

Type of Request: Extension of a currently approved collection.

Burden Hours: 5,000.

Number of Respondents: 5,000.

Average Hours per Response: 5 minutes.

Needs and Uses: The Advance Monthly Retail Trade Survey (MARTS) was developed in response to requests by government, business, and other users to provide an early indication of current retail trade activity in the United States. The MARTS also provides an estimate of monthly sales at food service establishments and drinking places.

Policymakers such as the Federal Reserve Board need to have the timeliest estimates in order to anticipate economic trends and act accordingly. Sales data from this survey provide the earliest possible look at consumer spending and are necessary for the calculation of the personal consumption expenditures component of Gross Domestic Product (GDP). Without the Advance Monthly Retail Trade Survey, the Census Bureau's earliest measure of retail sales is the "preliminary" estimate from the full monthly sample released about 40 days after the reference month. Advance estimates are released approximately 12 days after the reference month.

The Council of Economic Advisers, Bureau of Economic Analysis (BEA), Federal Reserve Board, and other government agencies, as well as businesses use sales estimates developed from the Advance Monthly Retail Trade Survey in formulating economic decisions. Data users especially value these estimates because of their timeliness. There would be approximately a one month delay in the availability of these data if this survey were not conducted.

We intend to select a new MARTS sample to be introduced in Fall 2009. We expect the number of respondents to increase from 4,500 to 5,000 as a result of selecting the new sample.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202-395-7245) or e-mail (bharrisk@omb.eop.gov).

Dated: July 8, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-16522 Filed 7-13-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-849]

Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China

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

ACTION: Notice of Preliminary Determination of Circumvention of Antidumping Duty Order.

SUMMARY: We preliminarily determine that imports from the People's Republic of China (PRC) of cut-to-length carbon steel plate products with 0.0008 percent or more boron, by weight, produced by Tianjin, regardless of the exporter or the importer of the merchandise, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC. We also preliminarily determine that imports from the PRC of cut-to-length carbon steel plate products with 0.0008 percent or more boron, by weight, imported by Toyota Tsusho, regardless of the producer or exporter of the merchandise, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC.

EFFECTIVE DATE: July 14, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Bezirgianian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-1131.

SUPPLEMENTARY INFORMATION:

Background

In response to a request from Nucor Corporation, SSAB N.A.D., Evraz NA Claymont Steel, Evraz NA Oregon Steel Mills, and Arcelor Mittal USA Inc., domestic interested parties in the above-mentioned proceeding (collectively certain domestic producers), the Department of Commerce (the Department) initiated an antidumping circumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act). *See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Initiation of Antidumping Circumvention Inquiry*, 73 FR 62250 (October 20, 2008) (*Initiation Notice*). On November 17, 2008, the Department issued questionnaires to Tianjin (Tianjin Questionnaire) and Toyota Tsusho (Toyota Tsusho Questionnaire).

On December 8, 2008, Toyota Tsusho informed the Department that it would not submit a response to the Department's questionnaire. On December 23, 2008, Tianjin submitted a response to the Department's questionnaire (Tianjin Questionnaire Response). On December 31, 2008, SSAB N.A.D., Evraz NA Claymont Steel, and Evraz NA Oregon Steel Mills submitted comments on the Tianjin Questionnaire Response, and on January 13, 2009, Nucor Corporation submitted comments on the Tianjin Questionnaire Response.

On January 23, 2009, the Department requested from U.S. Customs and Border Protection (CBP) documentation pertaining to various entries of steel plate that had been classified under the HTSUS as "alloy" steel plate. Such documentation was provided by CBP to the Department on March 9, 2009 (see the March 12, 2009 memorandum from Steve Bezirgianian to The File (CBP Entry Documents)).

On February 10, 2009, the Department issued a supplemental questionnaire to Tianjin (Tianjin Supplemental Questionnaire). On March 6, 2009, Tianjin submitted a response to the Tianjin Supplemental Questionnaire, but the Department noted in its letter of March 12, 2009, that Tianjin had failed to follow certain filing requirements and asked Tianjin to re-file its response appropriately. Tianjin re-filed its response on March 16, 2009 (Tianjin Supplemental Questionnaire Response). On March 19, 2009, SSAB N.A.D., Evraz NA Claymont Steel, and Evraz NA Oregon Steel Mills submitted comments on the Tianjin Supplemental Questionnaire Response. On March 27, 2009, Nucor Corporation submitted comments on the Tianjin Supplemental

Questionnaire Response. Subsequent to this submission, no additional submissions were made.¹

Scope of the Order

The product covered by this order is certain cut-to-length carbon steel plate from the People's Republic of China. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") - for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. Specifically excluded from subject merchandise within the scope of this order is grade X-70 steel plate.

Merchandise Subject to the Minor Alterations Antidumping Circumvention Proceeding

The merchandise subject to this antidumping circumvention inquiry (Inquiry Merchandise) consists of all

merchandise produced by Tianjin and/or imported by Toyota Tsusho containing 0.0008 percent or more boron, by weight, and otherwise meeting the requirements of the scope of the antidumping duty order as listed under the "Scope of the Order" section above, with the exception of merchandise meeting all of the following requirements: aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (i.e., Jominy test) result indicating a boron factor of 1.8 or greater. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7225.40.3050, 7225.99.0090, 7226.91.5000, and 7226.99.0180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of Inquiry Merchandise is dispositive.

Legal Framework

Section 781(c) of the Act, dealing with minor alterations of merchandise, states: (1) In general. The class or kind of merchandise subject to (A) an investigation under this title, (B) an antidumping duty order issued under section 736, (C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 706 or section 303, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. (2) Exception. Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

Section 351.225(i) of the Department's regulations states that under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

Criteria for Analysis

While the statute is silent regarding what factors to consider in determining whether alterations are properly considered "minor," the legislative history of this provision indicates there are certain factors that should be considered before reaching a circumvention determination. Previous

circumvention cases² have relied on the factors listed in the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Tariff Act of 1930 to include the anti-circumvention provisions contained in section 781), which states:

{i}n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.³

In the case of an allegation of a "minor alteration" claim under section 781(c) of the Act, it is the Department's practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case. *See, e.g., Canadian Plate*, 65 FR at 64929. Each circumvention case is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, in circumvention cases we sometimes analyze additional criteria to determine if circumvention of the order is taking place. *Id.* at 64930. These may be case-specific. For example, in *Canadian Plate* additional factors analyzed included the circumstances under which the products entered the United States, the timing of the entries during the circumvention review period, and the quantity of merchandise entered during the circumvention review period. *Id.* at 64930-31. In a more recent circumvention case, the additional factors analyzed included not only the timing of the entries during the period, but also other factors, such as the input of customers in the design phase. *See Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Folding*

² *See, e.g., Preliminary Determination of Circumvention of Antidumping Order: Cut-to-Length Carbon Steel Plate from Canada*, 65 FR 64926, 64929 (October 31, 2000) (unchanged in final results, 66 FR 7617, 7618 (January 24, 2001)) (*Canadian Plate*); *see also Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan*, 68 FR 33676, 33679 (June 5, 2003).

³ Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess., at 100 (1987) (emphasis added).

¹ On April 13, 2009, the Department indicated that in a memorandum to the file that the deadline for submission of new information in this proceeding would be April 20, 2009.

Metal Tables and Chairs from the People's Republic of China, 73 FR 63684 (October 27, 2008), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China*, 74 FR 20920 (May 6, 2009).

Analysis (Tianjin)

We examined the evidence and argument we received in the questionnaire responses, and in the comments on those questionnaire responses, in the context of the Senate Report Criteria; and an additional factor (the timing of the entries during the period).

Based on our review of the record evidence and our analysis of the comments received, the Department preliminarily determines that imports from the PRC of Inquiry Merchandise produced by Tianjin are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC. For a complete discussion of the Department's analysis, see the Preliminary Analysis Memorandum for the Minor Alterations Circumvention Inquiry of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China (Preliminary Analysis Memorandum), dated concurrently with this notice.

As explained in the Preliminary Analysis Memorandum, we preliminarily determine that the Inquiry Merchandise has the same physical characteristics as products in the scope of the order on certain cut-to-length carbon steel plate from the PRC and the *ITC Final Report* except for the presence of boron in excess of 0.0008 percent, by weight.⁴ There is no evidence of significant differences in the expectations of the ultimate users, uses of the merchandise, and channels of marketing between products in the scope of the order and those containing boron in excess of 0.0008 percent, by weight. Tianjin's main claim regarding what distinguishes its Inquiry Merchandise from merchandise covered by the scope is that the presence of boron in the former allows for more stable mechanical properties. However, the Department finds that the information submitted by Tianjin does not support this conclusion. We also determine the cost of modification in this case (*i.e.*, adding trace amounts of boron) is insignificant. Finally, we find that Tianjin's production and export of the Inquiry Merchandise not only followed the imposition of the antidumping duty order on certain cut-to-length carbon steel plate from the

PRC, but also occurred as the PRC government was altering export tariff and VAT refund rates in ways that favored PRC exporters' shift to exports of steels classifiable as "alloy" steel based solely on customs classification. See Preliminary Analysis Memorandum for more details.

As a result of our inquiry, we preliminarily determine that imports from the PRC of Inquiry Merchandise produced by Tianjin, regardless of the exporter or the importer of the merchandise, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC. See Section 781(c) of the Act.

Facts Available (Toyota Tsusho)

As noted above, Toyota Tsusho indicated it would not respond to the Department's request for information. The questionnaire the Department issued to this party was designed to elicit information for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated in section 781(c) of the Act as outlined above. This approach is consistent with our analysis in previous circumvention inquiries. See, *e.g.*, *Petroleum Wax Candles From the People's Republic of China: Partial Termination of Circumvention Inquiry and Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 72 FR 14518 (March 28, 2007), unchanged in *Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 72 FR 31053 (June 5, 2007); *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006); and *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom: Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 64 FR 40336 (July 26, 1999).

Without this information the Department must use facts available in making its determination pursuant to section 776(a)(2) of the Act. Section 776(a) of the Act requires the Department to resort to facts otherwise available if necessary information is not available on the record or when an interested party or any other person fails to provide (requested) 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. See sections 776(a)(1) and 776(a)(2)(B) of the Act. As provided in section 782(c)(1) of the Act, if an interested party, promptly after receiving a request from the Department for information, notifies the Department that such party is unable to submit the information requested in the requested form and manner, the Department may modify the requirements to avoid imposing an unreasonable burden on that party. However, Toyota Tsusho informed the Department it would not respond to the Department's questionnaire. Consequently, because Toyota Tsusho failed to respond to the Department's questionnaire and, in fact, stated categorically that it would not respond to the Department's questionnaire, with respect to this party, we must base the preliminary determination in this inquiry on the 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 *Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial Rescission of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Certain Individually Quick Frozen Red Raspberries from Chile*, 72 FR 44112, 44114 (August 7, 2007) (unchanged in *Final--Raspberries from Chile*, 72 FR at 70297). Further, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997). See also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1380–84 (CAFC 2003). Toyota Tsusho provided no indication that it was unable to comply with the Department's request for information. Therefore, in selecting from among the facts available, the Department determined that an adverse inference is warranted, pursuant to section 776(b) of the Act, because this party failed to comply with the Department's requests for information to the best of its ability.

As a result of our inquiry, we preliminarily determine that imports from the PRC of Inquiry Merchandise imported by Toyota Tsusho, regardless of the producer or the exporter of the merchandise, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC. See Section 781(c) of the Act.

Conclusion

As noted above, we preliminarily determine that imports from the PRC of Inquiry Merchandise produced by Tianjin, regardless of the exporter or the importer of the merchandise, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC. Also as noted above, we preliminarily determine that imports from the PRC of Inquiry Merchandise imported by Toyota Tsusho, regardless of the producer or exporter of the merchandise, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC.

Suspension of Liquidation

In accordance with section 351.225(l)(2) of the Department's regulations, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of Inquiry Merchandise entered, or withdrawn from warehouse, for consumption on or after October 20, 2008, the date of the initiation of this inquiry. We will also instruct CBP to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after October 10, 2008, the date of the initiation of this inquiry, in accordance with section 351.225(l)(2) of our regulations.

Public Comment

The parameters for submission of public comment for circumvention inquiry cases are governed by the regulation covering scope rulings. See 19 CFR 351.225. Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 20 days of the publication of this notice. See 19 CFR 351.225(f)(3). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than 10 days after the date on which the case briefs are due. *Id.* Interested parties may request a hearing within 20 days of the publication of this notice. Interested parties will be notified by the Department of the location and time of any hearing, if one is requested.

This preliminary determination of circumvention is in accordance with section 781(c) of the Act and 19 CFR 351.225.

Dated: July 7, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-16646 Filed 7-13-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-805]

Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Extension of Time Limit for Final Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: The Department of Commerce (the Department) finds that it is not practicable to complete the final results of this changed circumstances review within the original time frame as it would be impossible to consider the parties comments and to complete the final results of this changed circumstances review within the original time frame. Accordingly, the Department is extending the time limit for completion of the final results of this changed circumstances review by 31 days to August 17, 2009.

FOR FURTHER INFORMATION CONTACT: John Drury or Brian Davis, 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) 482-0195 or (202) 482-7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2008, the Department published its notice of initiation of antidumping duty changed circumstances review. See *Notice of Initiation of Antidumping Duty Changed Circumstances Review: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico*, 73 FR 63682 (October 27, 2008) (*Notice of Initiation*). On June 18, 2009, the Department preliminarily determined that Ternium is the successor-in-interest to Hylsa and should be treated as such for antidumping duty cash deposit purposes. See *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico*, 74 FR 28883 (June 18, 2009) (*Preliminary Results*).

Extension of Time Limits for Final Results

The antidumping statute does not provide for a specific time limit for completing a changed circumstances review. However, under 19 CFR 351.216(e), the Department will issue the final results of a changed circumstances review within 270 days after the date on which the Department initiates the changed circumstances review. Currently, the final results of the antidumping duty changed circumstances review, which cover Hylsa, a producer/exporter of certain circular welded non-alloy steel pipe and tube from Mexico, and its successor Ternium, are due by July 17, 2009.

In the *Preliminary Results*, we stated that interested parties could request a hearing and submit case briefs to the Department no later than 30 days after the publication of the *Preliminary Results*, and submit rebuttal briefs, limited to the issues raised in those case briefs, five days subsequent to the case briefs' due date. As comments are currently due no later than July 20, 2009,¹ and the final results are currently due July 17, 2009, it would be impossible to consider the parties comments and to complete the final results of this changed circumstances review within the original time frame. Accordingly, pursuant to 19 CFR 351.302(b), the Department is extending the time limit for completion of the final results of this changed circumstances review by 31 days to August 17, 2009. See, e.g., *Certain Pasta from Italy: Notice of Extension of Final Results of Antidumping Duty Changed Circumstances Review*, 73 FR 46871 (August 12, 2008) and *Polyethylene Terephthalate Film Sheet and Strip from the Republic of Korea: Extension of Time Limit for Final Results of Changed Circumstances Review*, 73 FR 6931 (February 6, 2008).

This notice is issued and published in accordance with sections 751(b) and 777(i) of the Tariff Act of 1930, as amended.

Dated: July 8, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-16651 Filed 7-13-09; 8:45 am]

BILLING CODE 3510-DS-S

¹ Day 30 falls on a Saturday. Therefore, interested parties have until Monday, July 20, 2009, to request a hearing and submit case briefs to the Department.