



A-588-872  
POI: 07/01/12-06/30/13  
**Public Document**  
E&C/IV: TEM

October 6, 2014

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**Subject:** Issues and Decision Memorandum for the Final Determination of  
Sales at Less Than Fair Value for Non-Oriented Electrical Steel  
from Japan

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## I. Summary

In this final determination, the Department of Commerce (the “Department”) finds 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 735 of the Tariff Act of 1930, as amended (the “Act”). The estimated weighted-average dumping margins of sales at LTFV are listed in the “Final Determinations” section of the accompanying *Federal Register* notice. The period of investigation (“POI”) is July 1, 2012, through June 30, 2013.

We analyzed the case and rebuttal briefs of interested parties submitted in this LTFV investigation of NOES from Japan. This investigation covers two non-responsive mandatory respondents, JFE Steel Corporation (“JFE”) and Sumitomo Corporation (“Sumitomo”). In the *Preliminary Determination*, we determined an estimated weighted-average dumping margin based on total adverse facts available (“AFA”) for both JFE and Sumitomo because neither company participated in the investigation.<sup>1</sup> No party commented on our application of a total AFA rate to JFE and Sumitomo. Accordingly, our determination to determine an estimated weighted-average dumping margin based on total AFA to both JFE and Sumitomo remains unchanged from the *Preliminary Determination*.

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<sup>1</sup> See *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014) (“*Preliminary Determination*”) and accompanying Preliminary Decision Memorandum at the “Application of Facts Available and Use of Adverse Inference” section.



Based on comments with regard to the preliminary determination of critical circumstances, we have updated the import statistics supporting this determination. We now find that critical circumstances do not exist for all other producers and exporters.

### **III. Background**

On May 22, 2014, the Department published the *Preliminary Determination* in the LTFV investigation of NOES from Japan. We invited parties to comment on the *Preliminary Determination*. On June 23, 2014, we received case briefs from Marubeni Itochu Steel America Inc. (“MISA”) and Nippon Steel & Sumitomo Metal Corporation (“NSSMC”). On June 30, 2014, we received a rebuttal brief from AK Steel Corporation (“Petitioner”).

On July 2, 2014, the Department extended the deadline for this final determination by 60 days at the request of several parties, in accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b) and (e).<sup>2</sup> Thus, the revised deadline for the final determination in this investigation is October 6, 2014.

### **IV. Critical Circumstances**

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) 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 LTFV and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

The Department preliminarily found that, pursuant to section 733(e)(1) of the Act, critical circumstances exist with regard to NOES from Japan for JFE, Sumitomo, and the non-individually examined companies receiving the “all others” rate.<sup>3</sup> With respect to JFE and Sumitomo, the facts remain unchanged from the *Preliminary Determination* and, therefore, for this final determination, we continue to find that critical circumstances exist for JFE and Sumitomo for the same reasons explained in the Preliminary Decision Memorandum.

Concerning the non-individually examined respondents, NSSMC argued in its case brief that the Department should update the data used in its critical circumstances analysis if additional data are available. We have addressed this argument in Comment 3 below. As a result of our analysis of this issue for the final determination, we do not find that critical circumstances exist

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<sup>2</sup> See *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, and Sweden: Postponement of Final Determinations of Sales at Less Than Fair Value*, 79 FR 37718 (July 2, 2014).

<sup>3</sup> See *Preliminary Determination*, 79 FR at 29424, and accompanying Preliminary Decision Memorandum, which is incorporated herein by reference, at the “Critical Circumstances” section. See also Memorandum from Thomas Martin to the File, “Non-Oriented Electrical Steel from Japan: U.S. Import Data Considered in Critical Circumstances Analysis,” dated May 15, 2014.

for the non-individually examined companies receiving the “all others” rate pursuant to section 735(a)(3) of the Act and 19 CFR 351.206

## **V. Scope Comments**

In its case brief, MISA requested that the Department clarify that products with no surface oxide coating are outside the scope of this investigation. We have addressed this request in Comment 1 below.

## **VI. 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) 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.

## VII. Discussion of the Issues

### Comment 1: Request for a Scope Clarification

#### MISA

- The Department should clarify that products with no surface oxide coating are outside the scope of this investigation. The scope defines NOES as having a surface oxide coating, along with four other characteristics, all of which must be present for the product to be considered subject merchandise.
- While the scope covers both fully-processed and semi-processed NOES, there is no limitation on the requirement that products must have a surface oxide coating in order to be considered subject merchandise.
- Petitioner intended for surface oxide coating to be a controlling characteristic of subject merchandise because it amended the petition to clarify the scope by adding the phrase “NOES has a surface oxide coating” and eliminated the phrase “whether or not it is coated.”

#### Petitioner

- The intention was for this investigation to cover all NOES. NOES is subject to this investigation whether or not it has an insulation coating in addition to the surface oxide coating.
- The statement in the scope that “NOES has a surface oxide coating, to which an insulation coating may be applied” is intended to distinguish subject merchandise from cold-rolled motor lamination steel, which lacks a surface oxide coating.

#### Department Position:

The Department has the authority to define or clarify the scope of an investigation and generally must exercise that authority in a manner which reflects the intent of the petition and fulfills the Department’s statutory mandate to provide the relief requested by the petitioning industry.<sup>4</sup> The Petitioner stated in the petition that “NOES is subject to these investigations ... whether or not it is coated (*e.g.*, with enamel, varnish, natural oxide surface, chemically treated or phosphate surface, or other non-metallic materials).”<sup>5</sup> Petitioner later proposed replacing the prior sentence, which was included in the scope at initiation, with the sentence “NOES has a surface oxide coating, to which an insulation coating may be applied” in order “to avoid covering cold-rolled

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<sup>4</sup> See *e.g.*, *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7236, 7240 (February 18, 2010), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010). See also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) and accompanying Issues and Decision Memorandum in the introduction to the “Scope Issues” (after Comment 49) and Comment 51.

<sup>5</sup> 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 (“*Petitions*”), at Volume I, page 5.

motor lamination electrical steel ('CRML')."<sup>6</sup> On November 26, 2013, after explaining why the Department should change the minimum silicon content identified in the scope from 1.25 percent to more than one percent, Petitioner noted that "it recognizes that it is possible that there may be some production of merchandise characterized as CRML that has a silicon content level higher than 1.0 percent. . . . these products are distinguishable from NOES by the change to the proposed scope definition that specifies that subject merchandise has a surface oxide coating."<sup>7</sup> This change is consistent with Petitioner's understanding that all NOES has a "natural" oxide coating resulting from the annealing process while CRML "lacks such a coating due to its different manufacturing process."<sup>8</sup> Taken together, these statements indicate that Petitioner included the phrase "NOES has a surface oxide coating" in the scope to distinguish *all* NOES from CRML rather than exclude certain NOES from the scope. Therefore, we have not made the clarification requested by MISA.

Comment 2: Request to Treat October 2013 as Part of the Base Period Rather Than the Comparison Period for Purposes of Critical Circumstances

#### NSSMC

- While the Department followed its practice in the *Preliminary Determination* and treated October 2013 as part of the comparison period because the petition was filed on September 30, 2013, it should treat October 2013 as part of the base period because U.S. imports in October 2013 could not have been arranged in response to a petition filed on September 30, 2013.
- Given that NOES is generally transported from Japan by sea, there is no reasonable basis to believe that U.S. imports of Japanese NOES in October 2013 were in response to a petition filed on the last day of September 2013.
- The purpose of the critical circumstances provision is to deter exporters from evading potential duties "by increasing their exports {of subject merchandise} to the United States during the period between the initiation of an investigation and the preliminary determination."<sup>9</sup> This provision creates a disincentive to increase exports of subject merchandise to the United States between initiation of an investigation and the publication of the preliminary determination. The initiation notice for this investigation was not signed until November, 6, 2013. Since the initiation happened after October 2013, imports during October 2013 should be considered part of the base period rather than the comparison period.
- The fact that the Department's regulations use the word "normally" when identifying the start of the "relatively short period" (*i.e.*, the comparison period) indicates the regulations allow the Department the flexibility to adopt a different beginning date for that period where circumstances warrant.

No other parties commented on this issue.

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<sup>6</sup> See Petitioner's November 22, 2013 submission at 2.

<sup>7</sup> See Petitioner's November 26, 2013 submission at 4

<sup>8</sup> *Id.* at 6.

<sup>9</sup> See H.R. Rep. No. 96-317, at 63 (1979).

## Department Position:

We disagree with NSSMC, and have not included October 2013 in the base period, as requested by NSSMC, in determining whether there have been massive imports of subject merchandise over a relatively short period of time for purposes of our critical circumstances analysis. In determining which month should be the last month of the base period, the Department's practice is to consider the month in which the petition was filed as the last month of the base period if the petition was filed in the second half of the month.<sup>10</sup> The petition for this investigation was filed in the second half of September 2013; thus September 2013, rather than October 2013, should be the last month of the base period.

NSSMC believes that U.S. imports in October 2013 could not have been affected by a petition filed on September 30, 2013 given that NOES is generally transported from Japan by sea. We disagree. Record information<sup>11</sup> cited by NSSMC regarding how NOES is generally transported from Japan does not rule out other shipment scenarios (such as shipments from a warehouse located in another country) and thus does not support a conclusion that U.S. imports in October 2013 could not have been affected by the NOES petition.

Further, we disagree with NSSMC's argument that the base period should be dependent upon when the investigation was initiated. This approach is not consistent with the Department's practice or its regulations. The base period ends when the proceeding begins and the Department has consistently considered a proceeding to begin when the petition is filed, or earlier, if parties had reason to believe that a proceeding was likely. In the LTFV investigation of steel concrete reinforcing bar from Turkey, the Department stated that:

The Department normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later. Furthermore, the Department may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed.<sup>12</sup>

Moreover, section 351.102(b)(40) of the Department's regulations state that a "proceeding" begins on the date of the filing of a petition under section 702(b) or section 732(b) of the Act or the publication of a notice of initiation in a self-initiated investigation under section 702(a) or section 732(a) of the Act ... ." The instant investigation was not self-initiated.

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<sup>10</sup> See *Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) and accompanying Issues and Decision Memorandum at Comment 2 ("If a petition is filed in the first half of the month the Department's practice has generally been to consider the month in which the petition was filed as part of the comparison period. In the instant investigation, the petition was filed on March 19, 2008, the second half of the month; thus we have considered March 2008 as part of the base period.").

<sup>11</sup> See *Petitions*, at Volume IV, at 8 ("Moreover, the Japanese mills ship much of their output, domestic sales included, by water.").

<sup>12</sup> See *Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 21986 (September 15, 2014) and accompanying Issues and Decision Memorandum at "Massive Imports of the Subject Merchandise Over a Relatively Short Period."

For the above reasons, we have not included October 2013 in the base period that we used to determine whether there have been massive imports of subject merchandise over a relatively short period of time.

Comment 3: Request to Revise the Comparison Period for Purposes of Critical Circumstances

NSSMC

- The comparison period used by the Department in its critical circumstances analysis for the non-individually examined respondents should include import data up through May 2014 (the month the preliminary determination was issued and published) which is consistent with the Department's practice of using the "longest period for which information is available up to the date of the preliminary determination."<sup>13</sup> The Department used data through February 2014 in its critical circumstances analysis in the *Preliminary Determination*.
- The Department has, in other cases, updated the data used in its critical circumstances analysis after the preliminary determination when additional data were available.

No other parties commented on this issue.

Department Position:

We agree with NSSMC. In conducting our critical circumstances analysis for the final determination, we determined whether there were massive imports of subject merchandise over a relatively short period of time with respect to the non-individually examined respondents by comparing relevant import data for the comparison period October 2013 to May 2014 to data for the base period February 2013 to September 2013.<sup>14</sup> Based on this comparison we found that there was not an increase in imports of 15 percent or more during a "relatively short period" of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we do not find there to be massive imports for the non-individually examined companies receiving the "all others" rate, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h).<sup>15</sup> Based on the foregoing, we find that critical circumstances do not exist for the non-individually examined companies receiving the "all others" rate under section 735(a)(3) of the Act and 19 CFR 351.206.

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<sup>13</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 10.C.

<sup>14</sup> See Memorandum from Thomas Martin to the File, "Non-Oriented Electrical Steel from Japan: U.S. Import Data Considered in Critical Circumstances Analysis for the Final Determination" dated October 6, 2014.

<sup>15</sup> *Id.*

**VIII. Recommendation**

We recommend applying the above methodology for this final determination.

Agree ✓ Disagree \_\_\_\_\_

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

6 OCTOBER 2014  
Date