

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-428-831]

**Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Germany**

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

**ACTION:** Notice of preliminary determination of sales at less than fair value

**SUMMARY:** We preliminarily determine that structural steel beams from Germany are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

**EFFECTIVE DATE:** December 28, 2001.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer or Edythe Artman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0410 or (202) 482-3931, respectively.

**SUPPLEMENTARY INFORMATION:****The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to the regulations at 19 CFR part 351 (April 2001).

**Background**

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Structural Steel Beams From the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan*, 66 FR 33048 (June 20, 2001) (*Initiation Notice*)), the following events have occurred.

On July 9, 2001, the United States International Trade Commission ("ITC")

preliminarily determined that there is a reasonable indication that imports of structural steel beams from Germany are materially injuring the United States industry (see ITC Investigation Nos. 731-TA-935-942 (Publication No. 3438)).

On July 26, 2001, we selected the two largest producers/exporters of structural steel beams from Germany as the mandatory respondents in this proceeding. For further discussion, see Memorandum to Susan H. Kuhbach, Senior Director Office 1, from The Team Re: Respondent Selection dated July 26, 2001. We subsequently issued the antidumping questionnaire to Stahlwerk Thüringen GmbH ("SWT") and Salzgitter AG ("Salzgitter") on July 26, 2001.

During the period August through November 2001, the Department received responses to sections A, B, C and D of the Department's original and supplemental questionnaires from SWT. The Department did not receive any responses from Salzgitter.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (See *Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan*, 66 FR 51639 (October 10, 2001).) On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (See *Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan*, 66 FR 56078 (November 6, 2001).)

**Postponement of Final Determination and Extension of Provisional Measures**

Pursuant to section 735(a)(2) of the Act, on November 21, 2001, SWT requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**

and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) SWT accounts 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.

**Scope of Investigation**

The scope of these investigations covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of these investigations unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of these investigations: (1) structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

## Scope Comments

In accordance with the preamble to our regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (see 66 FR 33048–33049). Interested parties submitted such comments by July 10, 2001. Additional comments were subsequently submitted by interested parties.

Pursuant to the Department's solicitation of scope comments in the *Initiation Notice*, interested parties in this and the concurrent structural steel beams investigations request that the following products be excluded from the scope of the investigations: (1) beams of grade A913/65 and (2) forklift mast profiles.

With respect to the scope-exclusion requests for the A913/65 beam and forklift mast profiles, the interested parties rely upon 19 CFR 351.225(k)(2) and reason that, in general, these products differ from the structural steel beams covered by the scope of the investigations in terms of physical characteristics, ultimate uses, purchaser expectations, channels of trade, manner of advertising and display and/or price. They also argue that these products are not produced by the petitioners.

In considering whether these products should be included within the scope of the investigations, we analyzed the arguments submitted by all of the interested parties in the context of the criteria enumerated in the court decision *Diversified Products Corp. v. United States*, 572 F. Supp. 883, 889 (CIT 1983) ("*Diversified*"). For these analyses, we relied upon the petition, the submissions by all interested parties, the International Trade Commission's ("ITC") preliminary determination, and other information.

After considering the respondent's comments and the petitioners' objections to the exclusion requests regarding the A913/65 beam, we find that the description of this grade of structural steel beam is dispositive such that further consideration of the criteria provided in their submissions is unnecessary. Furthermore, the description of the merchandise contained in the relevant submissions pertaining to this grade of beam does not preclude this product from being within the scope of the investigations. Accordingly, we preliminarily determine that the A913/65 beam does not constitute a separate class or kind of

merchandise and, therefore, falls within the scope as defined in the petition.

With respect to forklift mast profiles, having considered the comments we received from the interested parties and the criteria enumerated in *Diversified*, we find that the profiles in question, being doubly-symmetric and having an I-shape, fall within the scope of the investigations. These profiles also meet the other criteria included in the scope language contained in the petition. While the description by the interested party requesting the exclusion indicates some differences, such as in price, between forklift mast profiles and structural steel beams, these differences are not sufficient to recognize forklift mast profiles as a separate class or kind of merchandise. However, given these differences between forklift mast profiles and structural steel beams, we preliminarily determine that forklift mast profiles should be separately identified for model-matching purposes.

We also received a scope-exclusion request by an interested party for fabricated steel beams. This request was subsequently withdrawn pursuant to an agreement with the petitioners to clarify the scope language by adding that " \* \* \* beams that have additional weldments, connectors or attachments to I-sections, H-sections, or pilings are outside the scope definition." However, " \* \* \* if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector or attachment." Accordingly, we modified the scope definition to account for this clarification. See the "Scope" section above.

We have addressed these scope-exclusion requests in detail in a Memorandum to Louis Apple and Laurie Parkhill, Directors, AD/CVD Enforcement Group I, Offices 2 and 3, respectively, from The Structural Steel Beams Teams Re: Scope Exclusion Requests, dated December 19, 2001.

## Period of Investigation

The period of investigation ("POI") is April 1, 2000, through March 31, 2001.

## Fair Value Comparisons

With respect to SWT, to determine whether sales of structural steel beams from Germany to the United States were made at less than fair value ("LTFV"), we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice,

below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to weighted-average NVs.

## Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the SWT in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: Form; shape/size (section depth); strength/grade; and coating.

SWT reported different forms in the home market for beams that had "special finishing" and it reported different strength/grades in the home market for beams that had different notch-toughness requirements. SWT did not demonstrate that the hot-formed beams with "special finishing" should be distinguished from other hot-formed beams. Neither did SWT demonstrate that the grades that had different notch-toughness requirements should be distinguished from other beams that had the same grade (but not the notch-toughness requirements). Therefore, we did not differentiate the forms either on the basis of "special finishing" or on the basis of notch toughness.

## Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was 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, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, all U.S. sales of merchandise produced by SWT are made in the United States by TradeARBED Inc. ("TANY"), which is a reseller affiliated with SWT.

We based CEP on the packed FOB or CIF prices to unaffiliated purchasers in the United States. We made adjustments for price-billing errors. We made deductions for rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. inland freight expenses (*i.e.*,

freight from port to warehouse), and warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit costs) and indirect selling expenses (including inventory carrying costs).

For the U.S. sales for which SWT did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.*, December 19, 2001) in the calculation of imputed credit expenses.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by SWT and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

## Normal Value

### A. Home-Market Viability

In order to determine whether there is a 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 is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

### B. Affiliated-Party Transactions and Arm's-Length Test

The Department's standard practice with respect to the use of home-market sales to affiliated parties for NV is to determine whether such sales are at arm's-length prices. Therefore, in accordance with that practice, we performed an arm's-length test on SWT's sales to affiliates as follows.

We excluded sales to affiliated customers in the home market not made at arm's-length prices from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices,

we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993).

In accordance with 19 CFR 351.403(d), where the respondent's sales to its affiliates constituted at least five percent of the total home-market sales and these sales failed the arm's-length test, we normally use the sales made by the affiliates to unaffiliated customers in our analysis. Because SWT did not report these sales as we requested, we relied on partial adverse facts available in order to estimate the downstream sales prices for the sales of these customers that we match to U.S. sales. See the "Facts Available" section below for a detailed discussion of this use of partial facts available.

### C. Cost-of-Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of structural steel beams in the home market were made at prices below their cost of production ("COP"). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (see *Initiation Notice*, 66 FR at 33048, 33051).

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A"), interest expenses, and home-market packing costs (see "Test of Home-Market Sales Prices" section below for treatment of home-market selling expenses). We relied on the COP data submitted by SWT and TANY, except in

specific instances. We revised the consolidated financial expense rate to exclude interest income offsets for dividends and trade receivables. We revised the denominator in the consolidated financial expense rate calculation to reflect cost of goods sold rather than raw materials. See Memorandum from Heidi Norris to Neal Halper, Director Office of Accounting, dated December 19, 2001, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination ("Cost Calculation Memorandum").

#### 2. Test of Home-Market Sales Prices

On a product-specific basis, we compared the weighted-average COP to the home-market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, rebates, discounts, direct and indirect selling expenses, and packing expenses. In determining whether to disregard home-market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

#### 3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP during a POI, we determine that the below-cost sales represent "substantial quantities" of sales within an extended period of time, pursuant to section 773(b)(1)(A) of the Act. In such cases, we also determine if such sales were made at prices which permit recovery of all costs within a reasonable period of time, pursuant to 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of SWT's home-market sales were at prices less than the COP and, therefore, the below-cost sales were made within an extended period of time in substantial quantities. In addition, because we compared the price to the weighted-average COP for the POI, we determined

that the below-cost sales were not made at prices which permitted the recovery of all costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),<sup>1</sup> including selling functions,<sup>2</sup> class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison-market sales (*i.e.*, NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may

compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from SWT regarding the marketing stages involved in making the reported home-market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. SWT's LOT findings are summarized below.

We examined the chain of distribution and the selling activities associated with sales reported by SWT to distributors in the home market. SWT's sales to different distributors did not differ from each other with respect to selling activities (*e.g.*, market research, advertising and promotion, technical services, sales calls and demonstrations). Based on our overall analysis, we found that all of SWT's sales to distributors constituted one LOT. SWT did not provide any information regarding the selling activities associated with the downstream sales by the distributors in spite of our request for this information. Therefore, we have assumed that SWT and its affiliates performed the same selling activities as SWT performed for sales to distributors and that the LOT of the downstream sales is the same as the LOT of the sales to distributors.

In the U.S. market, SWT reported CEP sales only. Therefore, we treated all of SWT's U.S. sales as sales to an affiliated importer (*i.e.*, at the constructed, or CEP LOT) and found only one LOT. This CEP LOT differed considerably from the home-market LOT in that SWT reported a lower intensity of selling activities associated with market research, advertising, technical service, sales calls and demonstrations, engineering services, and warranties for the CEP LOT than the home-market LOT. Therefore, we found the CEP level of trade to be different from the home-market LOT and to be at less advanced stages of distribution than the home-

market LOT. Consequently, we could not match CEP sales at the same LOT in the home market. Furthermore, we have no information that provides an appropriate basis for determining a LOT adjustment.

Because there is only one LOT in the home market, it is not possible to determine if there is a pattern of consistent price differences between the sales on which normal value is based and home market sales at the LOT of the export transaction. Accordingly, because the data available do not form an appropriate basis for making a level-of-trade adjustment but the home-market LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to normal value in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) The indirect selling expenses on the home-market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

#### E. Calculation of Normal Value Based on Comparison-Market Prices

We calculated NV based on delivered prices in the home market to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We made adjustments for price-billing errors. We made deductions, where appropriate, from the starting price for discounts and rebates. We also made deductions for movement expenses, including inland freight, and inland insurance under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and warranties.

We also deducted home-market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

#### F. Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to

<sup>1</sup> The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhat along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine whether in the chain of distribution the sale appears to occur.

<sup>2</sup> Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common structural steel beams selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

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 that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

According to section 776(b) of the Act, 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 facts otherwise available. 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 URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the 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).

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act.

However, section 776(c) provides that, when the Department relies on secondary information rather than on information obtained in the course of a investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

#### 1. Salzgitter

On July 26, 2001, we issued a questionnaire to Salzgitter. We obtained confirmation from Federal Express that the questionnaire was delivered to Salzgitter on July 30, 2001. On August 10, 2001, we sent a letter of clarification of our questionnaire to Salzgitter. We obtained confirmation from Federal Express that this letter was delivered to Salzgitter on August 13, 2001. Salzgitter did not respond to our questionnaire.

Because Salzgitter did not respond to our questionnaire and therefore withheld information requested by the Department, we find it necessary, under section 776(a)(2) of the Act, to use the facts otherwise available in order to calculate a dumping margin for this company.

We find that, by not responding to our questionnaire, Salzgitter failed to cooperate by not acting to the best of its ability to comply with a request for information. Therefore, pursuant to section 776(b) of the Act, we find it appropriate to use an inference that is adverse to its interests in selecting from among the facts otherwise available. By doing so, we ensure that Salzgitter will not obtain a more favorable result by failing to cooperate than had it cooperated fully.

In selecting from among the facts otherwise available and using an

adverse inference, we reviewed the information provided in the petition and in the response submitted by SWT. The petition contained a margin calculation for each of three products sold by Salzgitter. See *Initiation of Antidumping Duty Investigations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan*, 66 FR 33048 (June 20, 2001), for a review of the methodology used by the petitioner for its calculations of export price and normal value. One of these margins was higher than the margin that we calculated for SWT. Hence, we selected this margin for purposes of corroboration.

We first corroborated the U.S. price from the petition (the same price being provided for all three products) by comparing it to prices of comparable product—product of the same grade and section depth—sold by SWT. We found that SWT made sufficient sales of the comparable product at similar or lower prices in the United States in order to corroborate the price provided in the petition. For the ocean freight and U.S. duty expenses, we likewise found that the petition contained the same expenses for each of the three products and that the percentage of sales by SWT with ocean freight and U.S. duty expenses in excess of these amounts of expenses were sufficient to corroborate the amounts provided in the petition. We were unable to corroborate the port charges from the petition, since these were in excess of those reported by SWT by a significant percentage. Thus, we selected the weighted-average port charges reported by SWT for use in calculating a facts-available margin for Salzgitter.

We then found that SWT made sufficient home-market sales at prices similar to or above the highest home-market price provided in the petition. Thus, we were able to corroborate this price and we selected the home-market prices from the petition for use in calculating the facts-available margin. One COP amount was provided in the petition for each of the three products sold by Salzgitter. We were not able to corroborate this amount, since it exceeded the highest COP reported by SWT for a comparable product. Thus, we selected the highest COP amount reported by SWT to estimate whether Salzgitter's home-market prices were made below the cost of production.

Using the information corroborated and selected, we performed a below-cost test and found that none of the three home-market prices provided in the petition were below the selected COP.

Taking the highest of these prices, we compared it to the export price, based on the U.S. information corroborated and selected, and calculated the margin between the two amounts, as is our practice. See *Notice of Final Determination of Sales at Less Than Fair Value: Welded Large Diameter Line Pipe from Japan*, 66 FR 47172, 47173 (September 11, 2001). This margin of 35.75 percent, based on facts otherwise available and using an adverse inference in selecting from among those facts, is our preliminary margin for Salzgitter. Because it is a preliminary determination, we will consider all of the margins on the record at the time of the final determination in order to determine the most appropriate final margin for Salzgitter.

For a detailed discussion of the calculation of the margin for Salzgitter, see the Decision Memorandum for Salzgitter AG for the Preliminary Results of the Less-Than-Fair-Value Investigation of Structural Steel Beams from Germany for the Period of Investigation April 1, 2000, through March 31, 2001, dated December 19, 2001.

## 2. SWT

Normally, in accordance with 19 CFR 351.403(d), where a respondent's sales to its affiliates constituted at least five percent of the total home-market sales and these sales failed the arm's-length test, we use the sales made by the affiliates to unaffiliated customers in our analysis. However, in this case, SWT did not report the sales made by the affiliates to unaffiliated customers. Because we do not have the data we need to use our normal methodology, because SWT did not provide the information we requested, and because we find, as described below, that SWT has significantly impeded this proceeding in not providing the information we requested, the use of facts available with regard to these sales is warranted.

In this proceeding, SWT has not complied with our requests for information with regard to downstream sales. We have given SWT two opportunities to remedy or explain the deficiency in its response. As discussed below, SWT has not remedied or adequately explained the deficiency in its response.

We sent a questionnaire to SWT on July 26, 2001. In that questionnaire, we asked that SWT report the resales by affiliated customers to unaffiliated customers instead of the sales by SWT to affiliated customers. SWT did not provide the downstream sales by its affiliated customers in the home market,

telling us that it could not do so. See SWT's section A response dated August 30, 2001, at page A-3. SWT stated that its affiliated resellers "co-mingle in their warehouse structural steel beams from all their suppliers" and that "these affiliated resellers will not necessarily record the origin of the product in their sales records." *Id.* SWT further stated that the "situation is further complicated by the fact that part of SWT's inventory systems, while maintained in electronic format, differ throughout the organization. The inability to link data and an inconsistency between database layouts and data codes would make it both time consuming and difficult (and at times impossible) for SWT's affiliated resellers to link downstream sales of structural steel beams to the beams they purchased from SWT." *Id.*

SWT expanded on its explanation in a letter dated October 1, 2001. SWT contends that it would be "impossible" to provide the downstream sales data as the Department requested. However, SWT focused on the difficulty in reporting downstream sales of beams that are of a grade which we do not use in our normal-value comparisons (hereinafter, "Grade B"). With regard to the grade sold in the United States (hereinafter, "Grade A"), SWT stated that "traceability of [Grade A] material is possible" and "for [Grade A] products, the inspection certificate will always go to the end customer. Nevertheless, because the link, in these situations, is not recorded in any retrievable system, and because historical sales records do not provide any information nor provide any basis for permitting retrieval through an electronic format, obtaining the information requested by the Department is impossible." See SWT letter dated October 1, 2001, at pages 4-5. Thus, it appears that SWT could have provided the downstream sales for Grade A beams, but that the operation of assembling this data would have to be done manually.

We reiterated our request for the downstream sales in a supplemental questionnaire on October 17, 2001. In response to our request, SWT submitted documents demonstrating the difficulty or impossibility of gathering downstream sales. However, all documents pertained to Grade B beams. SWT did not submit documentation showing that it could not report information on Grade A beams.

We sent a second supplemental questionnaire to SWT on November 27, 2001, requesting that SWT report only the downstream sales of Grade A beams. We also limited the reporting

requirements for SWT so that it only had to report downstream sales for those affiliates that failed the arm's-length test (as identified in our supplemental questionnaire). We asked that SWT explain, if it did not report these limited downstream sales, why it was unable to do so in light of the fact that the sales of this merchandise to these customers accounts for a relatively low quantity of sales.

SWT did not report the downstream sales even on this limited basis. Instead, SWT told us, with respect to Grade A beams sold by two of the affiliates that failed the arm's-length test, that the beams had been sold prior to their being resold to the first unaffiliated party and, therefore, there are no sales records to end-customers. With regard to these customers, SWT stated that, prior to any re-sale from the related purchasers, the products of SWT would have been co-mingled with non-SWT product. SWT further told us that, with regard to one of the customers, some of the beams have not yet been resold and, therefore, there are no downstream sales. Finally, SWT stated that, with regard to a third customer, while obtaining the downstream sales would be possible, it would be "an impracticable effort when viewed in the context of all tonnage that would have to be traced for the reporting of the detailed information on each downstream sale—a significantly impracticable effort in terms of cost and man-hours." See SWT's December 6, 2001, submission at pages 3-4.

We find SWT's explanation unconvincing for the following reasons. First, SWT did not explain why it could not report these sales given the relatively small quantity of sales that would have to be captured. For example, SWT states that obtaining the downstream sales information for the third customer would be "a significantly impracticable effort in terms of cost and man-hours" but it did not explain why that was the case given that the quantity of that customer's sales of Grade A beams is very low.

Second, the fact that some of the merchandise sold to one of the affiliates has not yet been resold does not justify not reporting that merchandise which has been resold. Indeed, the fact that the affiliate was able to report that some of the merchandise was not yet resold suggests that the company was able to trace its inventory to particular purchases from SWT.

Third, SWT states that traceability of the merchandise is complicated due to the co-mingling with non-SWT product and that it would be "impossible" for the reasons explained in the October 1, 2001, letter as described above.

However, the October 1, 2001, letter suggests that Grade A beams *can* be traced and that the problem is that it cannot be done electronically. SWT does not explain why the tracing of sales of Grade A beams could not be done manually given the small quantity of sales in question. Furthermore, if SWT had required more time to obtain the information we requested, it could have asked for an extension of the deadline to respond to our request. Although we have not always granted SWT the entire amount of time it requested when it has requested extensions, we have not denied SWT's requests for additional time to respond to our requests for information.

Finally, SWT claims that there are no sales records to end-customers for some of the merchandise sold by these affiliates. This is not an adequate justification for not reporting these sales. Because the facts of this matter are proprietary, please see the SWT preliminary analysis memorandum dated December 19, 2001, for a full description. Also, this is the first time SWT made the Department aware of this complication. Had SWT made us aware of this circumstance previously, we could have instructed SWT on the proper methodology for reporting such sales.

In sum, we are not convinced that SWT, acting to the best of its ability, could not report the downstream sales of Grade A beams sold to the parties that failed the arm's-length test. Indeed, it appears that SWT has made no attempt to gather the downstream sales information as of this date, even though it had been notified that it should report its downstream sales on July 26, 2001, or, in the alternative, a limited number of downstream sales on November 27, 2001. Furthermore, SWT has not provided us an adequate explanation for why it cannot report the more limited selection of downstream sales identified by the Department in its November 27, 2001, supplemental questionnaire.

Therefore, we find it appropriate to rely on the facts available in order to estimate the downstream sales prices of Grade A beams sold by the parties that failed the arm's-length test. Also, because we have preliminarily determined that SWT has not acted to the best of its ability in reporting these sales, we find that it is appropriate to use an adverse inference in estimating these downstream sales prices.

In the course of performing the arm's-length test, we have calculated customer-specific price ratios. We calculated these ratios on a model-specific basis by dividing the weighted-average price of sales to the affiliate by

the weighted-average price of sales to unaffiliated parties. We then weighted-averaged the model-specific ratios for each customer. As stated above, where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length.

As adverse facts available, we have recalculated the prices of Grade A beams sold to the parties that failed the arm's-length test. We recalculated this price by multiplying the reported prices by the highest customer ratio we found among SWT's affiliates and dividing the product by the customer ratio for each affiliate that failed the arm's-length test.

For a detailed discussion of the use of facts otherwise available for affiliated sales, see the SWT Preliminary Determination Analysis Memorandum dated December 19, 2001.

We intend to examine this issue further at verification.

#### Currency Conversion

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

#### Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct 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 CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exporter/manufacture | Weighted-average margin percentage |
|----------------------|------------------------------------|
| SWT .....            | 6.58                               |
| Salzgitter .....     | 35.75                              |

| Exporter/manufacture | Weighted-average margin percentage |
|----------------------|------------------------------------|
| All Others .....     | <sup>1</sup> 6.58                  |

<sup>1</sup> Pursuant to section 735(c)(5)(A), we have excluded from the calculation of the all-others rate margins which are zero or *de minimis*, or determined entirely on facts available. Because we determined Salzgitter's margin entirely on facts available, we used SWT's margin as the all-others rate.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for 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. Section 774 of the Act provides that the Department will hold a public 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 an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. 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 to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the 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 the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

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

Dated: December 19, 2001.

**Bernard T. Carreau,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 01-31980 Filed 12-27-01; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-869]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From The People's Republic of China

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

**ACTION:** Notice of preliminary determination of sales at less than fair value.

**SUMMARY:** We preliminarily determine that structural steel beams from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

**EFFECTIVE DATE:** December 28, 2001.

**FOR FURTHER INFORMATION CONTACT:** Lyn Johnson or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5287 and (202) 482-4477, respectively.

#### SUPPLEMENTARY INFORMATION:

#### The Applicable Statue and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995,

the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 2001).

#### Preliminary Determination

We preliminarily determine that structural steel beams from the People's Republic of China ("PRC") are being, or are likely to be, 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 for the period of investigation ("POI"), October 1, 2000, through March 31, 2001, are shown in the "Suspension of Liquidation" section of this notice.

#### Background

On June 20, 2001, the Department of Commerce ("the Department") published in the **Federal Register** the *Notice of Initiation of Antidumping Duty Investigations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain, and Taiwan* (66 FR 33048). The Department notified the U.S. Embassy in the PRC of the initiation of this investigation on June 12, 2001.

On July 9, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of structural steel beams from the PRC are materially injuring the United States industry (see ITC Investigation Nos. 731-TA-935-942 (Publication No. 3438)).

On July 17, 2001, the Department issued its antidumping questionnaire to the Chinese Ministry of Foreign Trade & Economic Cooperation with a letter requesting that it forward the questionnaire to all Chinese exporters of structural steel beams who had shipments during the POI. We also sent courtesy copies of the antidumping questionnaire to the following possible producers/exporters of subject merchandise named in the petition: Chongqing Iron & Steel (Group Co. Ltd.), Fushun Special Steel Co. Ltd., Guangzhou Iron & Steel Holdings Ltd., Hangzhou Iron & Steel Group Co., Hefei Iron & Steel Co., Jinan Iron & Steel Group, Lingyuan Iron & Steel Group Co. Ltd., Maanshan Iron & Steel Co., Ltd ("Maanshan"), Shanghai Pudong Iron & Steel (Group) Co. Ltd., Taiyuan Iron & Steel (Group) Co. Ltd., and Wuhan Iron & Steel Group Co.

During the period August through November 2001, the Department received responses to sections A, C, and

D of the Department's original and supplemental questionnaires from Maanshan. We received no other responses to our questionnaire.<sup>1</sup>

On September 6, we requested publicly-available information for valuing the factors of production and comments on surrogate-country selection. We received comments from Maanshan and from the Committee for Fair Beam Imports ("petitioners") on November 29, 2001.

On September 25, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on October 2, 2001, and postponed the preliminary determination until no later than November 30, 2001. (*See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan*, 66 FR 51639 (October 10, 2001).) On October 30, 2001, the petitioners made another timely request to postpone the preliminary determination for an additional 19 days. We granted this request on October 31, 2001, and postponed the preliminary determination until no later than December 19, 2001. (*See Notice of Postponement of Preliminary Antidumping Duty Determinations: Structural Steel Beams from the People's Republic of China, Germany, Italy, Luxembourg, Russia, South Africa, Spain and Taiwan*, 66 FR 56078 (November 6, 2001).)

#### Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on December 13, 2001, Maanshan requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Maanshan accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling

<sup>1</sup> The Hangzhou Iron & Steel Group and the Jinan Iron & Steel Group notified the Department via facsimile on July 28, 2001, and August 2, 2001, respectively, that they had no shipments of the subject merchandise during the POI. The Department put this information on the administrative record of this proceeding.