



A-821-824
A-520-808
Investigation
Public Document
E&C/V&VII: CMB&KMW

September 5, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the non-exclusive functions and duties of Deputy
Assistant Secretary for Antidumping and Countervailing Duty

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less Than Fair Value Investigation of Carbon and Alloy Steel
Wire Rod from the Russian Federation and the United Arab
Emirates

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that carbon and alloy steel wire rod (wire rod) from the Russian Federation (Russia) and the United Arab Emirates (the UAE) is, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The Department also preliminarily determines that critical circumstances exist for all Russian exporters and producers of wire rod. The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 28, 2017, the Department received an antidumping duty (AD) petition covering imports of wire rod products from Russia and the UAE,¹ which was filed in proper form by Gerdau Ameristeel US Inc., Nucor Corporation, Keystone Consolidated Industries, Inc., and

¹ See the Petitions for the Imposition of Antidumping Duties on Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom, dated March 28, 2017 (the Petition).

Charter Steel (collectively, the petitioners). The Department initiated this investigation on April 17, 2017.²

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on April 20, 2017, and April 25, 2017, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ From April 27, 2017, through May 2, 2017, we received comments on behalf of the petitioners regarding the respondent selection process.⁵ On May 10, 2017, the Department determined there were a large number of exporters and limited the number of respondents selected for individual examination to the two largest publicly identifiable producers/exporters of the merchandise under consideration by volume in the Russia investigation, Abinsk Electric Steel Works Ltd. (Abinsk) and JSC NLMK-Ural (NLMK Ural).⁶ On May 11, 2017, the Department limited the number of respondents selected for individual examination to the only publicly identifiable producer/exporter of the merchandise under consideration in the UAE investigation, Emirates Steel Industries PJSC (Emirates Steel).⁷

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the appropriate physical characteristics of wire rod to be reported in response to the Department's AD questionnaire.⁸ On May 10, 2017, the petitioners and POSCO, an interested party in the companion AD investigation of wire rod from the Republic of Korea, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.⁹ On May 15, 2017, the petitioners and various other interested parties in the companion AD investigations for the United Kingdom and Spain filed rebuttal comments.¹⁰ On May 18, 2017, the Department clarified and corrected information provided by POSCO in its product brochure at Attachment 2 of POSCO's Product

² See *Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 19207 (April 26, 2017) (*Initiation Notice*).

³ See *Initiation Notice*, 82 FR at 19211.

⁴ See Memorandum regarding: U.S. Customs Data for Respondent Selection, dated April 20, 2017 (UAE); Department Letter re: Customs Data for Use in Respondent Selection, dated April 25, 2017 (Russia).

⁵ See Letter to the Secretary from Petitioners re: Comments on Mandatory Respondent Selection, dated April 27, 2017 (UAE); Letter to the Secretary from Petitioners re: Respondent Selection Comments, dated May 2, 2017 (Russia).

⁶ See Memorandum, "Respondent Selection for the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the Russian Federation," dated May 10, 2017.

⁷ See Memorandum, "Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from United Arab Emirates: Respondent Selection," dated May 11, 2017.

⁸ See *Initiation Notice*, 82 FR at 19207-08.

⁹ See Letter to the Secretary from Petitioners re: Comments on the Department's Proposed Product Comparison Hierarchy, dated May 10, 2017; Letter to the Secretary from POSCO re: Comments on Product Characteristics and Model Match Methodology, dated May 10, 2017 (POSCO's Product Characteristics Comments).

¹⁰ See Letter to the Secretary from Petitioners, re: Petitioners' Rebuttal Comments in Response to POSCO's May 10, 2017 Letter, dated May 15, 2017; Letter to the Secretary from British Steel Limited (British Steel) re: British Steel's Rebuttal Comments on Product Characteristics, dated May 15, 2017; Letter to the Secretary from Global Steel Wire S.A., CELSA Atlantic SA, and Compania Espanola de Laminacion re: Rebuttal Comments Regarding Product-Matching Characteristics, dated May 15, 2017.

Characteristics Comments.¹¹ Based on the comments received, the Department issued a letter to interested parties which contained the product characteristics for these and the companion AD investigations.¹²

The Department issued its AD questionnaire to Abinsk and NLMK Ural on May 11, 2017.¹³ The Department issued its AD questionnaire to Emirates Steel on May 11, 2017.¹⁴ The Department confirmed with FedEx that its questionnaire was delivered to Abinsk and NLMK Ural on May 19, 2017, and May 16, 2017, respectively.¹⁵ Abinsk and NLMK Ural did not respond to the questionnaire within the specified deadlines.¹⁶ On May 19, 2017, Emirates Steel informed the Department that it did not intend to respond to the Department's antidumping questionnaire.¹⁷

On May 18, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wire rod from Russia and the UAE.¹⁸

On July 6, 2017, the petitioners filed a critical circumstances allegation in regard to Russia.¹⁹

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2016, through December 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2017.²⁰

IV. SCOPE COMMENTS

In accordance with the *Preamble* to the Department's regulations,²¹ we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage and encouraged all parties to submit comments.²² We received comments and rebuttal comments from several parties concerning the scope of the investigations.²³ The Department evaluated these comments and

¹¹ Memorandum regarding: Clarification and Correction of Information in POSCO Brochure, dated May 18, 2017.

¹² See Department Letter, re: Product Characteristics for the Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the United Arab Emirates, dated May 18, 2017.

¹³ See Department Letter re: Antidumping Duty Questionnaire, dated May 11, 2017.

¹⁴ See Department Letter re: Antidumping Duty Questionnaire, dated May 11, 2017.

¹⁵ See Memorandum regarding: Delivery of Questionnaires to Respondent Companies, dated June 16, 2017.

¹⁶ See Department Letter re: Antidumping Duty Questionnaire, dated May 11, 2017.

¹⁷ See Letter to the Secretary from Emirates Steel re: Emirates Steel Industries PSJC's Entry of Appearance, dated May 19, 2017.

¹⁸ See *Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom; Determinations*, 82 FR 22846 (May 18, 2017) (ITC Preliminary Affirmative Injury Determination).

¹⁹ See Letter to the Secretary from Petitioners re: Carbon and Alloy Steel Wire Rod from Russia, South Africa, Spain, Turkey, and the United Kingdom: Critical Circumstances Allegations, dated July 6, 2017 (Critical Circumstances Allegation).

²⁰ See 19 CFR 351.204(b)(1).

²¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²² See *Initiation Notice*, 82 FR at 19207-19208.

²³ See Letter to the Secretary from Cooper Tire and Rubber Company re: Carbon and Alloy Steel Wire Rod Trade

addressed them in a separate memorandum, which was released on August 7, 2017.²⁴ As discussed in the Preliminary Scope Decision Memorandum, the scope language remains unchanged from the scope included in the *Initiation Notice*.²⁵

V. SCOPE OF THE INVESTIGATIONS

The product covered by these investigations is wire rod from Russia and the UAE. For a full description of the scope of these investigations, *see* Appendix I to the accompanying preliminary determination *Federal Register* notice.

VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As noted above, Abinsk and NLMK Ural were selected as mandatory respondents in the Russia investigation. Emirates Steel was selected as the mandatory respondent in the UAE investigation. Abinsk and NLMK Ural received the Department's questionnaire and did not respond within the established deadlines. Emirates Steel received the Department's questionnaire and subsequently informed the Department that it would not participate in this investigation. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Emirates Steel, Abinsk, and NLMK Ural.

A) Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by the Department; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the

Petitions against Ten Countries, dated April 13, 2017; *see also* Letter to the Secretary from POSCO re: Comments on Scope of the Investigations, dated May 12, 2017; Letter to the Secretary from British Steel re: British Steel's Scope Comments, dated May 12, 2017; Letter to the Secretary from Petitioners re: Scope Rebuttal Comments, dated May 22, 2017; Letter to the Secretary from Petitioners re: Response to Cooper Tire's Request to Exclude Tire Cord/Tire Bead Wire Rod, dated June 16, 2017. These comments are summarized in the Preliminary Scope Decision Memorandum. *See* Memorandum, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," August 7, 2017 (Preliminary Scope Decision Memorandum), at 3-4.

²⁴ *See* Preliminary Scope Decision Memorandum.

²⁵ *Id.* at 20.

applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Abinsk, NLMK Ural, and Emirates Steel did not respond to our request for information or otherwise participate in this investigation. As a result, we preliminarily find that the necessary information is not available on the records of these investigations; that Abinsk, NLMK Ural, and Emirates Steel withheld information the Department requested; that they failed to provide information by the specified deadlines; and that they significantly impeded the proceeding. Moreover, because Abinsk, NLMK Ural, and Emirates Steel failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine Abinsk, NLMK Ural, and Emirates Steel's preliminary dumping margins.

B) Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.²⁶ In doing so, and under the TPEA,²⁷ the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²⁸ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference in selecting from the facts available.³⁰ It is the Department's practice to consider, in employing adverse facts available, the extent to which a party may benefit from

²⁶ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

²⁷ On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA) made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made By the Trade Preferences Extension Act of 2015*, 80 FR at 46793, 46794-95 (August 6, 2015). Therefore, the amendments apply to this investigation.

²⁸ See section 776(b)(1)(B) of the Act.

²⁹ See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

³⁰ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

its own lack of cooperation.³¹

We preliminarily find that Abinsk, NLMK Ural, and Emirates Steel have not acted to the best of their ability to comply with the Department's requests for information. Abinsk, NLMK Ural, and Emirates Steel failed to respond to the Department's questionnaires. The failure of Abinsk, NLMK Ural, and Emirates Steel to participate in these investigations and respond to the Department's questionnaires has precluded the Department from performing the necessary analysis to calculate weighted-average dumping margins for them based on their own data. Accordingly, the Department concludes that Abinsk, NLMK Ural, and Emirates Steel failed to cooperate to the best of their ability to comply with a request for information by the Department. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.³²

C) Preliminary Estimated Weighted-Average Dumping Margins Based on Adverse Facts Available

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.³³ In selecting a rate based on adverse facts available (AFA), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.³⁴ The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.³⁵

With respect to the Russia investigation, the highest dumping margin in the Petition is 756.93 percent and no rate was calculated for an individually-examined respondent. With respect to the UAE investigation, the highest dumping margin in the Petition is 84.10 percent and no rate was calculated for an individually-examined respondent.³⁶ Thus, consistent with our practice, we

³¹ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

³² See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

³³ See also 19 CFR 351.308(c).

³⁴ See SAA, at 870.

³⁵ See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014) and accompanying Issues and Decision Memorandum at Comment 3.

³⁶ See *Initiation Notice*; see also Antidumping Duty Investigation Initiation Checklist: Carbon and Alloy Steel Wire Rod from Russia, dated April 17, 2017 (Russia Initiation Checklist); Antidumping Duty Investigation Initiation Checklist: Carbon and Alloy Steel Wire Rod from the United Arab Emirates, dated April 17, 2017 (UAE Initiation

have selected the only dumping margin alleged in the Petition as the AFA rate applicable to Emirates Steel in the UAE investigation and the highest dumping margin alleged in the Petition as the AFA rate applicable to Abinsk and NLMK Ural in the Russia investigation.³⁷

D) *Corroboration of Secondary Information*

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.³⁸ The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value,³⁹ although under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁴⁰ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁴¹ Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.⁴²

Thus, because the AFA rates applied to Abinsk and NLMK Ural, the mandatory respondents in the Russia investigation, and Emirates Steel, the mandatory respondent in the UAE investigation, are derived from the Petition and, consequently, are based upon secondary information, the Department must corroborate the rates to the extent practicable. For Russia and the UAE, we determined that the margins in the Petition are reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of these preliminary determinations.⁴³

Checklist).

³⁷ See *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327 (March 14, 2016) and accompanying Issues and Decision Memorandum at Comment 14 (*PET Resin from India Final Determination*).

³⁸ See SAA, H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Sess. (1994), at 870.

³⁹ See SAA at 870; see also 19 CFR 351.308(d).

⁴⁰ See section 776(c)(2) of the Act; TPEA, section 502(2).

⁴¹ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁴² See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

⁴³ See Russia Initiation Checklist; UAE Initiation Checklist.

Specifically, we examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged in the Petition for use as AFA for purposes of these preliminary determinations. During our pre-initiation analysis, we also examined the key elements of the alleged dumping margin calculations (*i.e.*, export price (EP), constructed export price (CEP), and constructed value (CV) in the case of Russia; EP and normal value (NV) in the case of UAE).⁴⁴ Furthermore, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP, CEP, CV, and NV calculations used in the Petition to derive the dumping margins alleged in the Petition.⁴⁵

Based on our examination of the information, as discussed in detail in the Russia Initiation Checklist and UAE Initiation Checklist, we consider the petitioners' EP, CEP, CV, and NV calculations to be reliable. Because we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the U.S. price, CV, and NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP, CEP, CV, and NV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margins alleged in the Petition are reliable for the purposes of these investigations.

In making a determination as to the relevant aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with new section 776(d)(3) of the Act, when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party. Because there are no other participating cooperative respondents in these investigations, we relied upon the dumping margins alleged in the Petition, which is the only information regarding the steel wire rod industry reasonably at the Department's disposal. Furthermore, as noted in *GOES from China*, in which the only mandatory respondent also received AFA, "there was no need to review any additional documentation outside of what was submitted in the Petition considering such sources of information fulfill our requirements for corroboration of secondary information."⁴⁶

Accordingly, with respect to Russia, the Department preliminarily determines that the dumping margins alleged in the Petition have probative value, and the Department has corroborated the AFA rate of 756.93 percent to the extent practicable within the meaning of section 776(c) of the

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See *Grain-Oriented Electrical Steel from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014) (*GOES from China*), and accompanying Issues and Decision Memorandum at 20; see also *KYD, Inc. v. United States*, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with the Department that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that "[t]he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition").

Act by demonstrating that the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant to the uncooperative mandatory respondents.⁴⁷

Similarly, with respect to the UAE, the Department preliminarily determines that the only dumping margin alleged in the Petition has probative value, and the Department has corroborated the AFA rate of 84.10 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant to the uncooperative mandatory respondents.⁴⁸

E) *All-Others Rate*

Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As we indicated above, Abinsk and NLMK Ural are the mandatory respondents in the Russia investigation, and their estimated dumping margin are determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, the Department’s practice under these circumstances has been to assign, as the “all-others” rate, a simple average of the petition rates.⁴⁹ Consistent with its practice, the Department is using the simple average of the six dumping margins provided in the Petition (682.41 percent, 372.95 percent, 214.06 percent, 756.93 percent, 367.87 percent, and 226.56 percent), which is 436.80 percent, as the “all-others” rate assigned to entities not individually examined in the Russia investigation.⁵⁰

Similarly, as noted above, Emirates Steel is the sole mandatory respondent in the UAE investigation, and their estimated dumping margins are determined entirely under section 776 of

⁴⁷ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People’s Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁸ *Id.*

⁴⁹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁰ See *Certain Oil Country Tubular Goods from Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014).

the Act. Pursuant to section 735(c)(5)(B) of the Act, the Department's practice under these circumstances has been to assign, as the "all-others" rate, a simple average of the petition rates.⁵¹ However, because the Petition here contained only one estimated dumping margin, there are no additional estimated margins available with which to create the "all-others" rate. Consequently, and consistent with its practice, the Department is using the initiation margin of 84.10 percent as the "all-others" rate assigned to entities not individually examined in the UAE investigation.⁵²

VII. AFFIRMATIVE PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES FOR EXPORTERS AND PRODUCERS OF WIRE ROD FROM RUSSIA

On July 6, 2017, the petitioners alleged that critical circumstances exist with respect to imports of the subject merchandise from Russia, pursuant to section 733(e)(1) of the Act and 19 CFR 351.2016(c)(1).⁵³ In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether or not there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

A) Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine that critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been "massive imports" of the subject merchandise over a relatively short period. In turn, 19 CFR 351.206(h)(2) provides that, "{i}n general, unless the imports during the 'relatively short period' have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports 'massive.'" Under 19 CFR 351.206(i), the Department generally defines "relatively short period" as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at

⁵¹ See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2 (*Sodium Nitrite from Germany Final Determination*).

⁵² See *Certain Oil Country Tubular Goods from Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014).

⁵³ See Critical Circumstances Allegations.

least three months later.⁵⁴ This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time.⁵⁵

B) *Critical Circumstances Allegation*

The petitioners allege that section 733(e)(1)(A) of the Act is met, in part, by virtue of the dumping margins alleged in the Petition, which were up to 756.93 percent for Russia,⁵⁶ exceeding the 15 and 25 percent thresholds used by the Department to impute knowledge of dumping in CEP and EP transactions, respectively.⁵⁷ The petitioners further argue that importers of wire rod have been on notice that dumped imports are likely to cause injury since the ITC’s May 2017 preliminary affirmative injury finding.⁵⁸

The petitioners argue that, regarding section 733(e)(1)(B), which examines whether or not there have been “massive imports of the subject merchandise over a relatively short period,” the Department should use the minimum three-month base and comparison periods of January 2017 through March 2017 and April 2017 through June 2017, as required under 19 CFR 351.206(i).⁵⁹ The petitioners allege that import statistics obtained from the ITC and the Department’s Steel Import Monitoring and Analysis System (SIMA) indicate shipments significantly increased in terms of volume (27.12 percent) between the base period and the comparison period and, as a result, exceeded the threshold for “massive” imports provided by 19 CFR 351.206(h) and (i).⁶⁰

C) *Analysis*

The Department’s normal practice in determining whether or not critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to the Department, such as: (1) the evidence presented in the petitioners’ critical circumstances allegation, (2) import statistics released by the ITC, and (3) shipment information submitted to the Department by the respondents selected for individual examination.⁶¹

In determining whether or not a history of dumping and material injury exists, the Department

⁵⁴ See 19 CFR 351.206(i); see also *Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, Policy Bulletin 98.4, 63 FR 55364 (Oct. 15, 1998) (“Commerce has traditionally compared the three-month period immediately after initiation with the three-month period immediately preceding initiation to determine whether there has been at least a 15 percent increase in imports of the subject merchandise”).

⁵⁵ See 19 CFR 351.206(i).

⁵⁶ See Critical Circumstances Allegation at 6.

⁵⁷ *Id.*

⁵⁸ *Id.* at 6 and 7 (citing ITC Preliminary Affirmative Injury Determination)

⁵⁹ *Id.* at 12.

⁶⁰ *Id.*

⁶¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008) (*Carbon Steel Pipe Final Determination*); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009) (*SDGE Final Determination*).

generally considers current and previous AD orders in the United States or any other country on imports of subject merchandise from the country in question.⁶² The petitioners identify no such orders with respect to Russian wire rod. Furthermore, we are unaware of any AD order on Russian wire rod encompassing the same or similar scope of merchandise subject to this investigation. Thus, we preliminarily find that there is not a history of injurious dumping of Russian wire rod.

We must next determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales. When evaluating whether or not such imputed knowledge exists, the Department normally considers margins of 15 percent or more for CEP sales or 25 percent or more for EP sales sufficient to meet the quantitative threshold to impute knowledge of dumping.⁶³ For purposes of this investigation, the Department preliminarily determines that the knowledge standard is met because preliminary margins exceed both the 15 and 25 percent thresholds.⁶⁴ Because the two mandatory respondents in the Russia investigation were uncooperative, we are assigning, as AFA, a rate of 756.93 percent, which is the highest margin from the Petition and has been corroborated to the extent practicable, as explained above. Furthermore, we are assigning a rate of 436.80 percent as the rate for all other exporters and producers from Russia. Because the preliminary dumping margins for the mandatory respondents and all other exporters and producers exceed the threshold sufficient to impute knowledge of dumping, there is a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV to the importers.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the preliminary injury determination of the ITC.⁶⁵ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. Here, the ITC found that there is a “reasonable indication” of material injury to the domestic industry by reason of the imported merchandise under consideration.⁶⁶ Therefore, the ITC’s preliminary injury determination in this investigation is sufficient to impute knowledge of possible injury, and, thus, both knowledge requirements of section 733(e)(1)(A)(ii) of the Act are satisfied.

It is the Department’s practice to conduct its massive imports analysis based on the experience of

⁶² *Id.*

⁶³ See, e.g., *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).

⁶⁴ See “Preliminary Determination” section of the accompanying *Federal Register* notice.

⁶⁵ See, e.g., *Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790; *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People’s Republic of China*, 70 FR 5606, 5607 (February 3, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People’s Republic of China*, 70 FR 9037.

⁶⁶ See ITC Preliminary Affirmative Injury Determination, 82 FR at 22846.

investigated companies, using monthly shipment data requested from the mandatory respondents for the base and comparison periods.⁶⁷ However, as noted above, Abinsk and NLMK Ural did not respond to any of our requests for information.⁶⁸ Therefore, the Department preliminarily determines that the use of facts otherwise available with an adverse inference is warranted. Accordingly, following our normal practice, we preliminarily find that there were massive imports of merchandise from Abinsk and NLMK Ural.⁶⁹ As such, we have determined that critical circumstances exist for Abinsk and NLMK Ural.

Consistent with prior determinations, we did not impute the adverse inferences of massive imports that we applied to the mandatory respondents to the non-individually examined companies receiving the all-others rate.⁷⁰ Rather, the Department examined data for total imports of the subject merchandise during the comparison period relative to a base period to determine whether or not imports were massive with respect to these companies. The Department typically determines whether or not to include the month in which a party had reason to believe that a proceeding was likely in the base or comparison period based on whether the event that gave rise to the belief (*i.e.*, the filing of the Petition) occurred in the first half of the month (included in the comparison period) or the second half of the month (included in the base period).⁷¹ Moreover, it is the Department's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.⁷² Therefore, we chose to compare the base period of January 2017 through March 2017 to the comparison period of April 2017 through June 2017 to determine whether or not imports of subject

⁶⁷ See, e.g., *Carbon Steel Pipe Final Determination*, 73 FR at 31972-73; *SDGE Final Determination*, 74 FR at 2052-53.

⁶⁸ See the "Application of Facts Available and Adverse Facts Available" section of this memorandum.

⁶⁹ See, e.g., *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 38490 (June 30, 2014), and accompanying Issues and Decision Memorandum at 24 (determining as AFA that imports from a non-participating mandatory respondent were massive without relying on any company specific data), unchanged at the final determination, *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 1018 (January 8, 2015).

⁷⁰ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (noting that, where mandatory respondents receive AFA, we do not impute "massive imports" to companies receiving the all-others rate), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014); see also *Non-Oriented Electrical Steel From Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), unchanged in *Non-Oriented Electrical Steel From Germany, Japan, and Sweden: Final Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014).

⁷¹ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31312.

⁷² See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004).

merchandise were massive. These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and that the base period have a comparable duration. We relied on U.S. import statistics, as reported by Global Trade Atlas,⁷³ to determine whether or not there were massive imports of subject merchandise in the comparison period.⁷⁴ This comparison indicates that there was a 27.07 percent (*i.e.* more than 15 percent) increase in imports of subject merchandise during a “relatively short period” of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily find there to be massive imports for all non-individually examined companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i). Accordingly, we preliminarily find that there were massive imports of merchandise from all other Russian exporters and producers and, thus, that critical circumstances exist for all other Russian exporters and producers.

We will make a final determination concerning critical circumstances when we issue our final determination of sales at LTFV for this investigation.

⁷³ The petitioners based their “surge” calculation on a mixture of ITC data and SIMA data. The Department conducted its own query of GTA data, using the same series of HTSUS subheadings as those used for respondent selection, for the base and comparison periods and confirmed that, to the extent monthly data is available from all three sources, the GTA data, ITC data, and SIMA data are nearly identical.

⁷⁴ See Memorandum, “Carbon and Alloy Steel Wire Rod from the Russian Federation: Calculation Memorandum for the Preliminary Critical Circumstances Determination in the Antidumping Duty Investigation,” dated concurrently with this preliminary determination. Because Abinsk and NLMK Ural did not report the quantity of their shipments of subject merchandise to the United States during the base and comparison periods, the Department is not able to adjust the U.S. import statistics to exclude the data reflecting shipments made by the mandatory respondents. Therefore, we relied on the total quantity of U.S. imports to conduct its “massive imports” analysis for all other Russian exporters and producers.

VIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree

9/5/2017

X  _____

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance