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International Trade Administration
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May 2, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Decision Memorandum for the Preliminary Determination of
the Antidumping Duty Investigation of Grain-Oriented
Electrical Steel from the Russian Federation

SUMMARY

The Department of Commerce (the Department) preliminarily determines that grain-oriented electrical steel (GOES) from the Russian Federation (Russia) 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 period of investigation (POI) is July 1, 2012, through June 30, 2013.

BACKGROUND

On September 18, 2013, the Department received an antidumping duty (AD) petition concerning imports of GOES from Russia and several other countries filed in proper form by AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (collectively, the petitioners).¹ The Department initiated this investigation on October 24, 2013.² The Department

¹ See Antidumping Duty Petitions on Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, the Federal Republic of Germany, Japan, the Republic of Korea, Poland, and the Russian Federation, filed on September 18, 2013 (petition).



set aside a period of time for parties to raise issues regarding product coverage and invited parties to submit comments within 20 calendar days of publication of the Initiation Notice.³ As the only known producer/exporter of GOES in Russia, OJSC Novolipetsk Steel/VIZ-Steel LLC (NLMK) is the sole respondent being individually examined by the Department. The Department invited interested parties to comment on this issue.⁴

On November 20, 2013, 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 GOES from Russia.⁵

On November 21, 2013, the Department issued section A of the AD questionnaire (*i.e.*, the section relating to general information) to NLMK, and on November 25, 2013, the Department issued the balance of the AD questionnaire to NLMK.⁶ On December 23, 2013, and January 23, 2014, NLMK filed its responses to section A and sections B through D of the Department's questionnaire (*i.e.*, the sections relating to sales and cost data), respectively. Between January and March 2014 we issued multiple supplemental questionnaires to NLMK, and we received its supplemental questionnaire responses in these same months.

On February 24, 2014, the petitioners filed a timely critical circumstances allegation alleging that critical circumstances exist with respect to imports of the merchandise under consideration. On this same date, we issued a letter to NLMK requesting its monthly shipment data for the period January 2010 through February 2014. We received NLMK's response to our request on March 10, 2014.

As discussed in detail, below, we determined that NLMK did not act to the best of its ability in responding to our requests for its cost of production (COP) information in either its response to section D of the Department's questionnaire or its section D supplemental questionnaires. As a result, we based NLMK's dumping margin in these preliminary results on adverse facts available

² See Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations, 78 FR 65283 (October 31, 2013) (Initiation Notice). As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the partial closure of the Federal Government from October 1, through October 16, 2013. See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013. Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

³ Id., at 65284.

⁴ Id., at 65288.

⁵ See Grain-Oriented Electrical Steel From China, Czech Republic, Germany, Japan, Korea, Poland, and Russia: Determinations, 78 FR 70574 (November 26, 2013) (ITC Preliminary).

⁶ See section A of the Department's questionnaire issued to NLMK on November 21, 2013; sections B through D of the Department's questionnaire issued to NLMK on November 25, 2013.

(AFA). For further discussion, see the “Application of Facts Available and Adverse Facts Available” section of this memorandum, below.

On February 10, 2014, the petitioners made a timely request for a 50-day postponement of the preliminary determinations for this and the other concurrent AD investigations on GOES, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).⁷ On February 20, 2014, we postponed the preliminary determinations by 50 days.⁸ As a result, the revised deadline for the preliminary determination of this investigation is now May 2, 2014.

Period of Investigation

The POI is July 1, 2012, through June 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was September 2013.⁹

Scope of the Investigation

The scope of this investigation covers grain-oriented silicon electrical steel (GOES). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 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. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (i.e., laminations).

Scope Comments

In accordance with the preamble to the Department’s regulations, we set aside a period for interested parties to raise issues regarding product coverage.¹⁰ The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the Initiation Notice—i.e., by November 13, 2013.¹¹

⁷ See letter from the petitioners entitled, “Antidumping Investigations of Grain-Oriented Electrical Steel (“GOES”) from China, Czech Republic, Germany, Japan, South Korea, Poland, and Russia: Petitioners’ Request for Extension of the Preliminary Determination,” dated February 10, 2014.

⁸ See Grain-Oriented Electrical Steel From the People’s Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Postponement of Preliminary Determinations in the Antidumping Duty Investigations, 79 FR 11082 (February 27, 2014).

⁹ See 19 CFR 351.204(b)(1).

¹⁰ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997) (Preamble); see also Initiation Notice, 78 FR at 65283-84.

¹¹ See Initiation Notice, 78 FR at 65284.

POSCO, a respondent in the concurrent AD investigation of GOES from the Republic of Korea, submitted comments on November 13, 2013, requesting that the Department clarify whether GOES that is further processed into shapes that are not square or rectangular, such as trapezoids, fall within the scope of the Department's investigation. The petitioners submitted rebuttal comments on December 11, 2013, stating such products should be within the scope of the investigation. ABB Inc., which identified itself as an interested party by virtue of it being a U.S. importer of GOES from Japan and Russia, submitted comments on December 19, 2013, claiming the petitioners' rebuttal comments represented an attempt to expand the scope beyond any product the petitioners can make.

On January 10, 2014, POSCO requested clarification regarding whether "laminations" and "cores" are covered by the scope. Specifically, POSCO stated that it believes those products are downstream products manufactured from GOES, noting "the physical and mechanical properties of the steel can be altered by any combination of the stamping or shearing, heat treatment, additional coating processes for laminations or stamping, molding, and stacking for cores, resulting in a new and different article with very different end uses." On January 24, 2014, the petitioners stated they do not wish relief on lamination products which have been: (1) cut-to-shape of the final design in which they will be incorporated into a stacked core; (2) subjected to additional post-processing heat treatment; and (3) potentially punched to create holes in their surface and subjected to additional coating processes.

On January 28, 2014, POSCO submitted additional comments, and, alluding to certain "cut to shape" products described in other submissions that it had filed (the aforementioned November 13, 2013, submission; a November 20, 2013, submission involving model matching; and a January 21, 2014, submission involving its Section A response in the GOES from Korea AD investigation), indicated that such products for which it desires scope clarification may not have undergone heat treatment but may nevertheless be stacked into a stacked transformer core. In a memorandum to the file following a meeting between Department officials and counsel to POSCO, the Department noted that "if the products are in the 'drop in' condition and suitable for production of cores without any further cutting/shaping, then based on the petitioners' January 24, 2014, letter, these products should not be reported as subject merchandise."

In a letter dated April 1, 2014, Custom Materials, Inc. asked that the wording of the scope be changed to explicitly exclude what it terms "off-cuts," which allegedly are pieces of GOES of no greater than three inches in width that are cut from wider coils. Custom Materials, Inc. claims to import such merchandise, and states that they are "traditionally sold as waste or scrap for remelting and recovery purposes." However, we have made no changes to the wording of the scope of the investigations to exclude so-called "off-cuts," as these are strips of subject GOES in coils specifically covered by the investigation.

On April 29, 2014, the petitioners submitted revised scope language addressing POSCO's request to exclude certain cut to shape products. We have incorporated that language in this preliminary determination.

Product Comparisons

In the Initiation Notice, we set aside a period of time for parties to raise issues regarding product characteristics and model matching. On November 13, 2013, POSCO and the petitioners submitted comments on the product characteristics. NLMK and Baoshan Iron & Steel Co., Ltd. (a respondent in the concurrent AD investigation of GOES from the People's Republic of China) submitted comments on November 18, 2013. POSCO, NLMK, and the petitioners submitted rebuttal comments on November 20, 2013.

We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining models and, when necessary, for comparing similar models, for this AD investigation. The Department identified the following seven criteria for matching U.S. sales of subject merchandise to normal value (NV): maximum core loss, nominal thickness, permeability, domain refinement, coating, form, and nominal width. These criteria were included in the questionnaires issued to NLMK, as well as the respondents in the concurrent GOES investigations.

In this investigation, we did not rely on the above-mentioned criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product because we based the margin for NLMK on AFA for the reasons discussed below. However, in the companion GOES investigations in which the Department applied the criteria in its price comparisons, the Department incorporates by reference any determinations made on the criteria to this investigation.

Respondent Selection

As stated above, NLMK is the sole mandatory respondent in this investigation. The Department set aside a period of time for parties to comment on this.¹² No parties submitted comments on the Department's decision to individually examine NLMK as the mandatory respondent. Consequently, the Department has not changed its decision to individually examine NLMK as a mandatory respondent.

Application of Facts Available and Use of Adverse Inference

On November 21, 2013, the Department requested that NLMK respond to section D of the Department's original AD questionnaire, and on January 23, 2014, NLMK filed its response to this request. After analyzing NLMK's submission, the Department found that even though NLMK had been given over two months to prepare its response, NLMK failed to respond to numerous questions contained in the original questionnaire, and where it did respond, its answers were often vague and did little to explain its product-specific costing calculations and methodologies. For example, in response to Question III.C of the Department's original AD questionnaire which instructs respondents to provide illustrative worksheets which demonstrate how submitted CONNUM-specific COP and CV amounts were calculated and how such product-specific costs tie to source data from NLMK's normal accounting system, NLMK

¹² See Initiation Notice, 78 FR at 65288.

simply referred the Department to the Exhibits D-1 and D-2 even though the referenced exhibits only contained unexplained Excel worksheets and did not include any illustrative product-costing documentation from NLMK's normal cost accounting system.

Because NLMK's original section D questionnaire response was incomplete and did not provide a sufficient basis for the Department to understand NLMK's cost calculations, the Department sent NLMK repeated requests for information and clarification. Specifically, on January 29, 2014, and February 24, 2014, the Department issued two supplemental section D questionnaires to NLMK in which it: 1) repeated questions from the original section D questionnaire designed to elicit information on how NLMK calculated product-specific costs; 2) requested that NLMK demonstrate that costs trace back to source data in NLMK's normal cost accounting system; 3) requested an explanation of apparent errors in the cost reconciliation; 4) requested inventory-movement schedules; 5) requested clarification of conflicting production quantity information; and 6) requested sample product costing documentation and missing general and administrative and financial expense factor calculation worksheets. In its responses to these supplemental questionnaires, NLMK provided limited and vague explanations for its product-specific cost calculations and failed to address the other deficiencies. Moreover, in its response dated March 21, 2014, NLMK declined to respond to a large portion of the Department's section D supplemental questionnaire, dated February 24, 2014, and stated that its revisions to the cost reconciliation and "cost base" made the remainder of the Department's supplemental questionnaire no longer relevant.¹³

NLMK's dismissal of a large portion of the Department's section D supplemental questionnaire issued on February 24, 2014, coupled with its repeated pattern of offering sparse and vague responses, which offered little information concerning NLMK's product-costing practices and methodologies, to multiple requests for information and clarification, significantly impeded the Department's ability to analyze NLMK's section D questionnaire response. Contrary to NLMK's contention, its revision to its reconciliation does not make the remainder of the Department's supplemental questionnaire irrelevant. Information responsive to the questions NLMK chose to leave unanswered (e.g., requested product-specific cost build ups with supporting documentation, requested product-specific inventory-movement schedules, and clarification of conflicting production quantity information) is essential to our understanding of NLMK's financial and cost accounting practices, normal books and records, production, and submitted product-specific costing calculations. While some of the questions related to a specific reconciliation that NLMK offered, many of the questions that NLMK did not answer are not dependent on any revision to a particular database or reconciliation. After repeated attempts at eliciting information pertaining to NLMK's normal books and records, the degree and manner in which NLMK calculates product-specific costs normally, and the extent to which NLMK deviated from those product-specific costs for the purpose of submitting its COP database, and despite the Department having issued its original and two supplemental section D questionnaires, NLMK has not provided precise and illuminating answers to questions regarding these very basic critical issues and, thus, the Department is unable to understand what the information NLMK placed on the record represents.

¹³ We note that, rather than clearly explain how it has changed its cost reconciliation and cost base and how such changes impact the per-unit cost calculations, NLMK just indicates that the changes were made in response to comments in the Department's supplemental section D questionnaire.

In short, despite the Department's issuance of the original section D questionnaire and two section D supplemental questionnaires, NLMK failed to provide the Department with the requisite explanations and documentation of how costs are calculated in its normal cost accounting system, the degree of specificity to which product-specific costs are calculated in its normal books and records, the extent to which its submitted costs reflect the product-specific manufacturing costs recorded in NLMK's normal books and records, and other information that is necessary for the Department meaningfully to analyze NLMK's section D response. As a result of NLMK's deficient responses to our requests for explanations and clarifications, the Department is unable to assess the reasonableness and reliability of the submitted data which is necessary to calculate an AD margin, even though the Department issued the original and two supplemental questionnaires and granted NLMK generous filing deadline extensions to respond to the Department's requests for information.¹⁴ Moreover, we note that NLMK was made aware that the requested information was critical for the Department's analysis because the Department explicitly cautioned NLMK that much of the requested information in the second supplemental questionnaire was information which should have been provided in the original questionnaire response. See letter from Shawn Thompson, Program Manager, to counsel for NLMK, dated March 19, 2014.

NLMK failed to provide the Department with information which would serve as a reliable basis for calculating an AD margin, despite having had multiple opportunities to do so. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to NLMK.

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 an interested party withholds information requested by the Department; 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; significantly impedes a proceeding; or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

¹⁴ See, e.g., letter from Shawn Thompson, Program Manager, to counsel for NLMK, dated December 23, 2013; letter from Shawn Thompson, Program Manager, to counsel for NLMK, dated January 15, 2014, and letter from Shawn Thompson, Program Manager, to counsel for NLMK, dated March 7, 2014.

In this case, NLMK failed to provide complete COP information. As a consequence, we preliminarily find that necessary information is not available on the record, and NLMK withheld information requested by the Department, failed to provide information by the specified deadlines, and significantly impeded the proceeding.¹⁵ Further, section 782(c)(1) of the Act does not apply because NLMK did not notify the Department that it was unable to submit the information requested in the requested form and manner with a full explanation and suggest alternative forms. Additionally, to the extent that some information was provided, it was so incomplete that it could not serve as a reliable basis for reaching the determination in this investigation.¹⁶ 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 for NLMK's preliminary dumping margin.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.¹⁷ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁸ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.¹⁹ It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.²⁰

We preliminarily find that NLMK has not acted to the best of its ability in providing requested information because NLMK failed to provide complete COP information when it possessed the information requested by the Department. Accordingly, the Department concludes that NLMK failed to cooperate to the best of its ability to comply with a request for information by the Department, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), and

¹⁵ See sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act.

¹⁶ See section 782(e) of the Act.

¹⁷ See also 19 CFR 351.308(a); 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).

¹⁸ See H.R. Doc. 103-316, Vol. 1 (1994) at 870; Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663, 69664 (December 10, 2007).

¹⁹ See, e.g., Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985 (July 12, 2000); Preamble, 62 FR at 27340.

²⁰ See, e.g., Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 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).

preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.²¹

C. AFA Rate Assigned to NLMK

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.²² In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²³ The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.²⁴ In this investigation, the highest petition dumping margin is 119.88 percent and there is no other mandatory respondent.²⁵ Thus, consistent with our practice, we selected this rate as the AFA rate applicable to NLMK.

Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as information in 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.²⁶ 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."²⁷ Thus, because the 119.88 percent AFA rate applied to NLMK is derived from the petition and, consequently, is based upon secondary information, the Department must corroborate it to the extent practicable.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.²⁸ The SAA and the Department's regulations explain that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information

²¹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the AD questionnaire).

²² See also 19 CFR 351.308(c).

²³ See SAA at 870.

²⁴ See 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).

²⁵ See, e.g., Initiation Notice, 78 FR at 65287.

²⁶ See also 19 CFR 351.308(d).

²⁷ See SAA at 870; see also 19 CFR 351.308(c)(1).

²⁸ See SAA at 870; see also 19 CFR 351.308(d).

obtained from interested parties during the particular investigation.²⁹ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.³⁰

We determined that the petition margin of 119.88 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.³¹

We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export price (EP) and normal value (NV) calculations used in the petition to derive an estimated margin. During our pre-initiation analysis, we also examined information (to the extent that such information was reasonably available) from various independent sources provided either in the petition or, on our request, in the supplements to the petition that corroborates some of the elements of the EP and NV calculations used in the petition to derive estimated margins.

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 would make us question the validity of the sources of information or the validity of information supporting the U.S. price or 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 margins in the petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the margins in the petition are reliable for the purposes of this investigation. In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.³² No information has been placed on the record to indicate that the rates in the petition are not reflective of commercial practices of the GOES industry and, moreover, in this particular case

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

³⁰ See 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).

³¹ See "AD INVESTIGATION INITIATION CHECKLIST: Grain-Oriented Electrical Steel from the Russian Federation," dated October 24, 2013 (Initiation Checklist).

³² See, e.g., Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

the information contained in the petition is specific to NLMK.³³ As such, we find these rates relevant to NLMK. Furthermore, because, as explained in detail above, we are unable to rely on NLMK's data to calculate a margin, and as there are no respondents in this investigation for which we are calculating a dumping margin, we relied upon the rates found in the petition, which is the only information regarding the GOES industry reasonably at the Department's disposal.

Accordingly, the Department corroborated the AFA rate of 119.88 percent to the extent practicable within the meaning of section 776(c) of the Act because the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant to the uncooperative respondent.³⁴

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 zero or de minimis margins, and any margins 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 based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated dumping margin for all other producers or exporters.

As noted above, NLMK is the sole mandatory respondent in this proceeding, and its margin is determined entirely under section 776 of the Act. Consequently, the only available dumping margins for this preliminary determination are found in the petition. Pursuant to section 735(c)(5)(B) of the Act, the Department's practice under these circumstances has been to calculate the all others rate as a simple average of these margins.³⁵ In this investigation, a simple average of the margins established in the petition (i.e., 43.52 percent, 43.54 percent, and 119.88 percent) yields a 68.98 percent margin for entities not individually examined.³⁶ Consequently, and consistent with its practice, the Department assigned an "all others" rate of 68.98 percent to entities not individually examined.

³³ Specifically, in this particular case the offer for sale quotes contained in the petition are from NLMK. See Volume II of the petition for Russia at Exhibits R-2A and R-2B.

³⁴ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

³⁵ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany, 73 FR 21909, 21912 (April 23, 2008), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

³⁶ See, e.g., Initiation Checklist at 13.

Critical Circumstances

On February 24, 2014, the petitioners filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.³⁷

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether 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 know 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 were massive imports of the subject merchandise over a relatively short period.

Critical Circumstances Allegation

In their allegation, the petitioners contend that, because the Department has not yet made its preliminary determination in this investigation, the Department may rely on the margins alleged in the petition and corroborated in the Department's Initiation Notice to decide whether importers knew or should know that dumping was occurring.³⁸ The estimated margins in the Initiation Notice for Russia range from 43.52 to 119.88 percent.³⁹ Therefore, the petitioners maintain that the information on the record of this investigation is sufficient to impute knowledge to importers that GOES from Russia was being sold in the United States at LTFV.⁴⁰

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.⁴¹ Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), the petitioners submitted import statistics for the subject merchandise covered by the scope of this

³⁷ See letter from the petitioners, "Grain-Oriented Electrical {sic} Steel from the Czech Republic, Poland, and the Russian Federation -- Critical Circumstances Allegations," dated February 24, 2014 (The Petitioners' Critical Circumstances Allegation).

³⁸ See, e.g., Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation, 67 FR 19157, 19158 (April 18, 2002).

³⁹ See Initiation Notice, 78 FR at 44529.

⁴⁰ See the petitioners' Critical Circumstances Allegation, at 3.

⁴¹ See ITC Preliminary.

investigation for the period between October and December 2013 as evidence of massive imports of GOES from Russia during a relatively short period.⁴²

Analysis

We considered each of 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

In determining whether a history of dumping and material injury exists, the Department generally considers current or 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 subject merchandise.⁴³ The petitioners did not address this criterion in their allegation. Therefore, we considered the criterion in section 733(e)(1)(A)(ii) of the Act.

Section 733(e)(1)(A)(ii) of the Act: Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales

The Department normally considers margins of 25 percent or more for EP sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.⁴⁴ Because the sole mandatory respondent in this investigation is uncooperative, we are assigning, as AFA, a rate of 119.88 percent, the highest margin in the petition and corroborated to the extent practicable. Further, we are assigning a rate of 68.98, the average of the rates recorded in the petition, to all other companies. Because the preliminary dumping margins exceed the threshold sufficient to impute knowledge of dumping, these margins provide a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV to the importers.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, the Department normally will look to the

⁴² See the petitioners' Critical Circumstances Allegation, at 6 and Attachment 1.

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 (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 (January 14, 2009) (SDGE Final Determination).

⁴⁴ 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 Preliminary Determination), 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 (Steel Wire Rod Moldova Final Determination); Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China, 70 FR 5606, 5607 (February 3, 2005) (Magnesium Metal Preliminary Critical Circumstances Determination), 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 (Magnesium Metal Final Determination) (February 24, 2005).

preliminary injury determination of the ITC.⁴⁵ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.⁴⁶ Here, the ITC found that “there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Czech Republic, Germany, Japan, Korea, Poland, and Russia of grain-oriented electrical steel, provided for in subheadings 7225.11.00, 7226.11.10, and 7226.11.90 of the Harmonized Tariff Schedule of the United States....”⁴⁷ Therefore, the ITC’s preliminary injury determination in this investigation is sufficient to impute knowledge of the likelihood of material injury.

Section 733(e)(1)(B): Whether there have been massive imports of the subject merchandise over a relatively short period

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise were “massive,” the Department 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. In addition, 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.” 19 CFR 351.206(i) 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 (i.e., the comparison period). This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the petition (i.e., the base period).

In its February 24, 2014, allegation, the petitioners noted that the Russia GOES AD petition was filed on September 18, 2013.⁴⁸ As such, according to the petitioners, the comparison period commences with the month of October 2013, and the base period concludes with the month of September 2013. The petitioners included in their submission U.S. import data collected from the ITC’s Dataweb.⁴⁹ Based on these data, the petitioners assert that imports of GOES from

⁴⁵ See, e.g., Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation, 75 FR 24572, 24573 (May 5, 2010), unchanged in Certain Potassium Phosphate Salts from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry, 75 FR 30377 (June 1, 2010).

⁴⁶ See, e.g., Steel Wire Rod Preliminary Determination, unchanged in Steel Wire Rod Moldova Final Determination; and Magnesium Metal Preliminary Critical Circumstances Determination, unchanged in Magnesium Metal Final Determination.

⁴⁷ See ITC Preliminary, 78 FR at 70574.

⁴⁸ See Initiation Notice, 78 FR at 65283.

⁴⁹ See the petitioners’ Critical Circumstances Allegation, at 6 and Attachment 1.

Russia increased by over 114 percent during the comparison period over the base period. Thus, the petitioners conclude that there were massive imports during a relatively short period.⁵⁰

The Department typically determines whether to include the month in which a party had reason to believe that a proceeding was likely in the base, or comparison, period depending on whether the event that gave rise to the reason for belief occurred in the first or second half of the month.⁵¹ Moreover, it is the Department's practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.⁵² With these practices in mind, we examined a base period of May through September 2013, and a corresponding comparison period of October 2013 through February 2014 in order to determine whether imports of subject merchandise were massive.

It is the Department's practice to conduct its massive imports analysis based on the experience of investigated companies, using the reported monthly shipment data for the base and comparison periods.⁵³ However, as noted above, we determined that NLMK has not acted to the best of its ability in responding to our requests for information.⁵⁴ Therefore, the Department preliminarily determines that the use of facts otherwise available with an adverse inference is warranted. Accordingly, we preliminarily find that there were massive imports of subject merchandise from NLMK, pursuant to our practice.⁵⁵

In determining whether there were massive imports for all other companies, we relied on import statistics from Global Trade Atlas (GTA) as evidence that imports in the post-petition period for the subject merchandise were massive.⁵⁶ These data show that there was an increase in imports

⁵⁰ Id., at 7.

⁵¹ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances, 77 FR 31309, 31312 (May 25, 2012).

⁵² See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004); and Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

⁵³ See, e.g., Carbon Steel Pipe Final Determination, 73 FR at 31972-73; and SDGE Final Determination, 74 FR at 2052-2053. We note that there was a measurable discrepancy between the export data reported by the respondent and the import data the Department placed on the record. See NLMK's March 10, 2014, submission at Exhibit 1 and the May 2, 2014, memorandum from Elizabeth Eastwood to the File entitled, "Antidumping Duty Investigation of Grain-Oriented Electrical Steel from the Russian Federation – Global Trade Atlas Data for Critical Circumstances Analysis," (GTA Data Memo) at Attachment 1. Because we are not relying on NLMK's data, we have not asked NLMK to explain the discrepancy or demonstrate the reliability of its export data.

⁵⁴ See the "Application of Facts Available and Adverse Facts Available" section of this memorandum, above.

⁵⁵ See SDGE Final Determination, 74 FR at 2052-2053.

⁵⁶ See GTA Data Memo at Attachment I.

of 134.92 percent, exceeding the 15 percent threshold, during a “relatively short period” of time, in accordance with 19 CFR 351.206(h) and (i).

Given the analysis above, we preliminarily determine that critical circumstances exist with respect to imports of GOES from NLMK and the companies covered by the “all others” rate.

We intend to make our final determination no later than 75 days after the date of publication of this preliminary determination, pursuant to section 735(a)(1) of the Act.

CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

2 MAY 2014
(Date)