

(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 date of publication in the **Federal Register** of our preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: February 2, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-852]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Structural Steel Beams From Japan

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

**EFFECTIVE DATE:** February 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Juanita Chen or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-0409 and (202) 482-3434, respectively.

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR part 351 (April 1998).

#### Preliminary Determination

We preliminarily determine that Structural Steel Beams ("Structurals") from Japan 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 are shown in the "Suspension of Liquidation" section of this notice. For all the following companies, the Department has used adverse facts available for their estimated margin: Nippon Steel

Corporation ("NSC"); Kawasaki Steel Corporation ("Kawasaki"); NKK Corporation ("NKK"); Sumitomo Metals Industries, Ltd. ("Sumitomo"); Toa Steel Co., Ltd. ("Toa"); Tokyo Steel Manufacturing Co., Ltd. ("Tokyo Steel") and Topy Industries, Limited ("Topy"). However, the Department is not assigning a margin to Yamato Kogyo Co. Ltd. See Case History section.

#### Case History

On August 3, 1999, the Department initiated antidumping duty investigations of imports of structural steel beams from Germany, Japan, South Korea, and Spain (Notice of Initiation of Antidumping Investigations: Structural Steel Beams from Germany, Japan, South Korea, and Spain (64 FR 42084 (August 3, 1999)). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. On August 8, 1999, Northwestern Steel & Wire Company, Nucor-Yamato Steel Company, TXI-Chaparral Steel Co., and the United Steelworkers of America AFL-CIO ("petitioners") submitted comments to the Department that proposed model match criteria. Petitioners stated that they provided the factors (i.e., shape, size, grade yield strength, weight, dimension and processing) upon which price distinctions in the foreign market should be based because they reflect the physical differences of the products. The petitioners stated that they listed these products in general order of importance. Also, on August 17, 1999, petitioners submitted comments to the Department requesting that the scope exclude certain forklift truck mast-section non-standard I-beams.

On August 13, 1999, petitioners revised their proposed model matching criteria for Japanese products. In this letter, petitioners provided information purporting to demonstrate that, based on yield strength, the new home market grades of the subject merchandise are a more appropriate match to the products being sold in the United States than the grades identified in the petition. Further, on August 25, 1999, petitioners submitted comments to the Department's draft model match characteristics. First, petitioners stated that the Department should include a classification for "Other Doubly-Symmetric Shapes (i.e., Special Sections)" at the end of the depth section category. Second, petitioners stated that the Department should match beam types in the following order: M beams, wide flange beams,

standard beams, H piles and other doubly-symmetric shapes.

On August 23, 1999, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Japan and South Korea and its negative injury determination on imports of subject merchandise from Germany and Spain. On August 31, 1999, noting the ITC's negative injury determination concerning Germany, petitioners submitted a letter stating that a scope exclusion of forklift truck mast-section non-standard I-beams was no longer necessary as those products were imported from Germany. Additionally, on September 1, 1999, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being threatened with material injured by reason of imports of the subject merchandise from Japan (64 FR 47866).

On August 2, 1999, the Department issued Section A of its antidumping duty questionnaire to NSC, Kawasaki, NKK, Sumitomo, Toa, Tokyo Steel, Topy, and Yamato Kogyo Co. Ltd. ("Yamato"). On August 11, 1999, the Department received NKK and Toa's joint response to Question 1 of Section A. This response stated that Toa is a subsidiary company of NKK now under liquidation, and that Toa did not make any sales of the subject merchandise during the POI.<sup>1</sup> On August 12, 1999, the Department received Sumitomo's response to Question 1 of Section A. On August 13 and 19, 1999, the Department received Tokyo Steel's response to Question 1 of Section A. Topy submitted its response to Question 1 of Section A on August 16 and 20, 1999. Yamato submitted its response to Question 1 of Section A on August 16, 1999, in which Yamato stated that it did not make any sales of subject merchandise to the United States during the POI. On August 18, 1999, NSC informed the Department that it will not be participating in the Structural Steel Beams investigation. On August 20, 1999, Kawasaki informed the Department that it will not be participating in the Structural Steel Beams investigation. On August 24, 1999, NKK informed the Department that it will not be participating in the Structural Steel Beams investigation. On August 30, 1999, the Department informed Yamato that it will not be part of the investigation because it did not

<sup>1</sup>Based on this information, the Department considers NKK and Toa to be a single entity and will instruct Customs to treat them as such.

have sales of subject merchandise during the POI.

On August 30, 1999, the Department issued Sections B-E of its antidumping duty questionnaire to Sumitomo, Tokyo Steel, and Topy. On September 3, 1999, the Department returned both Tokyo Steel and Topy's Section A response because both companies failed to correctly submit their respective Section A responses in accordance with the Department's regulations. On September 10, 1999, Tokyo Steel resubmitted its Section A response. Topy resubmitted its Section A response on September 13, 1999. On September 14, 1999, we provided additional instructions and filing procedures to both Tokyo Steel and Topy. Additionally, on September 14th, we sent a letter to Tokyo Steel informing it that all submissions must be served to APO parties. Petitioners requested on September 15, 1999 that the Department reject Tokyo Steel's Section A response because of non-conformity with the Department's regulations. Also, on September 15, 1999, Sumitomo informed the Department that it will not be participating in the Structural Steel Beams investigation. On September 21, 1999, petitioners filed comments on Tokyo Steel and Topy's Section A questionnaire response. On September 30, 1999, we issued supplemental Section A questionnaires to Tokyo Steel and Topy. Additionally, on September 30th, we provided further explanation to Tokyo Steel on the Department's filing procedures.

On October 7, 1999, Tokyo Steel informed the Department by fax that it was not possible to provide all of the data requested in Sections B-E of the questionnaire due to its voluminous nature. We received Tokyo Steel and Topy's supplemental Section A questionnaire responses on October 14, 1999. On October 15, 1999, we extended Tokyo Steel's deadline for submitting its Sections B-E responses from October 7, 1999 to October 22, 1999. On October 20, 1999, we extended Topy's deadline for submitting its Sections B-E responses from October 7, 1999 to October 27, 1999. Petitioners stated on October 20, 1999 that should Tokyo Steel and Topy fail to respond to the Department's questionnaire in its entirety and by the extended deadlines, the Department should cease granting leniency and apply adverse fact available. On October 22, 1999, the Department received Tokyo Steel's responses to Sections B, C, and D of the questionnaire. However, within the response Tokyo Steel again stated that it was impossible to provide the Department with all of the requested

data, due to the voluminous nature of the requested data. On October 27, 1999, petitioners submitted a letter requesting that the Department reject the non-conforming and incomplete response of Tokyo Steel to Sections B-E. On November 5, 1999, Tokyo Steel submitted a letter stating that the petitioners' letter of October 27th maligns the company and Tokyo Steel had, to the best of its ability, responded honestly to the Department's questionnaire. Further, on November 12, 1999, petitioners submitted a letter similar to its August 13th letter providing more appropriate price-to-price dumping margin comparisons for certain NSC Japanese products. Moreover, on January 14, 2000, petitioners submitted a letter providing reasons why its revised price-to-price margins are an appropriate basis for facts available.

#### Scope of Investigation

For purposes of this investigation, the products covered are 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 products ("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 products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation:

- Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

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, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

#### Period of Investigation

The Period of Investigation ("POI") is July 1, 1998 through June 30, 1999.

#### Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

In this case, NSC, Kawasaki, NKK, and Sumitomo indicated that they would not participate in the Department's investigation and did not provide the Department with information requested and needed to calculate a dumping margin. Therefore, we determine that NSC, Kawasaki, NKK/Toa, and Sumitomo withheld information requested by the Department. Accordingly, the Department finds it necessary to use the facts otherwise available for these respondents in accordance with section 776(a)(2)(A) of the Act.

With respect to Tokyo Steel and Topy, both companies responded to Section A of the Department's questionnaire. However, both companies failed to completely respond to Sections B-D of the Department's questionnaire. On October 7th, Tokyo Steel informed the Department it was not possible to provide all of the requested data for sections B-E of the questionnaire due to the voluminous nature of the request. On October 15, 1999 and October 20, 1999, the Department extended the deadline for submitting sections B-E of its questionnaire for both Tokyo Steel and Topy, respectively. In this letter, pursuant to section 782(d) of the Act, because incomplete responses are considered deficient, the Department warned respondents that such responses could result in use of the facts available. On October 22, 1999, the Department received Tokyo Steel's response to Sections B, C, and D of the questionnaire. However, in that response Tokyo Steel stated that due to the voluminous nature of the requested data it could not provide the Department with all the requested data and instead provided the Department with only selected information. Therefore, the Department determines that Tokyo Steel failed to provide the necessary information in the form or manner requested. Because the

Department is lacking complete information, we find it necessary to use the facts otherwise available for Tokyo Steel in accordance with section 776(a)(2)(B) of the Act.

Lastly, with respect to Topy, on October 20, 1999, the Department extended Topy's deadline for submitting its Sections B-D responses to October 27, 1999. However, Topy completely failed to respond to these sections of the questionnaire. Consequently, the Department finds Topy withheld requested information and that it is necessary to use the facts otherwise available in making its determination in accordance with section 776(a)(2)(A) of the Act.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, Vol. I, at 870 (1994) ("SAA"). In this case, NSC, Kawasaki, NKK, and Sumitomo completely failed to respond to the Department's questionnaires. Further, the companies indicated that they would not participate in the Department's investigation. Because of the companies' complete lack of participation in this investigation, we find that the companies failed to cooperate to the best of their abilities. Accordingly, when selecting among the facts available, we find that the use of an adverse inference is warranted in accordance with section 776(b) of the Act.

With respect to Tokyo Steel and Topy while the companies did respond to the Department's section A questionnaires and supplemental section A questionnaires, neither company responded satisfactorily to the Department's Sections B-E questionnaires. Although Tokyo Steel did submit a response to Sections B-E, on October 22, 1999, that response was highly incomplete despite Tokyo Steel's being granted an extension and warned that the Department required a complete response. Tokyo Steel informed the Department that it was not possible to respond to its questionnaire due to the voluminous nature of the requested data, but offered no further explanation for its failure to provide complete data in light of the Department's enlargement of time for Tokyo Steel's response. Further, Topy did not respond to Sections B-E of the Department's questionnaire at all, nor did it provide any reason for its failure to respond. In light of these facts, the Department finds

that Tokyo Steel and Topy failed to act to the best of their abilities to comply with the Department's requests for information under section 776(b) of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted for these companies as well.

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829-831. As adverse facts become available, the Department is assigning to NSC, Kawasaki, NKK/Toa, Sumitomo, Tokyo Steel, and Topy a dumping margin of 65.21 percent, which represents the highest margin calculated from the information placed on the record by petitioners on August 13, 1999 and November 12, 1999. As explained in detail in the "Corroboration" section below, we are using this information because it is a refinement of information in the petition in that it represents the best price-to-price comparison on the record. Further, the Department determines that use of this margin accomplishes the statute's aim of encouraging participation. As the SAA provides, where a party has not cooperated in a proceeding:

Commerce \* \* \* may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation. SAA at 870.

In this case, information representing a better price-to-price comparison that was submitted by petitioners during the proceeding demonstrates that the dumping margins estimated in the petition may be lower than in actual practice. Therefore, use of petitioners' updated information, which results in a higher dumping margin, will ensure that parties do not obtain a more favorable result by failing to cooperate in this investigation.

Section 776(c) of the Act provides that, when the Department relies on secondary information (which includes information from the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used as probative value (see SAA at 870). The SAA also states that independent sources used to corroborate

such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. *See* Import Administration Antidumping Duty ("AD") Investigation Initiation Checklist (July 27, 1999), for a discussion of the margin calculations in the petition. In addition, in order to determine the probative value of the margins in the petition in accordance with section 776(c) of the Act, we examined the key elements of the export price ("EP") and normal value ("NV") calculations on which the margins in the petition were based. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition are from public sources concurrent, for the most part, with the POI (e.g., interest rates, port fees, and customs duties).

In addition, shortly after the initiation of the investigation, on August 13, 1999, and again on November 12, 1999, the petitioners provided the Department with additional information for the Department's use in potential adverse facts available situations. Specifically, in the August 13th information petitioners provided a more recent price list than the one found in the petition (i.e., April 1999 versus December 1998). This new price list provided home market grades (i.e., SM490A and SM490B) that they contend are more appropriate matches for the U.S. grade (i.e., A572-50) found in the petition. Petitioners stated that the aforementioned home market grades are a more comparable match because both the home market and U.S. products have yield strengths that are more similar to each other than the home market and U.S. grades compared in the petition. Thus, petitioners believed that the new comparisons better reflect the Department's model matching criteria. After reviewing petitioners' new information, the Department agrees that it represents the best match and therefore the best price-to-price comparison currently on the record because it bases the prices used for the comparison on products with characteristics that best reflect the Department's model match criteria. Furthermore, the Department finds that the public price lists on the record do,

in fact, corroborate the prices of the new home market grades presented by petitioners.

With respect to certain other data included in the margin calculations of the petition (e.g., inland freight), neither respondents nor other interested parties provided the Department with further relevant information and the Department is aware of no other independent sources of information that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation for section 776 of the Act, at 19 CFR 351.308(c), 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, we note that the SAA at 870 specifically states that, where “corroboration may not be practicable in a given circumstance,” the Department may nevertheless apply an adverse inference. Accordingly, we find, for purposes of this preliminary determination, that the information used is sufficiently corroborated.

#### All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been assign, as the “all others” rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada*, 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy*, 64 FR 15458, 15459 (March 21, 1999).

We are basing the “all others” rate on the simple average of margins in the petition and information placed on the record by petitioners on August 13, 1999 and November 12, 1999, which is 31.98 percent.

#### Suspension of Liquidation

In accordance with section 733(d) 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 dumping margin 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/manufacturer	Weighted-average margin (percentage)
Kawasaki Steel Corporation .....	65.21
Nippon Steel Corporation .....	65.21
NKK Corporation/Toa Steel Co., Ltd. ....	65.21
Sumitomo Metals Industries, Ltd. Tokyo Steel Manufacturing Co., Ltd. ....	65.21
Topy Industries, Limited .....	65.21
All Others .....	31.98

#### 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.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 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. If this investigation proceeds normally, we will make our final determination no later than 75 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: February 2, 2000.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00-3261 Filed 2-10-00; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### University of Hawaii; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99-027. Applicant: University of Hawaii, Honolulu, HI 96822. Instrument: Low-Level Beta Counter, Model GM-25-5. Manufacturer: Riso National Laboratory, Denmark. Intended Use: See notice at 64 FR 63788. November 22, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) Robust design and portability for shipboard operation, (2) one-inch detector windows and (3) a background of  $0.178 \pm 0.003$  counts per minute. Woods Hole Oceanographic Institution advised January 28, 2000 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.