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Investigation
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November 12, 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 the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Prestressed Concrete Steel
Wire Strand from Italy

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that prestressed concrete steel wire strand (PC strand) from Italy 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 estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On April 16, 2020, Commerce received an antidumping duty (AD) petition covering imports of PC strand from Italy, which was filed in proper form by 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, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and the 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 Italy: Release of Customs Data from U.S. Customs and Border Protection,” dated May 4, 2020.



Commerce initiated this investigation on May 6, 2020.³ In the *Initiation Notice*, we stated that, where appropriate, we intended to select respondents based on CBP data for U.S. imports of PC strand from Italy under the appropriate Harmonized Tariff Schedule of the United States subheadings.⁴ On June 10, 2020, Commerce limited the number of respondents selected for individual examination to the two largest producers or exporters of the subject merchandise by volume, CB Trafilati Acciai S.p.A. (CB) and WBO Italcables Societa Cooperativa (WBO),⁵ and, on June 15, 2020, we issued the AD questionnaire to these two companies.⁶ On June 22, 2020, CB informed Commerce that it would not participate as a mandatory respondent in this investigation.⁷ See the “Application of Facts Available and Use of Adverse Inference” sections, below, for further discussion.

Also in the *Initiation Notice*, Commerce 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.⁸ In June 2020, PJSC PA Stalkanat-Silur (Stalkanat) and the petitioners submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes;⁹ Global Special Steel Products S.A.U. (dba, TYCSA) (TYCSA) and the petitioners submitted rebuttal comments.¹⁰

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 Italy.¹¹

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) (*Initiation Notice*).

⁴ *Id.*, 85 FR at 28609.

⁵ See Memorandum, “Less-Than-Fair-Value Investigation of Prestressed Concrete Steel Wire Strand from Italy: Respondent Selection,” dated June 10, 2020.

⁶ See Commerce’s Letters, “Antidumping Duty Questionnaire,” each dated June 15, 2020 (collectively, AD Questionnaire).

⁷ See CB’s Letter, “Prestressed Concrete Steel Wire Strand from Italy: Inability to Participate,” dated June 22, 2020 (CB’s Withdrawal Letter).

⁸ See *Initiation Notice*, 85 FR at 28606-07.

⁹ See Stalkanat’s 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, Comments on Product Characteristics and Product Matching Hierarchy,” dated June 2, 2020; see also 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 – Petitioners’ Comments on the Important Product Characteristics and Product Matching Hierarchy,” dated June 2, 2020.

¹⁰ See TYCSA’s 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: Rebuttal Comments on Product Characteristics and Product-Matching Hierarchy,” dated June 12, 2020; see also 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 – Petitioners’ Rebuttal Comments on the Important Product Characteristics and Product Matching Hierarchy,” dated June 12, 2020.

¹¹ 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).

From July through August, 2020, WBO submitted timely responses to sections A through D of Commerce's AD Questionnaire, *i.e.*, the sections relating to general information, comparison market sales, U.S. sales, and cost of production (COP).¹² From July, 2020 through October 2020, we issued supplemental questionnaires to WBO and received responses to these supplemental questionnaires from August through October, 2020.¹³ The petitioners filed pre-preliminary comments on November 4, 2020.¹⁴ WBO filed a response to the petitioners' pre-preliminary comments on November 9, 2020.¹⁵ We intend to issue further supplemental questionnaires pertaining to the pre-preliminary determination comments.

On August 19, 2020, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.¹⁶ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on September 8, 2020, Commerce published in the *Federal Register* a postponement of the preliminary determination until no later than November 12, 2020.¹⁷

On October 19, 2020, the petitioners submitted a timely filed critical circumstances allegation with respect to imports from Italy.¹⁸ October 20, 2020, Commerce issued a letter to WBO requesting that WBO file quantity and value shipment data for WBO's subject merchandise shipped to the United States for October 2019 through September 2020.¹⁹ On October 26, 2020, WBO submitted the requested shipment data.²⁰

¹² See WBO's July 3, 2020 Section A Questionnaire Response (WBO's July 3, 2020 AQR); WBO's July 29, 2020 Sections B and C Questionnaire Response (WBO's July 29, 2020 BQR and WBO's July 29, 2020 CQR); and WBO's August 3, 2020 Section D Questionnaire Response.

¹³ See WBO's Letters, "Prestressed Concrete Steel Wire Strand from Italy. First Supplemental Questionnaire Covering the Section A Questionnaire Response," dated August 10, 2020; "Prestressed Concrete Steel Wire Strand from Italy. Response to Section D Supplemental Questionnaire," dated September 10, 2020; "Prestressed Concrete Steel Wire Strand from Italy. Response to Third Supplemental Questionnaire," dated September 21, 2020; "Prestressed Concrete Steel Wire Strand from Italy. Response to Fourth Supplemental Questionnaire," dated October 13, 2020; and WBO's Letter, "Prestressed Concrete Steel Wire Strand from Italy. Second Section D Supplemental Questionnaire Response," dated October 28, 2020.

¹⁴ See Petitioners' Letter, "Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Italy – Petitioners' Comments on Preliminary Determination Calculations for Respondent WBO Italcables Societa' Cooperative," dated November 4, 2020.

¹⁵ See WBO's Letter, "Prestressed Concrete Steel Wire strand from Italy: Response to Petitioners' Preliminary Comments," dated November 9, 2020.

¹⁶ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Malaysia, South Africa, Spain, Taiwan, Tunisia, Turkey, and Ukraine – Petitioners' Request to Postpone Preliminary Determinations," dated August 19, 2020.

¹⁷ See *Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 55413 (September 8, 2020).

¹⁸ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Spain, and Ukraine – Petitioners' Allegation of Critical Circumstances," dated October 19, 2020 (Critical Circumstances Allegation).

¹⁹ See Commerce's Letter, "Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Italy: Request for Monthly Quantity and Value Shipment Data," dated October 2020, 2020 (Shipment Request).

²⁰ See WBO's Letter, "Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Italy: Request for Monthly Quantity and Value Shipment Data," dated October 26, 2020 (Monthly Shipment Data).

In October and November 2020, WBO and the petitioners requested that Commerce postpone the final determination and that provisional measures be extended.²¹

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

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 2020.²²

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage *i.e.*, scope.²⁴ During this period, no interested party commented on the scope of this investigation.

V. SCOPE OF THE INVESTIGATION

The product covered by this investigation is PC strand. For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As noted above, CB received Commerce's questionnaire, but, rather than submit a timely response, it withdrew from participation in this investigation.²⁵ In accordance with sections 776(a) and (b) of the Act, we determine that the use of facts available with an adverse inference, *i.e.*, AFA, is appropriate for this preliminary determination with respect to CB, because CB withdrew from participating in this investigation and did not respond to Commerce's questionnaire. For the reasons discussed below, we are preliminarily assigning a dumping margin of 19.26 percent to CB.

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,

²¹ See WBO's Letter, "Prestressed Concrete Steel Wire Strand from Italy: WBO Italcables Societa' Cooperativa's Request to Extend Final Determination," dated October 30, 2020; *see also* Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine – Petitioners' Request for Postponement of Final Antidumping Determinations," dated November 2, 2020.

²² See 19 CFR 351.204(b)(1).

²³ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁴ See *Initiation Notice*, 85 FR at 28606.

²⁵ See CB's Withdrawal Letter.

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 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.

CB 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 record of this investigation, that CB withheld information Commerce requested, that it failed to provide information by the specified deadline, and that it significantly impeded the proceeding. Moreover, because CB 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 CB's preliminary dumping margin.

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 adverse to the interests of that party in selecting from among the facts otherwise available.²⁶ 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.²⁷ 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."²⁸ 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

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); *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); and *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).

²⁷ See section 776(b)(1)(B) of the Act.

²⁸ 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).

the facts available.²⁹ It is Commerce's practice to consider, in employing adverse facts available, the extent to which a party may benefit from its own lack of cooperation.³⁰

We preliminarily find that CB has not acted to the best of its ability to comply with Commerce's request for information. CB failed to respond to Commerce's questionnaire. CB's failure to participate in this investigation and respond to Commerce's questionnaire, thus, has precluded Commerce from performing the necessary analysis to calculate a weighted-average dumping margin based on CB's own data. Accordingly, Commerce concludes that CB failed to cooperate to the best of its ability to comply with a request for information by Commerce. Based on the above, pursuant to section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available in determining a dumping margin for CB.

c. Preliminary Estimated Weighted-Average Dumping Margin Based on Adverse Facts Available

Section 776(b)(2) of the Act states that Commerce, when employing AFA, 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.³¹ In selecting a rate based on adverse facts available, 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.³² Commerce's practice is to select, as an adverse facts available 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.³³

With respect to this investigation, the only dumping margin alleged in the Petition concerning PC strand from Italy is 30.61 percent.³⁴ Thus, consistent with our practice, we first considered the only dumping margin alleged in the Petition concerning PC strand from Italy in determining the adverse facts available rate applicable to CB for this preliminary determination.

d. Selection and Corroboration of Adverse Facts Available Rate

When using facts otherwise available, section 776(c) of the Act provides that, in general, 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,

²⁹ See, e.g., *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); see also *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

³⁰ 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 (PDM) 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).

³¹ See 19 CFR 351.308(c).

³² See SAA at 870.

³³ See, e.g., *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 (IDM) at Comment 3.

³⁴ See Volume VI of the Petition at 4 and Exhibit AD-IT-3.

information from independent sources that are reasonably at its disposal.³⁵ 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.”³⁶ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.³⁷ The SAA and Commerce’s regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information derived from interested parties during the particular investigation.³⁸ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although 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.³⁹ If Commerce is unable to corroborate the highest petition margin using individual transaction-specific margins; Commerce may use the component approach to corroboration.⁴⁰

In order to determine the probative value of the dumping margin of 30.61 percent alleged in the Petition concerning PC strand from Italy, we examined the information on the record.⁴¹ When we compared the dumping margin of 30.61 percent alleged in the Petition concerning PC strand from Italy to the transaction-specific dumping margins we preliminarily determined for WBO in this investigation, we found the rate of 30.61 percent to be significantly higher than WBO’s highest calculated transaction-specific dumping margin (*i.e.*, 19.26 percent). Because we were unable to corroborate the rate of 30.61 percent in the Petition concerning PC strand from Italy with transaction-specific margins from WBO, we next applied a component approach and compared the normal value (NV) and net U.S. price underlying this rate to the range of NVs and net U.S. prices that we preliminarily calculated for WBO in this investigation. Again, we found that we were not able to corroborate the margin of 30.61 percent alleged in the Petition concerning PC strand from Italy using this component approach. Specifically, we find that the NV and net U.S. price underlying the margin of 30.61 percent alleged in the Petition concerning PC strand from Italy are not within the range of NVs and net U.S. prices calculated for WBO.

Accordingly, with respect to CB, we have used, as AFA, the highest transaction-specific margin of 19.26 percent that we preliminarily determined for WBO. Because this rate is not secondary information, but rather is based on information obtained in the course of this investigation, Commerce need not corroborate this rate, pursuant to section 776(c) of the Act.

³⁵ See 19 CFR 351.308(d).

³⁶ See SAA at 870.

³⁷ See SAA at 870; *see also* 19 CFR 351.308(d).

³⁸ *Id.*

³⁹ See section 776(d)(3) of the Act.

⁴⁰ See, e.g., *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

⁴¹ See Memorandum, “Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Italy: Corroboration of the Margin Based on Adverse Facts Available for the Preliminary Determination,” dated November 12, 2020.

VII. PRELIMINARY CRITICAL CIRCUMSTANCES FINDING

On October 19, 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 Italy.⁴² On October 20, 2020, Commerce issued a letter to WBO requesting that WBO file quantity and value shipment data for WBO's subject merchandise shipped to the United States for October 2019 through September 2020.⁴³ On October 26, 2020, WBO submitted the requested shipment data.⁴⁴

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 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)⁴⁵ and ending at least three months later.⁴⁶ 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.⁴⁷

B. Critical Circumstances Allegation

In their allegation, the petitioners contend that, based on the history of dumping and material injury by reason of dumped imports of PC strand in the United States, importers knew, or should

⁴² See Critical Circumstances Allegation.

⁴³ See Shipment Request.

⁴⁴ See Monthly Shipment Data.

⁴⁵ See 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

⁴⁶ See 19 CFR 351.206(h)(2) and (i).

⁴⁷ See 19 CFR 351.206(i).

have known, that the merchandise under consideration was being sold at LTFV.⁴⁸ 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.⁴⁹ Finally, the petitioners contend that, based on publicly-available import data, imports of PC strand from Italy were massive during the relevant time period.⁵⁰

C. Critical Circumstances Analysis

We consider the statutory criteria for finding critical circumstances below.

History of Dumping and Material Injury

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.⁵¹ 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 Italy. Moreover, Commerce is not aware of any AD order on PC strand from Italy 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.

Knowledge that Exporters Were Dumping 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 (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV.⁵² The rate calculated for WBO, which is also assigned to all-other

⁴⁸ See Critical Circumstances Allegation at 3-5.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.* at 8.

⁵¹ 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).

⁵² 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

producers/exporters, does not meet the 25-percent threshold necessary to impute importer knowledge of dumping for EP sales. Further, for CB, which is uncooperative, we are assigning, as AFA, a rate of 19.26 percent, the highest transaction-specific margin of WBO. This rate of 19.26 percent also does not meet the 25-percent threshold necessary to impute importer knowledge of dumping for EP sales. 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 WBO, the companies included in the all-others rate, and CB.

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 WBO, the companies included in the all-others rate, and CB.

VIII. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether WBO's sales of subject merchandise from Italy to the United States were made at LTFV, Commerce compared EP to the NV, as described in the "Export Price," and "Normal Value" sections of this memorandum.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs, *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a

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).

particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁵³ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, state, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number (CONNUM) and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

⁵³ See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); see also *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁵⁴

Results of the Differential Pricing Analysis

For WBO, based on the results of the differential pricing analysis, Commerce preliminarily finds that 47.30 percent of the value of U.S. sales pass the Cohen’s *d* test,⁵⁵ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account

⁵⁴ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1337 (CAFC 2017) affirmed much of Commerce’s differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁵⁵ See Memorandum, “Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Italy: WBO Italcables Societa’ Cooperativa Calculations for the Preliminary Results,” dated November 12, 2020.

for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for WBO.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by WBO covered by the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice and sold in the comparison market during the POI to be foreign like products for purposes of determining NV for the merchandise sold in the United States. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared WBO's U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: covering/coating, diameter, grade, strand, and type.

C. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁶

WBO reported the invoice date of sale for all comparison market and U.S. sales.⁵⁷ We preliminarily followed Commerce's long-standing practice of basing the date of sale for all comparison market and U.S. sales on the earlier of the invoice date or the shipment date.⁵⁸

⁵⁶ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁵⁷ See WBO's July 29, 2020 BQR at 17-18 and WBO's July 29, 2020 CQR at 14-15.

⁵⁸ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

D. Export Price

For all sales made by WBO, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, international freight, in accordance with section 772(c)(2)(A) of the Act. We increased the starting price by the amount of billing adjustments for invoice prices converted from a standard weight basis to nominal weight basis⁵⁹ and for invoicing quantity errors⁶⁰ where appropriate, and we made a downward billing adjustment due to a price renegotiation after shipment date,⁶¹ pursuant to 19 CFR 351.401(c).

E. Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we preliminarily determined that the aggregate volume of home market sales of the foreign like product for WBO was more than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that WBO's home market of Italy is viable. Therefore, we used home market sales in Italy as the basis for NV for WBO in accordance with section 773(a)(1)(A) and (B) of the Act.

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁶² Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that

⁵⁹ See WBO's July 29, 2020 CQR at 20; *see also* 3rd SQR at 28-29.

⁶⁰ See WBO's July 29, 2020 CQR at 21; *see also* 3rd SQR at 25.

⁶¹ See WBO's July 29, 2020 CQR at 21; *see also* 3rd SQR at 29-30.

⁶² See 19 CFR 351.412(c)(2).

there is a difference in the stages of marketing.⁶³ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,⁶⁴ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁶⁵

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁶⁶

In this investigation, we obtained information from WBO regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.⁶⁷ WBO did not claim LOT adjustments in either the home market or the U.S. market.⁶⁸ Consequently, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act,⁶⁹ Commerce requested COP information from WBO. We examined WBO's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we are applying our standard methodology of using annual costs based on WBO's reported data.

⁶³ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

⁶⁴ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁶⁵ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

⁶⁶ See, e.g., *OJ from Brazil* IDM at Comment 7.

⁶⁷ See WBO's July 3, 2020 AQR at Exhibit A-5.

⁶⁸ See WBO's July 3, 2020 AQR at A-17; see also WBO's July 29, 2020 BQR at 27; and WBO's July 29, 2020 CQR at 23-24.

⁶⁹ The TPEA amended section 773(b)(2)(A) of the Act; see TPEA found at <https://www.congress.gov/bill/114thcongress/>.

Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.

Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the comparison market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, actual direct and indirect selling expenses, and packing expenses.

Results of the COP Test

In determining whether to disregard comparison market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of WBO's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

F. Calculation of NV Based on Comparison-Market Prices

We calculated NV for WBO based on prices to unaffiliated customers. We calculated NV based on delivered or ex works prices to unaffiliated customers. We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, inland freight from plant to customer. We made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses (*i.e.*, imputed credit expenses) and adding U.S. direct selling expenses

(i.e., imputed credit expenses), where appropriate.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

IX. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

X. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

11/12/2020

X

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance