UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-069
Investigation
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DATE: August 29, 2018

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Rubber Bands from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that rubber bands 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), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We also preliminarily determine that critical circumstances exist with respect to imports from the China-wide entity. The estimated weighted-average dumping margin is shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On January 30, 2018, we received an antidumping duty (AD) petition covering imports of rubber bands from China,[1] filed in proper form on behalf of Alliance Rubber Company (the petitioner). We initiated this investigation on February 20, 2018.[2]

In the *Initiation Notice*, we notified parties of the application process by which exporters may obtain separate rate status in a non-market economy (NME) LTFV investigation. The process requires an exporter to submit a separate rate application (SRA) and to demonstrate an absence

[1] *See* the petitioner's letter, "Petition for the Imposition of Antidumping and Countervailing Duties on Rubber Bands from Thailand, China and Sri Lanka," dated January 30, 2018 (Petition).
[2] *See Rubber Bands from the People's Republic of China, Sri Lanka, and Thailand: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 8424 (February 27, 2018) (*Initiation Notice*).

of both *de jure* and *de facto* government control over its export activities.[3] No party submitted a separate rate application in this investigation.

In the *Initiation Notice*, we stated that, in the event that we conduct respondent selection, we intended to base our selection of mandatory respondents on responses to quantity and value (Q&V) questionnaires to be sent to each potential respondent named in the Petition and also posted on Commerce's website.[4] On February 22, 2018, we issued Q&V questionnaires to the 12 companies that the petitioner identified in the Petition as potential producers or exporters of rubber bands from China.[5] No party submitted a response to our Q&V questionnaires.

Further, in the *Initiation Notice*, we stated that the NME status for China has not been revoked by Commerce, and, therefore, remains in effect for purposes of the initiation of this investigation.[6]

On March 22, 2018, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injured by reason of imports of rubber band from Thailand and China.[7]

On June 11, 2018, the petitioner submitted an allegation of critical circumstances.[8] On June 27, 2018, Commerce issued a letter to petitioner stating that additional information was needed with respect to the petitioner's Critical Circumstances Allegation.[9] The petitioner submitted a supplement to its Critical Circumstances Allegation on August 7, 2018.[10]

On June 11, 2018, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[11] Thereafter, pursuant to section 733(c)(1)(A) of the Act, we

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[3] *See Initiation Notice*, 83 FR at 8428; *see also* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005, available at http://enforcement.trade.gov/policy/bull05-1.pdf.
[4] *See Initiation Notice*, 83 FR at 8427.
[5] *See* the memorandum, "Antidumping Duty Investigation of Rubber Bands from the People's Republic of China: Delivery of Quantity and Value Questionnaire to Exporters/Producers," dated March 6, 2018 (Q&V Delivery Memo).
[6] *See Initiation Notice*, 83 FR at 8426.
[7] *See Rubber Bands from China, Sri Lanka, and Thailand; Determinations*," 83 FR 12594 (March 22, 2018) (*ITC Preliminary Determination*). *See also* International Trade Commission Preliminary Report, "Rubber Bands from China, Sri Lanka, and Thailand," Investigation Nos. 701-TA-598-600 and 731-TA-1408-1410 (Preliminary), ITC Publication 4700, March 2018 (*ITC Preliminary Report*).
[8] *See* the petitioner's Letter,' "Rubber Bands from the People's Republic of China: Critical Circumstances Allegation," dated June 11, 2018 (Critical Circumstances Allegation).
[9] *See* the letter, "Antidumping and Countervailing Duty Investigations of Rubber Bands from the People's Republic of China: Critical Circumstances Allegation," dated June 27, 2018.
[10] *See* the petitioner's letter, "Rubber Bands from the People's Republic of China: Critical Circumstances Allegation, Supplement to Brief," dated August 7, 2018 (Revised Critical Circumstances Allegation).
[11] *See* the petitioner's letter, "Petition for the Imposition of Antidumping and Countervailing Duties on Rubber Bands from Thailand and China - Petitioner's Request for Postponement of the Preliminary Determinations in the Antidumping Duty Cases," dated June 11, 2018.

published a postponement of the preliminary determination in the *Federal Register* until no later than August 29, 2018.[12]

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2017, through December 31, 2017. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was in January 2018.[13]

IV. SCOPE COMMENTS

In accordance with the *Preamble* to our regulations,[14] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).[15] Certain interested parties from the companion rubber band investigations commented on the scope of this investigation, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. We have evaluated the scope comments filed by the interested parties, and we are preliminarily modifying the scope language as it appeared in the *Initiation Notice*.[16] In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties. We will issue a final scope decision on the records of the rubber bands investigations after considering the comments submitted in the scope case and rebuttal briefs.

V. DISCUSSION OF THE METHODOLOGY

A) <u>Non-Market Economy Country</u>

Commerce considers China to be an NME country.[17] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat China as an NME country for purposes of this preliminary determination.

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[12] *See Rubber Bands from the People's Republic of China and Thailand: Postponement of Preliminary Determinations in the Less-Than-FairValue Investigations*, 83 FR 29748 (June 26, 2018).
[13] *See* 19 CFR 351.204(b)(1).
[14] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).
[15] *See Initiation Notice*, 83 FR at 8424-8425.
[16] *Id*.
[17] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum (citing Memorandum to Gary Taverman, "China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

B) China-Wide Entity

We did not receive any responses to our Q&V questionnaire nor any SRAs from Chinese exporters of subject merchandise.[18] Because these companies did not respond to our requests for information, they are considered to be part of the China-wide entity, which has preliminarily been assigned a rate based entirely on adverse facts available (AFA).

C) Use of Facts Otherwise Available with an Adverse Inference

Section 776(a)(1) and (2) of the Act provides that if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, then Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce 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.[19] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[20]

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the petition) rather than on 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

[18] *See* Q&V Delivery Memo.
[19] *See* section 776(b)(1)(B) of the Act.
[20] *See* also 19 CFR 351.308(c).

the Act concerning the subject merchandise.[21] The SAA[22] clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value, although under the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[23] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[24]

Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. Further, when selecting an AFA margin, Commerce 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.[25]

D) Application of Facts Available

As noted above, all of the companies who received the Q&V questionnaire failed to respond to our requests for information. Further, because none of these companies demonstrated that they were eligible for a separate rate, we preliminarily find them to be a part of the China-wide entity. Thus, we find that the China-wide entity failed to provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information. Accordingly, we preliminarily determine that the use of facts available is required in determining the rate for the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.[26]

E) Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that Commerce, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Commerce finds that the China-wide entity's failure to respond to Commerce's Q&V

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[21] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, at 870 (1994) (SAA).
[22] *Id.*
[23] *See* section 776(c)(2) of the Act.
[24] *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).
[25] *See* section 776(d)(1)-(2) of the Act.
[26] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in N*otice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

questionnaire constitutes circumstances under which it is reasonable to conclude that the China-wide entity has failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information.

Moreover, the China-wide entity did not submit documentation indicating that it was having difficulty providing the requested information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to the China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[27]

F) <u>Selection and Corroboration of the AFA Rate</u>

When using facts otherwise available, section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that 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.[28]

Section 776(d)(3) of the Act provides that when selecting an AFA rate, Commerce is not required to estimate what the weighted-average dumping margin would have been if the interested party failing to cooperate had cooperated. Commerce is also not required to demonstrate that the AFA rate reflects an "alleged commercial reality" of the interested party.[29]

In selecting a rate for the China-wide entity based on AFA, Commerce's practice is to select 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.[30] Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition, or (b) the highest calculated dumping margin of any respondent in the investigation.[31] There are no calculated dumping margins for a respondent in this investigation. Therefore, as AFA, Commerce has preliminarily assigned the China-wide entity the rate of 27.27 percent, which is the only dumping margin alleged in the Petition. The dumping margin for the China-wide entity applies to all entries of the merchandise under investigation. In considering the dumping margin alleged in the Petition, it is secondary information subject to the requirement to corroborate the information, to the extent practicable. The petitioner's

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[27] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[28] *See* SAA at 870.
[29] *See* section 776(d)(3) of the Act.
[30] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from Finland*, 69 FR 77216, 77218 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Finland*, 70 FR 28279 (May 17, 2005).
[31] *See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.

methodology for calculating the export price (EP) and normal value (NV) in the Petition is discussed in the *Initiation Notice* and the China AD Initiation Checklist.[32]

To corroborate, to the extent practicable, the 27.27 percent Petition margin for purposes of this preliminary determination, Commerce first revisited its pre-initiation analysis of the reliability of the information in the Petition. During our pre-initiation analysis, we examined: (1) the information used as the basis for EP and NV in the Petition; (2) the calculations used to derive the alleged dumping margin; and (3) information from various independent sources provided either in the Petition or in supplements to the Petition.[33]

Based on our examination of the information, as discussed in detail in the China AD Initiation Checklist, we consider the petitioner's EP and NV in the Petition to be reliable.[34] In addition, we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV provided in the Petition. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margin alleged in the petition by examining source documents, as well as publicly available information, we preliminarily determine that the dumping margin alleged in the Petition is reliable for the purposes of an AFA rate in this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a calculated dumping margin not relevant. The Petition rate is relevant because it is based on a price quote for the merchandise under consideration and surrogate values that are contemporaneous with five months of the POI.[35] In addition, no information has been placed on the record that discredits this information. As such, we find the Petition rate of 27.27 percent relevant. Furthermore, as there are no respondents in this investigation for which we are calculating a separate dumping margin, we note that the Petition rate is the only rate available on the record of this proceeding.

Accordingly, Commerce has corroborated the AFA rate of 27.27 percent to the extent practicable within the meaning of section 776(c) of the Act.

G) <u>Preliminary Affirmative Determination of Critical Circumstances</u>

As discussed above, on June 11, 2018, the petitioner submitted its Critical Circumstances Allegation with respect to imports of subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), which was revised on August 7, 2018.[36] In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days

[32] *See Initiation Notice*; *see also* Antidumping Duty Investigation Initiation Checklist: Rubber Bands from the People's Republic of China, dated February 20, 2018 (China AD Initiation Checklist).
[33] *Id.*
[34] *Id*.
[35] Surrogate values were calculated using data for the period June 2017 through November 2017. The POI is July 1, 2017 through December 31, 2017. However, data was not available at the time of the filing of the Petition for December 2017, so in order two calculate surrogate vales based on a six-month period, petitioner included the June 2017 data in its surrogate value calculations.
[36] *See* Critical Circumstances Allegation and Revised Critical Circumstances Allegation.

before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

1. *Legal Framework*

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in an 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 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. Further, 19 CFR 351.206(h)(l) provides that, in determining whether imports of the subject merchandise have been "massive," Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

Finally, 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), Commerce defines "relatively short period" generally as the period starting on the date the proceeding begins *i.e.*, the date the petition is filed and ending at least three months later.[37] This section of the regulations further provides that, if Commerce "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 Commerce may consider a period of not less than three months from that earlier time.[38]

2. *Critical Circumstances Allegation*

The petitioner argues that section 733(e)(1)(A)(ii) of the Act is satisfied because the estimated dumping margin of 27.27 percent from the Petition exceeds the 15 percent threshold used by Commerce to impute knowledge of sales at less than fair value for constructed export price (CEP) transactions and the 25 percent threshold for EP transactions.[39] The petitioner further alleges that importers of rubber bands from China have been on notice that dumped imports are

[37] *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").
[38] *See* 19 CFR 351.206(i).
[39] *See* Critical Circumstances Allegation at 2 – 3.

likely to cause injury since the United States International Trade Commission's (ITC) March 2018 preliminary affirmative threat of injury finding.[40]

Furthermore, the petitioner alleges that import statistics taken from Dataweb indicate that shipments of merchandise under consideration increased significantly in terms of value[41] (17.22 percent) between its proposed base period and the comparison period, and thus exceeded the threshold for "massive" imports of rubber bands from China, as provided under 19 CFR 351.206(h) and (i).[42]

3. *Analysis*

When determining the presence of critical circumstances, Commerce, in accordance with section 733(e) of the Act and 19 CFR 351.206, must determine, "on the basis of information available to it," whether there is a reasonable basis "to believe or suspect that" there is either a "history of dumping and material injury by reason of dumped imports," or the parties at issue "knew or should have known that merchandise was being sold for less than fair value," that those sales were "likely to cause material injury, and that there were "massive imports of the subject merchandise over a relatively short period" of time.

When considering the information available to it, Commerce's may examine: (1) the evidence presented in the petitioner's critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to Commerce by the respondents selected for individual examination.[43]

In determining whether a history of dumping and material injury exists, Commerce generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of merchandise under consideration.[44] In the *ITC Preliminary Determination*, the ITC stated that there are no known trade remedy actions on rubber bands in third-country markets and that the petitioner noted it is not aware of any trade remedy actions on rubber bands.[45] Thus, we preliminarily find that there is not a history of injurious dumping of rubber bands from China, consistent with section 733(e)(A)(i) of the Act.

With respect to the requirements of section 733(e)(1)(A)(ii) of the Act, absent a history of dumping, Commerce must determine if the parties at issue "knew or should have known that

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[40] *See* Critical Circumstances Allegation at 3 (citing *Rubber Bands from China et al.,* Inv. Nos. 701-TA-598-600 *et al.* (Preliminary), USITC Pub. 4770 (March 2018), at 16-30 (*ITC Preliminary Determination*).
[41] Volume data is not available for the relevant US Harmonized Tariff System heading for the merchandise under consideration for the periods covered.
[42] *Id*. at 6.
[43] *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).
[44] *Id.*
[45] *See* the *ITC Preliminary Determination* at VII-10.

merchandise was being sold for less than fair value," that those sales were "likely to cause material injury." Commerce normally considers dumping margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV pursuant to section 733(e)(1)(B) of the Act.[46] As explained above, we are applying an AFA rate of 27.27 percent to the China-wide entity, and find this is sufficient to impute importer knowledge of sales at LTFV. Regarding knowledge of injury, when the ITC has preliminarily found "threat of material injury," as it did here,[47] Commerce has considered both the ITC's preliminary determination, as well as additional factors, such as, *e.g.*, trade and price statistics or press reports, in making a critical circumstances determination.[48] In its preliminary report, in support of its threat determination, the ITC concluded that there ". . . is a likelihood of substantially increased cumulated subject imports in the imminent future."[49] To that end, the ITC cited subject producers' substantial cumulated production capacity, excess production capacity, export orientation, and existing inventories.[50] In addition, the ITC cited the petitioner's loss of a customer's private label business to subject imports from Thailand.[51] Accordingly, on this basis, we are imputing the knowledge of the importers that merchandise was likely to be sold for less than fair value and that those sales were likely to cause material injury.

With respect to whether there have been massive imports, because the China-wide entity has not cooperated to the best of its ability, the record does not reflect the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period. Accordingly, consistent with our practice, as AFA we are determining that there was a massive increase in the volume of imports of the subject merchandise from the China-wide entity during the critical circumstances period.

VI. ADJUSTMENT UNDER SECTION 777A(f) OF THE ACT

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced

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[46] *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) (*Steel Wire Rod Prelim*), 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 (August 30, 2002) (*Steel Wire Rod Final*); *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 69 FR 59187 (October 4, 2004) (*Magnesium Metal Prelim*), 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 (February 24, 2005).

[47] *See ITC Preliminary Determination* and *ITC Preliminary Report*.

[48] *See e.g., Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504, 68506 (November 5, 2015).

[49] *See ITC Preliminary Determination* at 23 – 25.

[50] *Id.*

[51] *Id.* The ITC report states that "In 2015, Staples had awarded its private label rubber band business to petitioner because Alliance was at that time offering rubber bands at a lower price than Staples' prior supplier from Thailand." Further, the ITC states that "From July 2016 through 2017, petitioner shipped a substantial volume of Staples-branded product." Further, the ITC stated that in in April 2017 Staples shifted it purchasing of merchandise under consideration from the petitioner back to Thailand which was reportedly selling rubber bands at half the price offered by the petitioner. Subsequently, Staples shifted its purchasing of rubber bands back to Thailand.

the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[52] For a subsidy meeting these criteria, the statute requires Commerce to reduce the antidumping duty by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.[53] Because there has been no demonstration on the record that an adjustment for domestic subsidies is warranted, we are making no such adjustment to the cash deposit rate being assigned to the China-wide entity.

VII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally makes adjustments for countervailable export subsidies. Commerce is making an adjustment to the cash deposit rate for the China-wide entity. While certain programs in the companion CVD investigation were alleged to be export subsidies, as a result of non-cooperation by the mandatory respondents, Commerce's preliminary determination that the alleged programs were countervailable subsidies was based on facts available with adverse inferences.[54]

In relying on facts available with adverse inferences, Commerce preliminarily determines, concurrent with this preliminary determination,[55] that one of the subsidy programs in question was contingent on export of the subject merchandise. As such, Commerce finds that it is appropriate to make an offset to the cash deposit rates in this LTFV investigation pursuant to section 772(c)(1)(C) of the Act.[56] Accordingly, we will apply an export subsidy offset to the estimated weighted-average dumping margin assigned to the China-wide entity.

VIII. VERIFICATION

Because no exporter cooperated in this investigation and no information has been submitted to the record by responding parties, verifications will not be conducted.

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[52] *See* section 777A(f)(1)(A)-(C) of the Act.
[53] *See* section 777A(f)(1)-(2) of the Act.
[54] *See Rubber Bands from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 83 FR 31729 and accompanying Preliminary Determination Memorandum.
[55] *See* unpublished *Federal Register* notice "Rubber Bands from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation, and Amendment to the Scope of the Preliminary Determination in the Countervailing Duty Investigation," dated concurrently with this memorandum.
[56] S*ee, e.g., Ammonium Sulfate from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 78776 (November 9, 2016), and accompanying Preliminary Decision Memorandum at page 11, unchanged in *Ammonium Sulfate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 8403 (January 25, 2017).

IX. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒ ☐

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Agree Disagree

8/29/2018

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance