A–533–810

Stainless Steel Bar From India: Final Results of New Shipper Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 28, 1997.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Todd Hansen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815 or 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Summary

On October 22, 1996, the Department of Commerce (the Department) published the preliminary results of the new shipper antidumping duty administrative review of the antidumping duty order on stainless steel bar from India (61 FR 54774). The review covers two manufacturers/exporters of the subject merchandise for the period February 1, 1995 through July 31, 1995. These manufacturers/exporters are Akai Asian Ltd. (''Akai'') and Viraj Impoexpo Ltd. (''Viraj''). The Department gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have found no basis to modify our preliminary results. therefore, we have adopted the preliminary results of this review to be the final results, as well.

Scope of the Review

For purposes of this administrative review, the term ''stainless steel bar'' means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness have a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this administrative review is currently classifiable under subheadings 7222.11.0005, 7222.11.0050, 7222.19.0005, 7222.19.0050, 7222.20.0005, 7222.20,0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Interested Party Comments

In accordance with 19 CFR 353.38, we gave interested parties an opportunity to comment. We received written comments from petitioners and both responding companies.

Comment 1

Petitioners claim that Viraj had only one small shipment during the POR which, in petitioners' view, was intended to allow Viraj's U.S. customer to test or evaluate the merchandise. According to petitioners, the balance of the order was not to be shipped until the U.S. customer indicated its approval of the initial shipment. Petitioners claim that, in view of the circumstances surrounding this first shipment, it is clear that it was not a normal commercial shipment. Therefore, because Viraj made no other shipments during the POR, it does not qualify as a new shipper.

Viraj claims that, because it was a new producer, U.S. buyers were not familiar with its product. The first small shipment was made at the customer's request to enable it to market the goods in the United States. Viraj also states that during verification, no evidence was found to indicate that the balance of the order was in any way contingent on the U.S. customer's acceptance of the initial shipment.

DOC Position

While the purchase order did specify an initial shipment of limited quantity, neither the purchase order nor the confirmation contained any language indicating that the balance of the order was contingent on the acceptability of the first shipment. An examination of correspondence files during verification also revealed nothing that would indicate such a contingency. Therefore, we view this shipment as a normal shipment occurring during the POR pursuant to a sale made during the POR.

Comment 2

Petitioners claim that Viraj did not have a sale during the POR because a substantial quantity of the goods remained unshipped long after the delivery date specified in the confirmation order. Petitioners maintain that Viraj's failure to ship a substantial quantity by the date specified in the confirmation order resulted in a change in the delviery date and, consequently, in the date of sale. They claim that the delivery date was one of the substantive terms of sale as demonstrated by Viraj revising the delivery date at the time it issued the confirmation order to the customer. Petitioners conclude that, because a substantive term of sale was changed, the date of sale must be changed accordingly. Consequently, Viraj no longer has a sale within the POR and the Department has no basis for conducting a review.

Viraj claims that both the purchase of the goods and initial shipment of goods occurred during the POR. It contends that this purchase and initial shipment alone are sufficient for the Department to conduct a new shipper review. Further, a subsequent shipment pursuant to the purchase order was made at the prices specified in the purchase order and confirmation. Thus, the date of sale for that later shipment is also the date of the purchase order and confirmation.

Viraj also notes that it is the Department's long established practice to consider price and quantity as the essential terms of sale. Delivery terms, however, have not been typically viewed as an essential term of sale. Thus, changes in the delivery date should not affect the date of sale.

DOC Position

Viraj accepted and confirmed an order from its U.S. customer during the POR.

The order and confirmation clearly and definitively established the price and quantity of the sale, and we have determined in this case that the date of sale was the date of the order and confirmation. The fact that a change occurred in the delivery date specified in the order confirmation does not mean that the date of sale must also change. We have typically considered delivery terms to be nonessential terms of sale and have not regarded changes in delivery terms as affecting the date of sale. See, *e.g., Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina* (60 FR 33539, 33542, June 28, 1995). In the present review, nothing in the purchase order or confirmation indicated that special significance should be attached to the delivery terms of the sale. In fact, the purchase order allowed considerable flexibility with respect to the delivery date. Thus, the essential terms of this contract are clearly price and quantity and these remained unchanged from the original order and confirmation. Therefore, we consider the date of sale to be the original order and confirmation date.

We note that a portion of the goods subject to Viraj's sale remained unshipped as of August 30, 1996, the last day of verification. Consequently, this review was based on the goods actually shipped. For these goods, we found that shipments were made pursuant to the essential terms of the sales contract under review. In addition, in its responses to the antidumping questionnaire and three supplemental questionnaires, Viraj provided the Department with complete information on the sale and the shipments made to date pursuant to the sale. Further, the Department verified the responses during on site verification at Viraj's premises in Maharashtra, India. Therefore, although a part of the sales quantity has yet to be shipped, we nonetheless view the sale as a *bona fide* sale, which properly serves as the basis for a new shipper review: the shipments made to date pursuant to the sale support this finding. If, for some reason, the terms and conditions for the unshipped portion of this sale were to change, we would address these changes in a future administrative review, assuming that a review was requested.

Comment 3

Petitioners claim that the third country sale reported by Viraj did not occur during the POR because delivery of the goods pursuant to this sale did not take place until long after the date specified in the order confirmation. Petitioners claim that delivery date is a substantive term of sale and a change in the delivery date changes the date of sale. In this case, the change in delivery date results in a date of sale which falls outside the POR.

DOC Position

We disagree with petitioners. As explained in the *DOC Position* in response to *Comment 2,* we have typically considered delivery terms to be nonessential terms of sale and have not regarded changes in delivery terms as affecting the date of sale.

Comment 4

Section 773(a)(1)(C) of the Act provides that particular market situations in the home market or in third country markets may prevent the Department from using these markets as the basis for normal value. Petitioners cite page 150 of the Statement of Administrative Action (SAA), which describes a particular market situation that might prevent the Department from using a market for comparison purposes. The particular market situation referred to in the SAA concerns a home market where a single sale constitutes five percent of the sales to the United States. In the stated example, petitioners claim the Department is not able to determine whether the sale is in the ordinary course of trade or in normal commercial quantities. Petitioners claim that Viraj's sale for export to Canada falls into this category.

DOC Position

Neither the information supplied in Viraj's responses nor the information obtained during verification gives the Department reason to suspect that the Canadian sale was made outside the ordinary course of trade. Specifically, with regard to the quantity of the sale, we concluded that it did not appear to be either so extraordinarily large or small as to be outside normal commercial quantities, based on our examination of sales quantities sold for export to third countries. Verification exhibits revealed that the quantity of these third country sales was generally in line with the quantity of the Canadian sale.

Comment 5

Petitioners claim that although there is no equity relationship, the Department should determine that Akai's U.S. customer is an affiliated company based on the fact that Akai did not receive payment from this customer for a considerable period of time after shipment of the goods. Also, petitioners claim that certain information from verification leads to the conclusion that Akai is affiliated with this U.S. customer.

DOC Position

Late payment is not an uncommon business practice and, in and of itself, does not provide a sufficient basis for concluding that Akai is affiliated with its U.S. customer. In addition, the information petitioners refer to from verification is not grounds for supporting the conclusion that these two companies are affiliated. During verification, we checked the records establishing Akai's affiliations with other companies. We found no indication that an affiliation exists between Akai and its U.S. customer. Also, in reviewing the books and records of the company generally, we found no basis to conclude that the companies were affiliated.

Comment 6

Petitioners claim that the Department should determine that an affiliation exists between Akai and both its raw materials supplier and its processor. Their argument is based on the fact that Akai did not pay these companies for a considerable period of time after the goods and services were rendered.

DOC Position

We disagree with petitioners. As explained in the *DOC Position* to *Comment 5,* late payment of debts does not establish that the debtor and creditor are affiliated.

Comment 7

Petitioners argue that the cost of production data submitted by Viraj are irrelevant to this proceeding. Petitioners contend that Viraj has admitted that it did not produce commercial quantities of the subject merchandise during the POR. Thus, cost data submitted by Viraj relates to a period outside the POR. Petitioners point to instructions in the Department's questionnaire, which clearly require that cost data must be calculated over the POR.

Viraj counters that the Department's standard practice is to use costs outside the POR when little or no production has occurred during the POR. Viraj states that since production did not begin until the last month of the POR, it is reasonable, and consistent with past practice, to use cost data from after the POR.

DOC Position

We agree with respondent. The Department normally uses weighted average production data based on costs incurred during the POR. However, in

this case, most of the relevant production occurred outside the POR. Therefore, for purposes of gathering cost information, we have modified the cost reporting period to include the period when the bulk of the goods were actually produced. In view of the limited production by Viraj during the POR, we found it appropriate to include cost data from the two month period following the POR, as well. (*See, e.g., Antifriction Bearings (Other Thank Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review* (56 FR 31692, July 11, 1991.)

Comment 8

Petitioners argue that costs of production are not reliable because the quantity sold does not correlate with Viraj's production during the cost reporting period.

DOC Position

At verification we saw that Viraj's production during the cost reporting period exceeded shipments of the subject merchandise. Part of the excess was accounted for by merchandise that had been packed and was awaiting shipment. The remaining part was accounted for by finished merchandise waiting to be packed. The amount of unshipped goods on hand did not appear to be unusual, especially in view of the fact that Viraj was a new producer bringing its productive capacity online for the first time. Therefore, we find no reason to question costs reported by Viraj, merely because a balance of production remained on hand at the end of the POR.

Comment 9

Petitioners claim that the Department has calculated a constructed value based on 1995 costs for products which had not yet been shipped as of September 1996 and which, presumably, had not yet been produced. Petitioners claim that the 1995 cost data is inappropriate for goods not yet shipped or produced as of September 1996.

DOC Position

We agree with petitioners. For the preliminary results, we included the unshipped portion of Viraj's sale in our margin calculations, using the constructed value data and movement charges that applied to goods already shipped. For the final results, we have limited margin calculations to those goods which have already been shipped and for which relevant cost and sales data were reported in Viraj's responses to our antidumping questionnaires.

Comment 10

Petitioners argue that the Department erred in its calculation of constructed value for Akai because the Department did not account for the value of scrap retained by a subcontractor hired by Akai. Petitioners assert that if Akai had not allowed the subcontractor to retain the scrap, the subcontractor would have demanded a higher payment, and Akai's costs would have increased. Petitioners urge the Department to include a cost for this scrap in Akai's constructed value calculations.

Department's Position

By allowing the subcontractor to retain any scrap generated in the subcontractor's conversion work, Akai has foregone a reduction in its cost of materials in manufacturing the subject merchandise. By including the gross weight of inputs into the production process in our calculation of constructed value, we have accounted for all material costs incurred by Akai. In other words, our calculations already include the value of the scrap retained by the subcontractor since Akai does not receive a reduction in its material costs associated with this scrap.

Comment 11

Petitioners claim that the Department should include as part of constructed value excise taxes paid in purchasing raw material, unless those excise taxes have actually been rebated upon exportation of the finished goods. Petitioners maintain that a portion of the merchandise sold for export to the United States remained unshipped as of verification. Therefore, the excise tax applicable to this portion of the merchandise should be included as part of the constructed value because it has not yet been rebated.

DOC Position

For these final results, we are doing antidumping calculations only for merchandise which has actually been exported. (See *Comment 9*.) During verification it was readily apparent that the excise tax on raw materials was routinely rebated upon export of the finished product. An examination of excise claim ledgers, excise duty credit registers, and bank statements made it abundantly clear that the excise tax was consistently rebated upon export. Therefore, in calculating constructed value for merchandise actually exported, we did not include the excise taxes paid in purchasing raw materials.

Final Results of Review

As a result of this review, we determine that the following weighted-average dumping margins exist for the period February 1, 1995 through July 31, 1995:

Manufacturer/exporter	Margin
Akai Asian	4.83
Viraj	0.00

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future deposits of estimated duties for the manufacturers/exporters subject to this review. The posting of a bond or security in lieu of a cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and section 353.22(h)(4) of the Department's regulations, will no longer be permitted. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the reviewed companies will be that established in the final results of this new shipper administrative review; (2) for companies not covered in this review, but covered in previous review or the original less than fair value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacture is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be the ''all others'' rate of 12.45 percent established in the final determination of sales at less than fair value. (59 FR 66915, December 28, 1994).

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of

antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). 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 the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(2)(B) of the Tariff Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 353.22(h).

Dated: January 16, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2053 Filed 1–27–97; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–129. *Applicant:* University of Arizona, Soil, Water and Environmental Science, Shantz 429, Building #38, Tucson, AZ 85721. *Instrument:* Surface Forces Apparatus, Model Mark 4. *Manufacturer:* Australian National University, Australia. *Intended Use:* The instrument will be used to measure the force and distance between two surfaces coated with the bacterial outer membranes and phase separation of nonmiscible mixtures in mica slit pores. In addition, the instrument will be used in the course, SWES 607 Surface Chemistry of Soils, to teach students about molecular level phenomena that influence the fate and transport of contaminants in the soil. *Application accepted by Commissioner of Customs:* December 4, 1996.

Docket Number: 96–131. *Applicant:* Oklahoma State University, Purchasing Department, 208G Whitehurst, Stillwater, OK 74078. *Instrument:* Ti:Sapphire Laser, Model MBR–110. *Manufacturer:* Microlase Optical Systems Ltd., United Kingdom. *Intended Use:* The instrument will be used to conduct the following: (1) investigation of nonlinear optical properties of semiconductor microresonators, (2) determination of the compositions of composite media that enhance various nonlinear optical properties and in particular the relative effects of absorptive and dispersive contributions, (3) study of optical multistability in a system consisting of atoms transmitting through the mode of an optical resonator, (4) exploration of the interaction of atoms with very precisely modulated monochromatic intracavity radiation and (5) investigation of the interrelationship of various measures of cavity loss and their effects on experiments that depend on precise knowledge of atom-cavity coupling. In addition, the instrument will be used for educational purposes in graduate and undergraduate level physics courses. *Application accepted by Commissioner of Customs:* December 5, 1996.

Docket Number: 96–132. *Applicant:* National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Building 5, Room 108, Bethesda, MD 20892. Instrument: Stopped-Flow Spectrometer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for studying protein folding and unfolding kinetics. The instrument has been redesigned to provide facile and accurate measurements of stopped-flow kinetics using both fluorescence and absorbance detection. *Application accepted by Commissioner of Customs:* December 6, 1996.

Docket Number: 96–133. *Applicant:* National Institutes of Health, Building 8, Room 421, 8 Center Drive, MSC 0850, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CM120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used to study animal cells and tissues and macromolecular aggregates and organelles isolated from cells and tissue. These studies are designed to investigate the structure of cells and to correlate change in structure with functional variability leading to clinical disease. The objective of this research is to learn about transport of lipids, lipases and other molecules between and within normal cells and to identify translocation defects in mutant cells. *Application accepted by Commissioner of Customs:* December 9, 1996.

Docket Number: 96–134. *Applicant:* U. S. Department of the Interior, U. S. Geological Survey, 12201 Sunrise Valley Drive, MS 431, Reston, VA 20192. *Instrument: Mass Spectrometer, Model Deltaplus. Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to analyze the isotopic composition of natural materials in geologic and hydrologic systems. The studies will involve use of variations in the isotopic abundance of oxygen, carbon, sulfur and nitrogen to investigate problems in hydrology, geochemistry, microbiology and paleoclimatology. *Application accepted by Commissioner of Customs: December 10, 1996.*

Docket Number: 96–135. *Applicant:* Medical University of South Carolina, 171 Ashley Avenue, Charleston, SC 29425. *Instrument:* Electron Microscope, Model JEM–1210. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used for ultrastructural studies involving pediatric and adult cancer, retinal degenerative diseases, osteoporosis, endometriosis, teratogenic effect of prenatal alcohol exposure, cochlear changes associated with aging, cardiomyopathy and adrenoleukeodystrophy. The objective of these studies is to better understand the mechanisms involved in various disease processes. In addition, the instrument will be used for educational purposes in a graduate level course entitled ''Techniques in Biological Electron Microscopy.'' *Application accepted by Commissioner of Customs:* December 10, 1996.

Docket Number: 96–137. *Applicant:* Cornell University, Purchasing Department, 55 Judd Falls Road, Ithaca, NY 14850. *Instrument:* Mass Spectrometer, Model GEO 20–20. *Manufacturer:* Europa Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for the high precision determination of stable isotopes of carbon, hydrogen, oxygen, nitrogen, and sulfur during studies of (1) water and CO_2 flux in environmental systems, (2) plant-water-atmosphere relationships and (3) artificially enriched carbon, trace gases, and isotopes in carbonates. In addition, the instrument will be used in the course BioES6xx: Methods in Biogeochemistry to train research students. *Application*