



A-583-868

Investigation

POI: 4/01/2019 - 3/31/2020

Public Document

E&C/OIII: JZ, JH

September 23, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Determination of Less-Than-Fair-Value Investigation of Prestressed Concrete Steel Wire Strand from Taiwan

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that prestressed concrete steel wire strand (PC strand) from Taiwan is being, 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 preliminary estimated margins of sales at LTFV are provided in the accompanying *Federal Register* notice.

II. BACKGROUND

On April 16, 2020, the Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of PC strand from Taiwan, filed on behalf of Insteel Wire Products, Sumiden Wire Products Corporation, and Wire Mesh Corp. (collectively, the petitioners).¹ On May 4, 2020, we released U.S. Customs and Border Protection (CBP) data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.²

¹ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates – Petition for the Imposition of Antidumping and Countervailing Duties," dated April 16, 2020 (Petition).

² See Memorandum, "Petition for the Imposition of Antidumping Duties on Imports of Prestressed Concrete Steel Wire Strand from Taiwan: Release of Customs Data from U.S. Customs and Border Protection," dated May 3, 2020.



On May 6, 2020, we initiated this investigation.³ In the *Initiation Notice*, Commerce stated that, where appropriate, it intended to select respondents based on CBP data for U.S. imports of PC strand under the appropriate Harmonized Tariff Schedule of the United States subheadings (HTSUS). In the *Initiation Notice*, Commerce also notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of PC strand to be reported in response to Commerce's AD questionnaire. On June 5, 2020, Commerce selected Chia Ta World Co., Ltd (Chia Ta) for individual examination as the largest exporter by volume of PC strand from Taiwan.⁴

On June 5, 2020, 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 PC strand from Taiwan.⁵

On June 10, 2020, Commerce issued the AD questionnaire to Chia Ta.⁶ On July 8, 2020, Chia Ta timely filed its Section A response to the Initial Questionnaire.⁷ On July 24, 2020, Chia Ta timely filed its Section B and C responses to the Initial Questionnaire.⁸ On August 11, 2020, Chia Ta timely filed its Section D response to the Initial Questionnaire.⁹ On August 20, 2020 Commerce issued a supplemental questionnaire concerning Chia Ta's Section A, B, and C questionnaire responses.¹⁰ Chia Ta did not submit a response to our supplemental questionnaire. Rather, on August 27, 2020, Chia Ta informed Commerce that it would no longer participate in the investigation.¹¹ See the "Application of Facts Available and Use of Adverse Inferences and Calculation of All-Others Rate" sections, below, for further discussion.

On September 2, 2020, the petitioners submitted a timely filed critical circumstances allegation with respect to imports from Taiwan.¹² On September 3, 2020, Commerce issued a letter to the

³ See *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, the Republic of Turkey, Ukraine, and the United Arab Emirates: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 28605 (May 13, 2020).

⁴ See Memorandum, "Less-Than-Fair-Value Investigation of PC Strand from Taiwan: Respondent Selection," dated June 5, 2020.

⁵ See *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates*, 85 FR 34648 (June 5, 2020).

⁶ See Commerce's Letter, "Antidumping Duty Questionnaire," dated June 10, 2020 (Initial Questionnaire).

⁷ See Chia Ta's Letter, "Prestressed Concrete Steel Wire Strand from Taiwan: Section A Questionnaire Response," (Section A QR) dated July 8, 2020.

⁸ See Chia Ta's Letter, "Prestressed Concrete Steel Wire Strand from Taiwan: Section B Questionnaire Response of Chia Ta World Co., Ltd.," dated July 24, 2020 (Section B QR); see also Chia Ta's Letter, "Prestressed Concrete Steel Wire Strand from Taiwan: Section B Questionnaire Response of Chia Ta World Co., Ltd.," dated July 24, 2020 (Section C QR).

⁹ See Chia Ta's Letter, "Prestressed Concrete Steel Wire Strand from Taiwan: Section D Questionnaire Response," dated August 11, 2020 (Section D QR).

¹⁰ See Commerce's Letter, "Less-Than-Fair-Value Investigation of Prestressed Concrete Steel Wire Strand from Taiwan: Supplemental Questionnaire for Chia Ta World Co., Ltd.," dated August 20, 2020 (First Supplemental Questionnaire).

¹¹ See Chia Ta's Letter, "Prestressed Concrete Steel Wire Strand from Taiwan: Notice of Intent Not to Participate," dated August 27, 2020 (Non-Participation Letter).

¹² See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Taiwan – Petitioners' Allegation of Critical Circumstances," dated September 2, 2020 (Critical Circumstances Allegation).

petitioners requesting that the petitioners file an addendum to their critical circumstances allegation that provides U.S. import data for subject merchandise from Taiwan for February 2020 through April 2020, as the base period and import data for May 2020 through July 2020 as the comparison period.¹³ On September 9, 2020, the petitioners submitted the requested shipment data.¹⁴

III. PERIOD OF INVESTIGATION

The POI is April 1, 2019 through March 31, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was April 2020.¹⁵

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is prestressed concrete steel wire strand (PC strand), produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft² standard set forth in ASTM-A-475. The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

V. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCES AND CALCULATION OF ALL-OTHERS RATE

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 Commerce; (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, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

¹³ See Commerce's Letter, "Less-Than-Fair-Value Investigation of Prestressed Concrete Steel Wire Strand from Taiwan: Critical Circumstances," dated September 3, 2020 (CC Request).

¹⁴ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Colombia, Egypt, the Netherlands, Taiwan and Turkey – Petitioners' Updated Import Volume Data for Their Critical Circumstances Allegations," dated September 9, 2020 (Updated CC Allegation).

¹⁵ See 19 CFR 351.204(b)(1).

Section 782(c)(1) of the Act states that Commerce 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 Commerce 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 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.

Further, 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.

As noted in the “Background” section above, Chia Ta was selected as the sole mandatory respondent in the investigation of PC strand from Taiwan. In the First Supplemental Questionnaire, Commerce explained that if it did not receive a response by the specified deadline “we may conclude that Chia Ta has decided not to cooperate in this proceeding.”¹⁶ Commerce further explained that “failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act), which may include adverse inferences pursuant to section 776(b) of the Act.”¹⁷ Chia Ta acknowledged receipt of the First Supplemental Questionnaire, but, rather than submit a timely response, Chia Ta withdrew its participation in the investigation.¹⁸ We find that necessary information is not available on the record, and that Chia Ta withheld requested information, failed to provide the requested information by the deadline and, thus, significantly impeded this proceeding. Additionally, we find that Chia Ta’s withdrawal from the investigation precluded Commerce from verifying or further examining the information that Chia Ta submitted on the record of the investigation prior to its withdrawal from the proceeding. Therefore, in accordance with sections 776(a)(1) and (a)(2)(A)-(D) of the Act, the use of facts otherwise available is preliminarily warranted in determining a dumping margin for Chia Ta.

B. Use of Adverse Inference

Section 776(b) of the Act provides that if Commerce 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, Commerce may use an inference that is averse to the interests of that party in selecting from

¹⁶ See First Supplemental Questionnaire.

¹⁷ *Id.*

¹⁸ See Non-Participation Letter.

among the facts otherwise available.¹⁹ 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.²⁰ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce 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.”²¹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.²² It is Commerce’s practice to consider, in employing adverse facts available (AFA), the extent to which a party may benefit from its own lack of cooperation.²³

Chia Ta declined to respond to Commerce’s supplemental questionnaire and thus, failed to participate in this investigation.²⁴ We have, therefore, preliminarily determined that Chia Ta failed to cooperate to the best of its ability in providing the necessary information for Commerce to conduct an investigation. Accordingly, we preliminarily find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted.

C. Preliminary Dumping Margin Based on Adverse Facts Available

Section 776(b) of the Act states that Commerce, 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.²⁵ In selecting a rate based on AFA, Commerce 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.²⁶ Commerce’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.²⁷

¹⁹ 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).

²⁰ See section 776(b)(1)(B) of the Act.

²¹ See SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

²² See, e.g., *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); see also *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); and *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

²³ 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 (IDM) 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).

²⁴ See Non-Participation Letter.

²⁵ See 19 CFR 351.308(c).

²⁶ See SAA at 870.

²⁷ See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at Comment 3.

The only margin alleged in the Petition is 23.89 percent.²⁸ In addition, because Chia Ta did not respond to our requests for information, there are no rates calculated for any individually-examined respondents. Thus, consistent with our practice, we have selected the only dumping margin alleged in the Petition as the AFA rate applicable to Chia Ta in this investigation.

D. Corroboration of Secondary Information

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 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. The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value,²⁹ although under the Trade Preferences Extension Act of 2015 (TPEA), Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.³⁰ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, 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.³¹ Finally, under the new section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping duty order when applying an adverse inference, including the highest of such margins.³²

Because the AFA rate applied to Chia Ta is derived from the Petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable. We determine that the petition margin of 23.89 percent is 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 this preliminary determination.³³ During our pre-initiation analysis, we examined: (1) the information used as the basis for export price and normal value in the Petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided in the petition.³⁴

²⁸ See *Initiation Notice*.

²⁹ See SAA at 870; see also 19 CFR 351.308(d).

³⁰ See section 776(c)(2) of the Act; TPEA, Section 502(2).

³¹ 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).

³² See sections 776(d)(1)-(2) of the Act; TPEA, Section 502(3).

³³ See *Initiation Checklist*.

³⁴ See *Initiation Notice*; see also *Initiation Checklist*.

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the petitioners' EP 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 EP and NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP 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 margin alleged in the Petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margin alleged in the Petition is reliable for the purpose of this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce 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, 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. Because there are no other participating cooperative respondents in this investigation, we relied upon the sole dumping margin alleged in the Petition, which is the only information regarding the PC strand industry reasonably at Commerce's disposal. Furthermore, as noted in *GOES from China*, in which the sole 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."³⁵

In sum, Commerce corroborated the AFA rate of 23.89 percent to the extent practicable within the meaning of section 776(c) of the Act. Because it is sufficient to induce cooperation and because it is corroborated, we selected the sole margin alleged in the Petition as the AFA rate applicable to Chia Ta in this investigation. Thus, we preliminarily assign 23.89 percent as the estimated weighted-average dumping margin for Chia Ta.

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

³⁵ 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 IDM at 20; see also *KYD, Inc. v. United States*, 607 F. 3d 760, 765 (Fed. Cir. 2010) (agreeing with Commerce 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").

of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As stated above, Chia Ta is the sole mandatory respondent in the investigation of PC strand from Taiwan, and its estimated weighted-average dumping margin is determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce's practice under these circumstances has been to assign, as the all-others rate, a simple average of the Petition rates.³⁶ However, because the Petition contained only one estimated dumping margin pertaining to PC strand from Taiwan, there are no additional dumping margins pertaining to PC strand from Taiwan available to include in the "all-others" rate. Consequently, and consistent with its practice, Commerce is using the dumping margin alleged in the Petition of 23.89 percent as the "all-others" rate applicable to entities not individually examined in this investigation of PC strand from Taiwan.³⁷

VI. PRELIMINARY CRITICAL CIRCUMSTANCES FINDING

On September 2, 2020, the petitioners timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the PC strand from Taiwan.³⁸ On September 3, 2020, Commerce issued a letter to the petitioners requesting that the petitioners file an addendum to their critical circumstances allegation that provides U.S. import data for subject merchandise from Taiwan for February 2020 through April 2020, as the base period and import data for May 2020 through July 2020 as the comparison period.³⁹ On September 9, 2020, the petitioners submitted the requested shipment data.⁴⁰

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

A. Legal Framework

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely filed allegation of critical circumstances, will preliminarily determine that critical circumstances exist in AD investigations 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

³⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986 (July 8, 2008), and accompanying IDM at Comment 2.

³⁷ See Initiation Checklist.

³⁸ See Critical Circumstances Allegation at 1; see also Updated CC Allegation at 2.

³⁹ See CC Request.

⁴⁰ See Updated CC Allegation.

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.

Section 351.206(h)(2) of Commerce's regulations provides that, generally, imports must increase by at least 15 percent during the "relatively short period" to be considered "massive," and section 351.206(i) defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed)⁴¹ and ending at least three months later.⁴² Commerce's regulations also provide, however, 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, Commerce may consider a period of not less than three months from that earlier time.⁴³

B. Critical Circumstances Allegation

In its allegation, the petitioners contend that, based on the dumping margin alleged in the Petition, importers knew, or should have known, that the merchandise under consideration was being sold at LTFV.⁴⁴ The petitioners also contend that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports.⁴⁵ Finally, the petitioners contend that, based on publicly-available import data, imports of PC strand from Taiwan were massive during the relevant time period.⁴⁶

C. Critical Circumstances Analysis

We consider the statutory criteria for finding critical circumstances below.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on the subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.⁴⁷ In this case, the current investigation marks the first instance that Commerce has examined whether sales of the subject merchandise have been made at LTFV in the United States. Accordingly, Commerce previously has not imposed an AD order on the subject merchandise from Taiwan. Moreover, Commerce is not aware of any

⁴¹ See 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

⁴² See 19 CFR 351.206(h)(2) and (i).

⁴³ See 19 CFR 351.206(i).

⁴⁴ See Critical Circumstances Allegation at 4-5.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 8.

⁴⁷ 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); 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).

AD order on PC strand from Taiwan in another country. Therefore, Commerce finds no history of injurious dumping of the subject merchandise pursuant to section 733(e)(1)(A)(i) of the Act.

Section 733(e)(1)(A)(ii): 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 less than its fair value and that there was likely to be material injury by reason of such sales

Commerce normally considers margins of 25 percent or more for export price sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.⁴⁸ Because the sole mandatory respondent in this investigation, is uncooperative, we are assigning, as AFA, a rate of 23.89 percent, the only margin in the Petition and corroborated to the extent practicable. Further, we are applying the sole Petition margin to all other producers/exporters. This rate of 23.89 percent does not meet the 25-percent threshold necessary to impute importer knowledge of dumping for EP sales because the U.S. price information used to calculate the Petition margin was an EP sale. Specifically, the petitioners based EP on an average unit value (AUV) derived from official import data for imports of PC strand from Taiwan into the United States during the POI under subheading 7312.10.3012.⁴⁹ Therefore, we find that the importer knowledge criterion, as set forth in section 733(e)(1)(A)(ii) of the Act, has not been met for Chia Ta and the companies included in the all-others rate.

Because the criteria of a history of dumping and material injury has not been satisfied pursuant to section of 733(e)(1)(A)(i) and (ii) of the Act, Commerce is not required to examine the additional criteria enumerated under section 733(e)(1)(B) of the Act.

For the reasons discussed above, we preliminarily determine that critical circumstances do not exist for Chia Ta and the companies included in the all-others rate.

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 (November 5, 2015); see also *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016); *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016); *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016); *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35313 (June 2, 2016); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Taiwan: Final Negative Countervailing Duty Determination*, 81 FR 35299 (June 2, 2016); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Final Affirmative Determination and Final Affirmative Critical Circumstances, in Part*, 81 FR 35326 (June 2, 2016); and *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016).

⁴⁹ See Initiation Checklist at 6.

VII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

9/23/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance