

Ministerial Error Allegations in the Final Results for Antidumping Duty Review on Chlorinated Isocyanurates from the People's Republic of China,

dated concurrently with this notice. Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the

administrative review of chlorinated isocyanurates from the PRC. The revised final weighted-average margins for Jiheng and Nanning are as follows:

| Exporter/Manufacturer | Original Weighted-Average Margin Percentage | Amended Weighted-Average Margin Percentage |
|-----------------------|---|--|
| Jiheng .....          | 0.80  | 0.90                                       |
| Nanning .....         | 53.67                                       | 54.86                                      |

### Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection ("CBP") 15 days after the date of publication of these amended final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates for merchandise subject to this review.

### Cash Deposit Requirements

The following deposit requirements will be effective retroactively on any entries made on or after September 10, 2008, the date of publication of the *Final Results*, for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Jiheng, the cash deposit rate will be 0.90 percent and for subject merchandise exported by Nanning, the cash deposit rate will be 54.86 percent; (2) for previously reviewed or investigated exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 285.63 percent; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

### Notification of Interested Parties

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

assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

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

Dated: October 10, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-849]

#### Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Initiation of Antidumping Circumvention Inquiry

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

**SUMMARY:** In response to a request from Nucor Corporation, SSAB N.A.D., Evraz Claymont Steel, and Evraz Oregon Steel Mills, domestic interested parties in the above-mentioned proceeding (collectively "certain domestic producers"), the Department of Commerce (the Department) is initiating an antidumping circumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act). This inquiry will determine whether the inclusion of 0.0008 percent or more, by weight, of boron in certain steel plates

results in those steel plates having been "altered in form or appearance in minor respects" from the subject merchandise such that the plates can be considered subject to the antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China (PRC) under the minor alterations provision. See Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order, 68 FR 60081 (October 21, 2003).

**EFFECTIVE DATE:** October 20, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Steve Bezirgianian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-1131 or (202) 482-0649, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

On August 13, 2008, certain domestic producers requested that the Department make a final circumvention ruling within 45 days pursuant to section 781(d) of the Act, with respect to certain steel plates containing 0.0008 percent or more, by weight, of boron. Those parties urged the Department to find that such plates are circumventing the antidumping duty order on certain cut-to-length carbon steel plate from the PRC by virtue of minor alterations to subject merchandise. *See* section 781(c) of the Act.

Certain domestic producers cite U.S. trade data indicating that imports from the PRC of merchandise classified under Harmonized Tariff Schedule of the United States (HTSUS) numbers that include subject merchandise declined after the order went into effect. *See* certain domestic producers' August 13, 2008, submission (August 13 submission) at 15 and Exhibit 5. Certain domestic producers also note that during the same period, imports from the PRC of merchandise classified under the HTSUS as putatively non-subject

alloy steel rose substantially. *See id.* As a result, certain domestic producers note, a single alloy HTSUS number accounted for nearly 95 percent of the total non-alloy and alloy steel plate imported from the PRC in the most recent quarter for which data are available (April 2008 through June 2008). *See id.*

Certain domestic producers suggest this trend reflects, at least in part, a move by PRC producers and exporters to add small amounts of boron during the steel production process. *See id.*, at 5. They note that steel consisting of 0.0008 percent or more boron is classified for U.S. Customs purposes as alloy steel. *See id.* Such “alloy” steel products are not classified in HTSUS numbers listed with the description of the scope of the order. Certain domestic producers state boron is being added in the steel production process to avoid antidumping duties. *See id.*, at 10.

Certain domestic producers assert that physical characteristics, expectations of ultimate users, uses, channels of marketing, and costs are unaffected by the inclusion of such small quantities of boron. *See id.*, at 10–13. Certain domestic producers also refer to evidence of a specific offer made for such PRC steel that contained what they described as language indicating a conscious attempt to avoid classification of the merchandise under the order. *See id.*, at 10 and Exhibit 1. Certain domestic producers suggest the shift to the ostensibly “alloy” plate products indicates an attempt to conceal Chinese producers’ true interest in re-entering the U.S. market in the context of the recently initiated sunset review of the order. *See id.*, at 14–15. In addition, certain domestic producers note the Department ruled that circumvention had taken place under another cut-to-length carbon steel plate order as a result of such boron additions. *See id.*, at 9 (citing *Final Determination of Circumvention of the Antidumping Order: Cut-to-Length Carbon Steel Plate From Canada*, 66 FR 7617 (January 24, 2001) (*Final Canada Plate Determination*)). Finally, certain domestic producers reference media reports that the PRC government is taking steps to curb efforts by PRC exporters to evade PRC export taxes through boron-inclusion resulting in steel plate products being classified as “alloy” steel. *See id.*, at 10 and Exhibit 2.

On August 26, 2008, the Department identified various issues in certain domestic producers’ August 13, 2008, submission that required clarification. Certain domestic producers provided a response on September 10, 2008

(September 10, 2008, submission). Certain domestic producers identified publicly the parties they claimed were involved with circumvention: Tianjin Iron and Steel Co., Ltd. (Tianjin) and Toyota Tsusho America (Toyota Tsusho). *See* September 10, 2008, submission, at 3. Certain domestic producers also clarified the proposed scope of the antidumping circumvention inquiry. Specifically, they proposed that manufacturers and exporters of certain merchandise containing boron at alloy steel levels, but otherwise meeting the description of the scope of the antidumping duty order, be required to demonstrate that the merchandise had certain additional chemical and testing result properties for such merchandise to be considered not subject to the antidumping duty order. *See id.*, at 7; *see also* “Scope of the Minor Alterations Antidumping Circumvention Proceeding” section below. Certain domestic producers provided mill test certificate information to support its claims. *See* September 13, 2008, submission, at Exhibits S–2 and S–5. Certain domestic producers also provided additional information and clarification, including, for example, discussion of the potential impact of boron on the hardenability of steels, and how hardenability is measured. *See* September 10, 2008, submission at 5–9 and Exhibit S–4.

On September 19, 2008, the Department obtained additional information through a telephone conversation with individuals speaking on behalf of one of the domestic producers. These individuals clarified that the request did cover products with any boron level greater than or equal to 0.0008 percent. Also, the request for antidumping circumvention inquiry was limited to merchandise produced by Tianjin and/or imported by Toyota Tsusho. *See* the September 30, 2008, telephone memorandum from Steve Bezirgianian to the File (September 30, 2008, memorandum). In a submission filed on October 1, 2008 (October 1, 2008, submission), certain domestic producers confirmed the accuracy of the information recorded in September 30, 2008, memorandum. *See* October 1, 2008, submission at 2. In that filing, certain domestic producers also provided additional evidence of offers for plate containing added boron and involving Tianjin and Toyota Tsusho. *See* October 1, 2008, submission at 1–2 and Exhibit 1.

#### *Scope of 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 (HTS) 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 HTS 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 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.

### Initiation of Minor Alterations Antidumping Circumvention Proceeding

Section 781(c)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when products which are of the class or kind of merchandise subject to an antidumping duty order have been "altered in form or appearance in minor respects . . . whether or not included in the same tariff classification." The Department notes that, while the statute is silent as to what factors to consider in determining whether alterations are properly considered "minor," the legislative history of this provision indicates there are certain factors which should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, the Department has generally relied upon "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." S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987) ("In 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.").

As discussed below, certain domestic producers have presented evidence with respect to each of these criteria.

### Overall Physical Characteristics

Certain domestic producers acknowledge that the presence of boron may be associated with enhanced hardenability of steel. *See id.* However, certain domestic producers have noted that other parameters are necessary for boron to have the effect in question (*see, e.g.,* September 10, 2008, submission at 5–9, and September 30, 2008, memorandum at 1–2). The limitation of the scope of this circumvention inquiry accounted for such circumstances. *See* "Merchandise Subject to the Minor Alterations Antidumping Proceeding" section above. Unless these parameters are met, the boron is assumed to have no effect upon the hardenability of the steel. *See, e.g.,* September 10, 2008, submission at 6.

### Expectations of the Ultimate Users

Certain domestic producers indicated they are unaware of any instances where customers expected or requested cut-to-length carbon steel plate with small amounts of boron added, other than to potentially avoid the added expenses to the plate products that result from the antidumping duties in place (*see* August 13, 2008, submission at 12), with the exception of those instances in which other parameters are fulfilled to allow enhanced hardenability of the product. As noted, the scope of the inquiry was limited to account for this exception. *See Overall Physical Characteristics* sub-section above.

### Use of the Merchandise

Certain domestic producers state the product at issue is used for the same purposes as subject merchandise. *See* August 13, 2008, submission at 12. This is consistent with their later claim that the presence of the additional amounts of boron, in and of itself, is insignificant in terms of adding beneficial attributes to the steel. *See* September 10, 2008, submission at 4.

### Channels of Marketing

Certain domestic producers state the channels of marketing for the boron-added cut-to-length plate and the subject plate are the same, noting that both products are marketed in the same manner, appeal to the same end users, and are used for the same end uses. *See* August 13, 2008, submission at 12. They note an electronic mail offer involving Tianjin and Toyota Tsusho directly targets U.S. customers of subject merchandise. *See id.* at 12–13 and Exhibit 1; *see also* September 10, 2008, submission at 3.

### Cost of Modification

Certain domestic producers indicated the addition of boron at levels recognized as alloy amounts by the tariff schedule involve minimal additional cost. They cite the Department's finding in a previous ruling that reaching the 0.0008 percent threshold involved a cost amounting to only about one-third of one percent of the sales price. *See* August 13, 2008, submission at 13; *see also Preliminary Determination of Circumvention of Antidumping Order: Cut-to-Length Carbon Steel Plate From Canada*, 65 FR 64926, 64928 (October 31, 2000) (unchanged at *Final Canada Plate Determination*).

Based on the information provided by certain domestic producers, the Department finds there is sufficient basis to initiate an antidumping circumvention inquiry pursuant to section 781(c) of the Act to determine

whether the merchandise subject to the inquiry (identified in the "Merchandise Subject to the Minor Alterations Antidumping Circumvention Proceeding" section above) involves a minor alteration to subject merchandise that is so insignificant as to render the resulting merchandise (classified as "alloy" steel under the HTSUS) subject to the antidumping duty order on certain cut-to-length carbon steel plate from the PRC.

The Department intends to issue its final determination within 300 days of the date of publication of this notice.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

We intend to notify the International Trade Commission in the event of an affirmative preliminary determination of circumvention, in accordance with 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C). The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. As noted above, the Department intends to issue its final determinations within 300 days of the date of publication of this initiation.

This notice is published in accordance with sections 781(c) and (d) of the Act and 19 CFR 351.225(i).

Dated: October 10, 2008.

**David Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–427–827]

### Sodium Metal from France: Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances

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

**SUMMARY:** The Department of Commerce (the Department) has determined that sodium metal from France is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act