



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-112]

Certain Collated Steel Staples from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of certain collated steel staples (collated staples) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable [**INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6478 or (202) 482-4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Determination* in the LTFV investigation of

collated staples from China on January 8, 2020.¹ For a complete description of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.²

Period of Investigation

The period of investigation is October 1, 2018 through March 31, 2019.

Scope of the Investigation

The products covered by this investigation are collated staples from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

On November 4, 2019, we issued a Preliminary Scope Memorandum making no changes to the scope of this and the companion countervailing duty (CVD) investigation.³ For a summary of the product coverage comments and rebuttal comments submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.⁴ Based on the comments received from interested parties, we are revising the scope of this investigation to exclude “hog rings.” The scope in Appendix I reflects this change.

Verification

¹ See *Certain Collated Steel Staples from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination and Extension of Provisional Measures*, 85 FR 882 (January 8, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Certain Collated Steel Staples from the People’s Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ See Memorandum, “Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Collated Steel Staples from the People’s Republic of China: Preliminary Scope Decision Memorandum,” dated November 4, 2019 (Preliminary Scope Decision Memorandum).

⁴ See Memorandum, “Certain Collated Steel Staples from the People’s Republic of China: Final Scope Determination Decision Memorandum,” dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

Commerce normally verifies information relied upon in making its final determination, pursuant to section 782(i) of the Tariff Act of 1930, as amended (the Act). However, on March 16, 2020, Commerce cancelled verification of the questionnaire responses submitted by Tianjin Hweschun Fasteners Manufacturing Co., Ltd. (Tianjin Hweschun).⁵ During the course of this investigation, a Level 4 travel advisory was imposed for all of China, preventing Commerce personnel from traveling to China to conduct verification. Due to this, as well as the impending statutory deadline for the completion of the final determination, Commerce was unable to conduct verification in this case.

Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce may use “facts otherwise available” in reaching the applicable determination. Accordingly, as Commerce was unable to proceed to verification in this investigation, we have relied on the information submitted on the record that we used in making the *Preliminary Determination*, as facts available in making our final determination.

Final Affirmative Determination of Critical Circumstances

Commerce preliminarily determined in this investigation that critical circumstances exist with respect to imports of collated staples from China shipped by Tianjin Hweschun, Tianjin Jin Xin Sheng Long Metal Products Co., Ltd. (Tianjin JXSL), the non-individually examined respondents, and the China-wide entity.⁶ That determination remains unchanged and a discussion of our final critical circumstances determination can be found in the Issues and Decision Memorandum.

Analysis of Comments Received

⁵ See Memorandum, “Cancellation of Verification,” dated March 16, 2020.

⁶ See *Preliminary Determination* PDM at 30.

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II to this notice. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

China-Wide Entity and Use of Adverse Facts Available

We continue to find that the use of facts available is warranted in determining the rate of the China-wide entity pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. Further, use of adverse facts available (AFA) is warranted because the China-wide entity did not cooperate to the best of its ability to comply with our requests for information and, accordingly, we applied adverse inferences in selecting from the facts available, pursuant to section 776(b) of the Act and 19 CFR 351.308(a). For the final determination, we are assigning the China-wide entity, as AFA, the rate of 122.55 percent, which is the highest petition rate.⁷

Separate Rates

⁷ *See* Issues and Decision Memorandum at 3-5 for a full discussion of this issue; *see also Preliminary Determination PDM* at 16-18.

As discussed in the Issues and Decision Memorandum, we granted Tianjin Hweschun, Tianjin JXSL, and six non-individually examined respondents⁸ a separate rate in the *Preliminary Determination* based on their eligibility.⁹ No parties commented on this preliminary finding and the facts have not changed with respect to these companies' separate rate eligibility. Therefore, we continue to grant separate rates to these companies in this final determination. As discussed in the Issues and Decision Memorandum, we assigned Tianjin JXSL, as AFA, the highest petition rate.

In accordance with section 735(c)(5)(A) of the Act, Commerce shall determine an estimated separate rate for companies not individually examined. Generally, under section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated antidumping duty (AD) rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. However, section 735(c)(5)(B) of the Act provides that if the AD duty rates established for all companies individually examined are zero or *de minimis* rates, or are determined entirely under section 776 of the Act, then Commerce may use "any reasonable method" to establish a separate rate, "including averaging the weighted-average anti-dumping duty rates determined for the exporters and producers individually investigated."

The sole calculated AD rate for this final determination is based on facts otherwise available. As explained above, the sole cooperative mandatory respondent in this investigation, Tianjin Hweschun, is receiving a rate based entirely on the facts available. In the specific circumstances of this case, because we were unable to verify Tianjin Hweschun, we find that a

⁸ These companies are China Staple (Tianjin) Co., Ltd., Shanghai Yueda Nails Co., Ltd., Shijiazhuang Shuangming Trade Co., Ltd., Tianjin Jinyifeng Hardware Co., Ltd., Unicorn Fasteners Co., Ltd., and Zhejiang Best Nail Industrial Co., Ltd.

⁹ See *Preliminary Determination* PDM at 10 – 14.

reasonable method to determine the all-others rate under section 735(c)(5)(B) of the Act here is to apply Tianjin Hweschun’s individual estimated AD rate as the separate rate for companies not individually examined.

Changes from the Preliminary Determination

Based on our analysis of the comments received, we made certain changes to the dumping margin calculations for Tianjin Hweschun.¹⁰ For a discussion of these changes, see the Issues and Decision Memorandum. In light of our method in this investigation for determining the separate rate for companies not individually examined, we have also modified the separate rate.

Combination Rates

Consistent with the *Preliminary Determination*¹¹ and Policy Bulletin 05.1,¹² Commerce calculated combination rates for the respondents that are eligible for a separate rate in this investigation.

Final Determination

Commerce determines that the following weighted-average dumping margins exist:

Producer	Exporter	Estimated Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (Adjusted for Subsidy Offsets) (percent)
Tianjin Hweschun Fasteners Manufacturing Co., Ltd.	Tianjin Hweschun Fasteners Manufacturing Co., Ltd.	96.15	85.61

¹⁰ See Issues and Decision Memorandum.

¹¹ See *Preliminary Determination*.

¹² See Enforcement and Compliance’s Policy Bulletin No. 05.1, regarding, “Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,” dated April 5, 2005 (Policy Bulletin 05.1), available on Commerce’s website at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

Tianjin Jin Xin Sheng Long Metal Products Co., Ltd.	Tianjin Jin Xin Sheng Long Metal Products Co., Ltd.	122.55	112.01
China Staple (Tianjin) Co., Ltd.	China Staple (Tianjin) Co., Ltd.	96.15	85.61
Shanghai Yueda Nails Co., Ltd.	Shanghai Yueda Nails Co., Ltd.	96.15	85.61
Shijiazhuang Shuangming Trade Co., Ltd.	Shijiazhuang Shuangming Trade Co., Ltd.	96.15	85.61
Tianjin Jinyifeng Hardware Co., Ltd.	Tianjin Jinyifeng Hardware Co., Ltd.	96.15	85.61
Unicorn Fasteners Co., Ltd.	Unicorn Fasteners Co., Ltd.	96.15	85.61
Zhejiang Best Nail Industrial Co., Ltd.	Zhejiang Best Nail Industrial Co., Ltd.	96.15	85.61
China-Wide Entity		122.55	112.01

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 733(e)(2)(A) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of collated staples from China, except for hog rings, as described in Appendix I of this notice, entered or withdrawn from warehouse, for consumption on October 10, 2019, which is 90 days before the date of publication of the *Preliminary Determination* in the *Federal Register*.

With respect to hog rings, we will instruct CBP to discontinue suspension of liquidation of such merchandise effective the date of publication of this determination. In addition, we will direct CBP to liquidate any suspended entries of this merchandise without regard to AD duties and to refund any cash deposits with respect to these entries.

Pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) the cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of Chinese exporters/producers of subject merchandise that have not received their own separate rate above, the cash deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of subject merchandise which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we made a negative finding for domestic subsidy pass-through for all respondents in the *Preliminary Determination*, which remains unchanged for the final determination.¹³ However, with respect to export subsidies for all respondents, Commerce issued the final determination of the concurrent CVD investigation of collated staples from China, in which it found export-contingent subsidies of 10.54 percent for

¹³ See sections “Adjustment Under Section 777A(F) of the Act” and “Adjustment to Cash Deposit Rate for Export Subsidies” in the Preliminary Decision Memorandum; see also Memorandum, “Certain Collated Steel Staples from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Issues and Decisions Memorandum” dated concurrently with this notice (Collated Staples from China CVD IDM).

Best Nail and 10.54 percent for all others.¹⁴ Therefore, we have deducted export subsidies from the final margins and adjusted the cash deposit rates in the chart above. However, suspension of liquidation for provisional measures in the companion CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those subsidies at this time.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our final affirmative determination of sales at LTFV. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise from China no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue an AD order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

¹⁴ See Collated Staples from China CVD IDM at 6.

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or 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 which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: May 22, 2020.

Jeffrey I. Kessler,

Assistant Secretary

for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the scope of this investigation is certain collated steel staples. Certain collated steel staples subject to this investigation are made from steel wire having a nominal diameter from 0.0355 inch to 0.0830 inch, inclusive, and have a nominal leg length from 0.25 inch to 3.0 inches, inclusive, and a nominal crown width from 0.187 inch to 1.125 inch, inclusive. Certain collated steel staples may be manufactured from any type of steel, and are included in the scope of this investigation regardless of whether they are uncoated or coated, and regardless of the type or number of coatings, including but not limited to coatings to inhibit corrosion.

Certain collated steel staples may be collated using any material or combination of materials, including but not limited to adhesive, glue, and adhesive film or adhesive or paper tape.

Certain collated steel staples are generally made to American Society for Testing and Materials (ASTM) specification ASTM F1667–18a, but can also be made to other specifications.

Excluded from the scope of this investigation are any carton-closing staples covered by the scope of the existing antidumping duty order on Carton-Closing Staples from the People's Republic of China. *See Carton-Closing Staples from the People's Republic of China: Antidumping Duty Order*, 83 FR 20792 (May 8, 2018).

Also excluded are collated fasteners commonly referred to as “C-ring hog rings” and “D-ring hog rings” produced from stainless or carbon steel wire having a nominal diameter of 0.050 to 0.081 inches, inclusive. C-ring hog rings are fasteners whose legs are not perpendicular to the crown, but are curved inward resulting in the fastener forming the shape of the letter “C”. D-ring hog rings are fasteners whose legs are straight but not perpendicular to the crown, instead intersecting with the crown at an angle ranging from 30 degrees to 75 degrees. The hog rings subject to the exclusion are collated using glue, adhesive, or tape. The hog rings subject to this exclusion have either a 90 degree blunt point or 15-75 degree divergent point.

Certain collated steel staples subject to this investigation are currently classifiable under subheading 8305.20.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Final Determination of Critical Circumstances
- IV. China-Wide Rate
- V. Separate Rates
- VI. Adjustments for Countervailable Export Subsidies
- VII. Changes Since the Preliminary Determination
- VIII. Discussion of the Issues
 - Comment 1: Whether Critical Circumstances Exist
 - Comment 2: Primary Surrogate Country Selection
 - Comment 3: Whether to Accept Non-Verified Record Information as Verified
 - Comment 4: Whether to Continue to Apply Adverse Facts Available (AFA) to Tianjin JXSL
 - Comment 5: Whether to Use the Reported Factors of Production (FOP) Data of Tianjin Hweschun's Cooperative Toller
 - Comment 6: Whether to Use the FOPs of Tianjin Hweschun's Cooperative Toller as Facts Available for the Uncooperative Toller
- IX. Recommendation

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