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DATE: May 15, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Non-Oriented Electrical
Steel from Japan

Summary

The Department of Commerce (“Department”) preliminarily determines that non-oriented electrical steel (“NOES”) from Japan 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 Department also preliminarily determines that critical circumstances exist for the mandatory respondents JFE Steel Corporation (“JFE”) and Sumitomo Corporation (“Sumitomo”) and for the non-individually examined companies receiving the “all-others” rate. The period of investigation (“POI”) is July 1, 2012, through June 30, 2013.

Background

On September 30, 2013, the Department received an antidumping (“AD”) petition concerning imports of NOES from Japan, among other countries, filed in proper form by AK Steel Corporation (“Petitioner”).¹ The Department initiated this investigation on November 6, 2013.²

¹ See Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan, dated September 30, 2013 (“Petition”).



In the Initiation Notice, we stated our intention to select respondents based on U.S. Customs and Border Protection (“CBP”) data.³ We released the CBP data to interested parties under an administrative protective order on November 15, 2013, and invited interested parties to submit comments on the data and potential respondent selection.⁴ On November 25, 2013, the Department received comments regarding the CBP data and respondent selection from AK Steel Corporation (“Petitioner”).⁵ On December 13, 2013, the Department selected JFE and Sumitomo as mandatory respondents in this investigation.⁶

In November 2013, and January and February 2014, the Department received comments regarding the scope of this investigation. For details, see the “Scope Comments” section of this memorandum below.

On December 2, 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 NOES from the People’s Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.⁷

On December 17, 2013, the Department issued its AD questionnaire to JFE and Sumitomo.⁸ Both JFE and Sumitomo received, but did not respond to, the Department’s questionnaire and otherwise declined to participate in this investigation.

On March 6, 2014, Petitioner alleged that critical circumstances exist with respect to imports of NOES from Japan.⁹ On March 17, 2014, Nippon Steel & Sumitomo Metal Corporation (“NSSMC”), a Japanese producer of NOES which was not selected as a mandatory respondent, commented on Petitioner’s critical circumstances allegation.¹⁰ For further discussion of Petitioner’s allegation, see the “Critical Circumstances” section of this memorandum below.

² See Non-Oriented Electrical Steel from the People’s Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Initiation of Antidumping Duty Investigations, 78 FR 69041 (November 18, 2013) (“Initiation Notice”).

³ Id. at 69046.

⁴ See Memorandum from Thomas Martin to the File, “Release of Customs and Border Protection Data,” dated November 15, 2013.

⁵ See Letter from Petitioner to The Honorable Penny S. Pritzker, “Non-Oriented Electrical Steel From Japan: Petitioner’s Comments On CBP Data And Respondent Selection,” dated November 25, 2013.

⁶ See Memorandum from Abdelali Elouaradia to Christian Marsh, “Antidumping Duty Investigation of Non-Oriented Electrical Steel from Japan: Respondent Selection Memorandum,” dated December 13, 2013.

⁷ See Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, and Taiwan; Determinations, 78 FR 73562 (December 6, 2013).

⁸ See Letter from the Department to Sumitomo, “Re: Investigation of Non-Oriented Electrical Steel from Japan: Antidumping Duty Questionnaire,” dated December 17, 2013 (“Sumitomo Questionnaire”); See Letter to JFE, “Re: Investigation of Non-Oriented Electrical Steel from Japan: Antidumping Duty Questionnaire,” dated December 17, 2013 (“JFE Questionnaire”). Sumitomo Corporation received the AD questionnaire via UPS. See Memorandum from Thomas Martin to the File, “Investigation of Non-Oriented Electrical Steel from Japan; Antidumping Duty Questionnaire Received by Sumitomo Corporation,” dated February 26, 2014. JFE’s counsel received the AD questionnaire via email, and is a registered IAACCESS E-File user in this proceeding.

⁹ See Letter from Petitioner to the Secretary of Commerce, “Non-Oriented Electrical Steel From Japan: Petitioner’s Critical Circumstances Allegation,” dated March 6, 2014 (“Critical Circumstances Allegation”).

In response to a request from Petitioner and in accordance with section 733(c)(1)(A) of the Act, the Department postponed the deadline for the preliminary determination by fifty days.¹¹ Therefore, the new deadline for issuing this preliminary determination is May 15, 2014.

The Department is conducting this investigation in accordance with section 733(b) the Act.

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 2013.¹²

Scope Comments

In the Initiation Notice,¹³ the Department invited interested parties to “to raise issues regarding product coverage.”

On November 22, and 26, 2013, Petitioner requested that the Department clarify the scope by lowering the minimum silicon content from 1.25 percent to 1.00 percent, removing altogether the maximum silicon content, and including language regarding surface oxide coating.¹⁴ On January 28, 2014, POSCO/DWI,¹⁵ a respondent in the companion LTFV investigation of NOES from the Republic of Korea, filed scope comments with the Department in which it requested that the Department clarify whether laminations and cores, downstream products fabricated from NOES, and certain NOES specifications with silicon content less than the percentage identified in the scope of NOES investigations contained in the Initiation Notice, are covered by this and the companion investigations.¹⁶ On February 4, 2014, Petitioner responded to POSCO/DWI’s comments, stating (1) that laminations and cores are out of the scope of the investigations to the

¹⁰ See Letter from NSSMC to the Secretary of Commerce, “Non-Oriented Electrical Steel from Japan (Antidumping Investigation): NSSMC Response to Allegation of Critical Circumstances,” dated March 17, 2014 (“NSSMC Critical Circumstances Rebuttal”).

¹¹ See Non-Oriented Electrical Steel from the People’s Republic of China, Germany, Japan, the Republic of Korea, Sweden and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 79 FR 13987 (March 12, 2014).

¹² See 19 CFR 351.204(b)(1).

¹³ See Initiation Notice, 78 FR at 69042.

¹⁴ See Letter from Petitioner to the Secretary of Commerce, “Petitions for the Imposition of Antidumping and Countervailing Duties against Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, Taiwan/Petition Amendment to Clarify the Proposed Scope Definition,” dated November 22, 2013 (“Petitioner’s Proposed Scope Changes”); and Letter from Petitioner, “Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, Taiwan: Petitioner’s Comments on the Scope of Investigations,” dated November 26, 2013.

¹⁵ On January 23, 2014, POSCO and Daewoo International Corporation (DWI) filed a joint response in the concurrent LTFV investigation of NOES from Korea. The Department has preliminarily found these two companies to be a single entity in the LTFV investigation. See the memorandum from Senior Advisor Gary Taverman to Assistant Secretary Paul Piquado entitled “Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Non-Oriented Electrical Steel from the Republic of Korea” dated May 15, 2014. The Department will refer to the single entity as POSCO/DWI in this preliminary determination memorandum.

¹⁶ See Letter from POSCO/DWI to the Secretary of Commerce, “Scope Clarification Requests,” dated January 28, 2014.

extent that exclusion only covers products that are suitable for use (without further processing) as a drop-in part of a core; and (2) that the Department should promptly implement the changes to the scope of the investigations relating to silicon content described in Petitioner's Proposed Scope Changes, and clarify for POSCO/DWI the data that it should report to the Department.¹⁷

After analyzing the scope comments regarding silicon content and surface oxide coatings, the Department has decided to lower the minimum silicon content identified in the scope from 1.25 percent to 1.00 percent and to include language regarding surface oxide coating in the scope. However, the Department has decided not to eliminate the maximum silicon content in the scope. For a complete discussion of these decisions see the memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Robert Bolling, Program Manager for AD/CVD Operations, Office IV, regarding "Scope Modification Requests," dated April 10, 2014, and hereby incorporated by reference into this memorandum. The scope language below reflects these decisions.

With respect to the issue involving laminations and cores, POSCO/DWI described laminations as products that are cut from NOES into their finished shape by a punch and die or, when in smaller quantities, by laser or wire erosion.¹⁸ The laminations are subsequently assembled together to form laminated transformer cores or electric motor stator and rotor parts.¹⁹ POSCO/DWI commented that it understands that laminations and cores manufactured from NOES are products not subject to these investigations because NOES is manufactured in sheet or strip form, either in coils or in straight lengths, and any subsequent processing is not simply an extension of the NOES production process, but, instead, processing performed by the end user or by a fabricator that sells to the end user.²⁰ POSCO/DWI commented that NOES is consumed exclusively in the production of laminated cores for transformers as well as stators and rotors for motors, and generators.²¹ Depending on the design requirements of an end user, the standard lamination products are cut "E," "I," or "U," or varying combinations thereof, while highly complex lamination products are customized with numerous sides, curved edges, or numerous punched holes.²² POSCO/DWI commented that the process of converting NOES coil or strip into laminations or cores constitutes a substantial transformation into products with end uses and customer expectations different from those for NOES.²³

In its reply to POSCO/DWI's scope clarification request, Petitioner stated that it agrees with POSCO/DWI that laminations and cores are outside the intended scope of the NOES

¹⁷ See Letter from Petitioner to the Secretary of Commerce, "Re: Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden and Taiwan/Petitioner's Response to POSCO's Scope Clarification Requests," dated February 4, 2014.

¹⁸ See Letter from POSCO/DWI to the Secretary of Commerce, "Scope Clarification Requests," dated January 28, 2014, at 3.

¹⁹ *Id.*, at 3-4.

²⁰ POSCO refers to the production process for NOES described in the petitions and in the International Trade Commission's preliminary determination that POSCO understands to mean that the NOES production process ends with slitting. *Id.*, at 4.

²¹ See Letter from POSCO/DWI to the Secretary of Commerce, "Scope Clarification Requests," dated January 28, 2014, at 3-4.

²² *Id.*, at 4-5.

²³ *Id.*, at 5.

investigations.²⁴ Petitioner commented that to the extent the term “laminations” is used as a substitute for the term laminated “cores,” Petitioner likewise agrees that laminations that are ready for assembly into cores are excluded from the intended scope of the NOES investigations.²⁵ Petitioner commented that it does not agree with POSCO/DWI that the production process for NOES necessarily ends with slitting; because the scope definition covers NOES “whether or not in coils,” simply cutting to length or cutting blanks from a coil (whether slit or not) does not take such products out of the scope.²⁶ Petitioner commented that it agrees nevertheless with POSCO/DWI that laminations cut from NOES to their finished shape and are otherwise suitable for use, without further processing, as a drop-in part of the core, are outside the intended scope of the NOES investigations.²⁷

On the basis of Petitioner’s statements that it is not seeking relief from laminations and cores made from NOES, we have modified the scope to reflect this exclusion.²⁸

We invite interested parties to comment on this proposed addition to the scope language in their briefs so that the finalized scope of the investigation can be adopted in the final determination.

Scope of the Investigation

The merchandise subject to this investigation consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term “substantially equal” means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (i.e., the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (i.e., parallel to) the rolling direction of the sheet (i.e., B_{800} value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.

NOES is subject to this investigation whether it is fully processed (i.e., fully annealed to develop final magnetic properties) or semi-processed (i.e., finished to final thickness and physical form but not fully annealed to develop final magnetic properties). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS)

²⁴ See Letter from Petitioner to the Secretary of Commerce, “Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden and Taiwan/Petitioner’s Response to POSCO’s Scope Clarification Requests,” dated February 4, 2014, at 2.

²⁵ See *id.* Referring to POSCO/DWI’s Scope Comments, Petitioner interprets POSCO/DWI’s statement, that POSCO/DWI uses the terms laminations and cores interchangeably in the normal course of business, to mean that laminations are a substitute for cores.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Letter from Petitioner to the Secretary of Commerce, “Non-Oriented Electrical Steel from The People’s Republic of China, Germany, Japan, The Republic of Korea, Sweden, and Taiwan: Scope Clarification Language,” dated May 12, 2014.

specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404-8-4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of this investigation is not limited to merchandise meeting the ASTM, JIS and IEC specifications noted immediately above.

NOES is sometimes referred to as cold-rolled non-oriented (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO) electrical steel. These terms are interchangeable.

Excluded from the scope of this investigation 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 Harmonized Tariff Schedule of the United States (HTSUS) as a part (i.e., lamination) for use in a device such as a motor, generator, or transformer.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the HTSUS. Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Comments on Physical Characteristics and Model Matching Hierarchy

The Department set aside a period of time for parties to comment on the physical characteristics and model matching hierarchy for use in the AD questionnaire.²⁹ On November 20, 2013, Petitioner and POSCO submitted timely comments regarding the physical characteristics and model matching hierarchy,³⁰ and on November 27, 2013, Petitioner and POSCO submitted timely rebuttal comments regarding the physical characteristics and model matching hierarchy.³¹

After analyzing the comments, the Department set forth the physical characteristics and model matching hierarchy in the AD questionnaire.³² We established these physical characteristics to define models of the subject merchandise and the foreign like product, and, when necessary, to identify identical and similar merchandise sold in the comparison market for this investigation. The Department identified the following physical characteristics for defining subject merchandise and the foreign like product: Maximum Core Loss, Nominal Thickness, Processing

²⁹ See Initiation Notice, 78 FR at 69042.

³⁰ See Letter from POSCO to the Department, “Re: Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Model Match Comments,” dated November 20, 2013; See Letter from Petitioner, “Re: Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, And Taiwan: Petitioner’s Comments On Product Characteristics For Use In The Antidumping Duty Questionnaire,” dated November 20, 2013.

³¹ See Letter from Petitioner to the Department, “Re: Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, And Taiwan: Petitioner’s Rebuttal Comments Concerning Product Characteristics For Use In The Antidumping Duty Questionnaire,” dated November 27, 2013; See Letter from POSCO, “Re: Non-Oriented Electrical Steel from China, Germany, Japan, South Korea, Sweden, and Taiwan: Rebuttal Model Match Comments,” dated November 27, 2013.

³² See, e.g., Sumitomo Questionnaire at pages B-9 through B-12, C-8 through C-10.

Level, Coating, Form, and Nominal Width. These criteria were included in the AD questionnaires issued to the mandatory respondents in this investigation, as well as the mandatory respondents in the concurrent NOES investigations.

Application of Facts Available and Use of Adverse Inference

As noted above, JFE and Sumitomo each received, but did not submit responses to, the Department's AD questionnaire.³³ 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 JFE and Sumitomo.

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 for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the 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.

In this investigation, JFE and Sumitomo did not respond to our request for information or otherwise participate in this investigation. As a result, we preliminarily find that necessary information is not available on the record, that JFE and Sumitomo withheld information the Department requested, that they failed to provide information by the specified deadlines, and that they significantly impeded the proceeding. Moreover, because JFE and Sumitomo failed to provide any information, section 782(e) of the Act is inapplicable. 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 JFE's and Sumitomo's preliminary, estimated weighted-average dumping margins.

³³ Sumitomo Corporation received the AD questionnaire via UPS. See Memorandum from Thomas Martin to the File, "Investigation of Non-Oriented Electrical Steel from Japan; Antidumping Duty Questionnaire Received by Sumitomo Corporation," dated February 26, 2014. JFE's counsel received the AD questionnaire via email, and is a registered IAACCESS E-File user in this proceeding.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.³⁴ 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.”³⁵ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.³⁶ 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.³⁷

We preliminarily find that JFE and Sumitomo have not acted to the best of their ability in providing requested information because JFE and Sumitomo failed to respond to the Department’s questionnaire. The failure of JFE and Sumitomo to respond to the Department’s questionnaire or otherwise participate in this investigation has precluded the Department from performing the necessary analysis and verification of their questionnaire responses, as required by section 782(i)(1) of the Act. Accordingly, the Department concludes that JFE and Sumitomo failed to cooperate to the best of their 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). Based on the above, the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.³⁸

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

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.³⁹

³⁴ 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).

³⁵ 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).

³⁶ 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.

³⁷ 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).

³⁸ 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 adverse facts available when the respondent failed to respond to the antidumping questionnaire).

³⁹ See also 19 CFR 351.308(c).

In selecting a rate based on adverse facts available (“AFA”), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴⁰ The Department’s practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the Petition, or (2) the highest calculated rate of any respondent in the investigation.⁴¹ In this investigation, the highest petition dumping margin is 204.79 percent and no rate was calculated for an individually-examined respondent.⁴² Thus, consistent with our practice, we have selected the highest dumping margin alleged in the Petition as the AFA rate applicable to JFE and Sumitomo.

D. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as 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.⁴³ 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.”⁴⁴ Thus, because the 204.79 percent AFA rate applied to JFE and Sumitomo 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.⁴⁵ 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 obtained from interested parties during the particular investigation.⁴⁶ 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.⁴⁷

We determined that the Petition margin of 204.79 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the

⁴⁰ See SAA at 870.

⁴¹ 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).

⁴² See, e.g., Initiation Notice, 78 FR at 69045.

⁴³ See Initiation Checklist.

⁴⁴ See SAA at 870; see also 19 CFR 351.308(c)(1).

⁴⁵ See SAA at 870; see also 19 CFR 351.308(d).

⁴⁶ See SAA at 870; see also 19 CFR 351.308(d).

⁴⁷ 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).

information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.⁴⁸

We examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the export price (“EP”) and normal value (“NV”) calculations, including the constructed value calculations used in the Petition to derive NV and the alleged dumping margins.⁴⁹ During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive the dumping margins alleged in the Petition.⁵⁰

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the Petitioner’s EP and NV calculations to be reliable. Because we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the 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 dumping margins alleged in the Petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margins alleged in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. 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.⁵¹ No information has been placed on the record to indicate that the rates in the Petition are unreflective of commercial practices of the NOES industry and, as such, we find these rates relevant to the uncooperative respondents.⁵² As such, we find these rates relevant to JFE and Sumitomo. Furthermore, as there are no participating respondents in this investigation, we relied upon the dumping margins alleged in the Petition, which is the only information regarding the NOES industry reasonably at the Department’s disposal.

Accordingly, the Department preliminarily determines that the highest dumping margin alleged in the Petition has probative value and has corroborated the AFA rate of 204.79 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate:

⁴⁸ See “Antidumping Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from Japan,” dated November 6, 2013 (“Initiation Checklist”).

⁴⁹ Id.

⁵⁰ Id.

⁵¹ See, e.g., Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

⁵² See Initiation Checklist.

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 respondents.⁵³

All Others Rate

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

As noted above, JFE and Sumitomo are the sole mandatory respondents in this investigation, and their estimated dumping margins are determined entirely under section 776 of the Act. Consequently, the only available dumping margins for this preliminary determination are those alleged 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 rates.⁵⁴ In this investigation, a simple average of the dumping margins alleged in the petition yields a rate of 135.59 percent for entities not individually examined.⁵⁵ Consequently, and consistent with its practice, the Department has assigned an “all others” rate of 135.59 percent to entities not individually examined in this investigation.

Critical Circumstances

On March 6, 2014, Petitioner alleged that critical circumstances exist with respect to imports of NOES from Japan.⁵⁶ Specifically, Petitioner contends that U.S. importers of NOES from Japan knew, or should have known, that exporters were dumping NOES and that the dumped imports were likely causing material injury based on the petition dumping margins of 88.63 to 204.79

⁵³ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); 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.

⁵⁴ 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.

⁵⁵ The Petition contained eleven margins, which, from lowest to highest, were as follows: 88.63 percent, 96.87 percent, 100.87 percent, 123.25 percent, 125.94 percent, 133.33 percent, 141.79 percent, 145.49 percent, 157.47 percent, 173.11 percent, and 204.79 percent. See Letter from Petitioner, “Re: Non-Oriented Electrical Steel From Japan: Petitioner’s Response To The Department’s Questions Regarding The Petition,” dated October 28, 2013, at Exhibit S-4 (Revised Exhibit IV-18); see also Letter from Petitioner, “Re: Non-Oriented Electrical Steel From Japan: Petitioner’s Response To The Department’s Requests,” dated October 30, 2013, at Exhibits S2-3 and S2-4.

⁵⁶ See Critical Circumstances Allegation.

percent alleged in the Petition⁵⁷ and the ITC's preliminary affirmative injury determination. Petitioner also alleges massive imports of Japanese NOES over a relatively short period because U.S. import data show approximately a 22 percent increase in subject imports from Japan in the three months following the filing of the Petition (October – December 2013) when compared to the three months preceding the filing of the Petition (July - September 2013). Taken together, Petitioner concludes that there is a reasonable basis to believe or suspect that critical circumstances exist with regards to imports of NOES from Japan.

On March 17, 2014, NSSMC rebutted Petitioner's critical circumstances allegation by providing shipment data which, according to NSSMC, shows that there was not a massive increase in NSSMC's shipments of NOES to the United States in the post-petition period of October through December 2013 compared to the base period, July through September 2013.⁵⁸ Thus, NSSMC argues that the Department should make a negative preliminary determination of critical circumstances with respect to NSSMC.

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation, such as that submitted by the Petitioner, is submitted more than 20 days before the scheduled date of the preliminary determination, the Department issues 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.

A. Legal Framework

Section 733(e)(1) of the Act, provides that upon receipt of a timely allegation of critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that: (1) 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 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 (2) there were massive imports of the subject merchandise over a relatively short period.

B. Analysis

Below we address the issues of whether importers had, or should have had, knowledge of dumping and material injury and whether there were massive imports.

1. Whether Importers Had, or Should Have Had, Knowledge of Dumping and Material Injury

⁵⁷ Petitioner notes that the Department imputes knowledge of dumping where margins are 15 percent or more for constructed export price sales and 25 percent or more for export price sales. See Critical Circumstances Allegation at 2-3.

⁵⁸ See NSSMC Critical Circumstances Rebuttal.

- a. 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.⁵⁹ Petitioner did not address this criterion. No parties have made claims regarding completed AD proceedings for NOES from Japan, and the Department is not aware of the existence of active AD orders on NOES from Japan in other countries. As a result, the Department does not find that there is a history of injurious dumping of NOES from Japan pursuant to section 733(e)(1)(A)(i) of the Act.

- b. 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 Less Than Its Fair Value and That There Was Likely to be Material Injury By Reason of Such Sales

The Department normally considers dumping 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.⁶⁰ For JFE and Sumitomo, we are preliminarily assigning them a rate of 204.79 percent, and we are assigning to all other producers or exporters a rate of 135.59 percent. Accordingly, the preliminary estimated weighted-average dumping margins exceed the threshold sufficient to impute knowledge of dumping. Thus, these rates 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 preliminary injury determination of the ITC.⁶¹ If the ITC finds a reasonable indication of

⁵⁹ 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”).

⁶⁰ 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 (August 30, 2001) (“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 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 (February 24, 2005) (“Magnesium Metal Final Determination”).

⁶¹ 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).

material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute knowledge of likely material injury by reason of such imports.⁶² 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, Germany, Japan, Korea, Sweden, and Taiwan of non-oriented electrical steel, provided for in subheadings 7225.19.00 and 7226.19.10, and 7226.19.90 of the Harmonized Tariff Schedule of the United States . . .”⁶³ Therefore, the ITC’s preliminary injury determination in this investigation is sufficient to impute knowledge of material injury to importers.

3. Section 733(e)(1)(B) of the Act: Whether There Have Been Massive Imports of the Subject Merchandise Over a Relatively Short Period

a. JFE and Sumitomo

In determining whether imports of the subject merchandise were “massive,” the Department normally will examine the volume and value of the imports, seasonal trends, and the share of domestic consumption accounted for by the imports.⁶⁴ 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 Department will not consider the imports to be massive.⁶⁵ The Department’s regulations define “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).⁶⁶

It is the Department’s practice to conduct its massive imports analysis with respect to the mandatory respondents based their reported monthly shipment data.⁶⁷ However, as noted above, the mandatory respondents did not respond to our request for information. 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 JFE and Sumitomo, pursuant to our practice.⁶⁸

b. Non-Individually Examined Respondents

In keeping with recent prior determinations, we did not impute the adverse inferences of massive imports that we applied to the mandatory respondents to the non-individually examined

⁶² See, e.g., Steel Wire Rod Preliminary Determination, unchanged in Steel Wire Rod Moldova Final Determination; Magnesium Metal Preliminary Determination, unchanged in Magnesium Metal Final Determination.

⁶³ See Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, and Taiwan; Determinations, 78 FR 73562 (December 6, 2013).

⁶⁴ See 19 CFR 351.206(h)(1).

⁶⁵ See 19 CFR 351.206(h)(2).

⁶⁶ See 19 CFR 351.206(i).

⁶⁷ 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); 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 (January 14, 2009) (“SDGE Final Determination”).

⁶⁸ See SDGE Final Determination, 74 FR at 2052-2053.

companies receiving the “all-others” rate.⁶⁹ Rather, we examined data for total relevant imports during the comparison period, relative to a base period, to determine whether imports were massive with respect to these companies. We disagree with NSSMC that the Department should use the company-specific shipment data it placed on the record. Because shipment data from a single company cannot answer whether there are critical circumstances for all of the unexamined companies, the Department’s practice is to only include shipment data from selected respondents in its analysis.⁷⁰ NSSMC is neither a selected mandatory respondent nor a selected voluntary respondent in this investigation.

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 belief occurred in the first half (included in the comparison period) or second half (included in the base period) of the month.⁷¹ Moreover, it is the Department’s practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.⁷² Based on these practices, we preliminarily determine to compare the base period May 2013 through September 2013 (parties had knowledge of the proceeding when the Petition was filed on September 30, 2013), with the comparison period October 2013 through February 2014 in order to determine whether imports of subject merchandise were massive.⁷³ These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and the base period have a comparable duration. We relied upon U.S. import statistics as reported by Global Trade Atlas to determine whether there were massive imports of subject merchandise in the

⁶⁹ See 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 at 11 (noting that where mandatory respondents receive AFA we do not impute “massive imports” to companies receiving the “all-others” rate) unchanged in Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, 79 FR 14476 (March 14, 2014).

⁷⁰ See, e.g., 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 (where the Department did not use the company-specific shipment data placed on the record by non-examined respondents in its critical circumstances analysis).

⁷¹ See e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances, 77 FR 31309, 31312 (May 25, 2012).

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

⁷³ Because data were available through February 2014, the Department used five months of U.S. import data for the base and comparison periods (*i.e.*, a base period of May 2013 – September 2013 and a comparison period of October 2013 – February 2014).

comparison period.⁷⁴ From these data, it is apparent that there was an increase in imports of more than 15 percent (specifically, 21.9 percent) during a “relatively short period” of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily find there to be massive imports for all non-individually examined companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Based on the foregoing, the Department preliminarily determines that critical circumstances exist for the mandatory respondents JFE and Sumitomo as well as with respect to the non-individually examined companies receiving the “all-others” rate.

Conclusion

We recommend applying the above methodologies for this preliminary determination.

✓

Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

May 15, 2014

(Date)

⁷⁴ See Memorandum from Thomas Martin to the File, “Non-Oriented Electrical Steel from Japan: Calculation of All Others Rate,” dated concurrently with this memorandum.