UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-996
Investigation
Public Document
AD/CVD I: YJC

May 15, 2014

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

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Determination of Less Than Fair Value Investigation: Non-Oriented Electrical Steel from the People's Republic of China

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I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that non-oriented electrical steel (NOES) from the People's Republic of China (the PRC) is being, or is likely to be, sold to the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

On September 30, 2013, AK Steel Corporation, the petitioner, filed a petition with the Department seeking the imposition of antidumping and countervailing duties (AD/CVDs) on NOES from, *inter alia*, the PRC.[1] On November 18, 2013, the Department published the notce of initiation of the LTFV investigation on NOES from the PRC.[2]

The Department stated in the *Initiation Notice* that we intend to issue quantity and value (Q&V) questionnaires to each respondent and base respondent selection on the responses received.[3] On November 12, 2013, we issued our Q&V questionnaire to all 25 companies named in the petition[4] by FedEx, e-mail, and fax.[5] We have information on the record of this investigation

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[1] *See* Letter from the petitioner entitled "Petitions For The Imposition Of Antidumping And Countervailing Duties Against Non-Oriented Electrical Steel From China, Germany, Japan, Korea, Sweden, and Taiwan," (September 30, 2013) (the petition).
[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] *See Initiation Notice*, 78 FR at 69046.
[4] *See* the petition at Exhibit I-4.

showing that 23 of the 25 possible respondents received the Q&V questionnaire by FedEx, fax, or both. The two companies for which we do not have such information are Shougang Qian'an Iron & Steel Co., Ltd., and Jianlong Group. On November 26, 2013, we received a Q&V response from POSCO (Guangdong) Coated Steel Co., Ltd. (POSCO Guangdong), which claims to have been formerly known as Shunde-Posco Coated Steel Co. Ltd. POSCO Guangdong reported that it did not export or sell the subject merchandise to the United States during the POI.[6] We received no Q&V responses from the other companies that received our Q&V questionnaire. Also, no potential respondent filed a separate rate application.

On December 2, 2013, the 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 PRC, *inter alia*., and the ITC notified the Department of its finding.[7]

On February 28, 2014, the petitioner made a timely request for a 50-day postponement of the preliminary determinations for this and the other concurrent NOES LTFV investigations pursuant to section 733(c)(1)(A) of the Act.[8] On March 5, 2014, we postponed the preliminary determinations by 50 days.[9] As a result of the postponement, the revised deadline for the preliminary determination of this investigation is now May 15, 2014.[10]

On March 6, 2014, the petitioner alleged that critical circumstances exist regarding imports of NOES from the PRC.[11]

On March 25, 2014, we aligned the concurrent CVD investigation of NOES from the PRC with this investigation.[12] The final LTFV and CVD determinations will be issued on the same date, which is currently scheduled to be issued no later than July 29, 2014.[13]

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2013, through June 30, 2013.

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[5] *See* the Q&V questionnaire (November 12, 2013), and the memorandum to the File entitled , "Less-Than-Fair-Value Investigation of Non-Oriented Electrical Steel from the People's Republic of China: Release of the Quantity and Value Questionnaire," (December 2, 2013).
[6] *See* POSCO Guangdong's Q&V response (November 26, 2013).
[7] *See Non-Oriented Electrical Steel From China, Germany, Japan, Korea, Sweden, and Taiwan; Determinations, Investigation Nos. 701–TA–506–508 and 731–TA–1238–1243 (Preliminary)*, 78 FR 73562 (December 6, 2013).
[8] *See* Letter from the 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: Request for Postponement of the Preliminary Determinations," dated February 28, 2014.
[9] *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).
[10] *Id*.
[11] *See* Letter from the petitioner entitled "Non-Oriented Electrical Steel From the People's Republic of China: Petitioner's Critical Circumstances Allegations," dated March 6, 2014 (Critical Circumstances Allegation).
[12] *See Non-Oriented Electrical Steel From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 FR 16293 (March 25, 2014).
[13] *Id*. *See also* section 735(a)(1) of the Act.

IV. SCOPE COMMENTS

In the *Initiation Notice*,[14] the Department invited interested parties "to raise issues regarding product coverage."

On November 22 and 26, 2013, the 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.[15] On January 28, 2014, POSCO/DWI,[16] 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.[17] On February 4, 2014, the petitioner responded to POSCO/DWI's comments, stating that (1) laminations and cores are out of the scope of the investigations to the extent that exclusion only covers products that are suitable for use (without further processing) as a drop-in part of a core; and (2) the Department should promptly implement the changes to the scope of the investigations relating to silicon content described in the petitioner's proposed scope changes, and clarify for POSCO/DWI the data that it should report to the Department.

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 his 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

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[14] *See Initiation Notice*, 78 FR at 69042.

[15] *See* Letter from the petitioner, "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, and Letter from the petitioner, "Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, Taiwan: Petitioner's Comments on the Scope of Investigations," dated November 26, 2013 (the petitioner's proposed scope changes).

[16] 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 Acting Assistant Secretary Ronald K. Lorentzen 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.

[17] *See* POSCO/DWI's scope clarification request dated January 28, 2014 (Scope Comments) at 7-8, and Attachment E.

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. Depending on the design requirements of an end user, the standard lamination products are cut into "E," "I" or "U" shapes, or varying combinations thereof, while highly complex lamination products are customized with numerous sides, curved edges, or numerous punched holes.[21] 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.[22]

In its reply to POSCO/DWI's scope clarification request, the petitioner stated that it agrees with POSCO/DWI that laminations and cores are outside the intended scope of the NOES investigations.[23] The petitioner commented that, to the extent the term "laminations" is used as a substitute for the term laminated "cores," the petitioner likewise agrees that laminations that are ready for assembly into cores are excluded from the intended scope of NOES investigations.[24] The 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.[25] The 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.[26]

On the basis of the 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.[27]

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[18] *Id*., at 3.
[19] *Id*., at 3-4.
[20] POSCO/DWI refers to the production process for NOES described in the petition and in the ITC's preliminary determination that POSCO/DWI understands to mean that the NOES production process ends with slitting. *Id.*, at 4.
[21] *Id*., at 4-5.
[22] *Id*., at 5.
[23] *See* Letter from the petitioner, "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.
[24] *Id*. Referring to POSCO/DWI's Scope Comments, the 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.
[25] *Id*.
[26] *Id*.
[27] *See* Letter from the 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.

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.

V. 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.

VI. PRC-WIDE ENTITY

The Department considers the PRC to be a nonmarket economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall

remain in effect until revoked by the administering authority.[28] The Department has not revoked the PRC's NME status. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

In the *Intiation Notice*, the Department stated that, in order to be eligible for separate rate status in an NMEinvestigation, exporters and producers must submit a separate rate application within 60 days after publication of the *Initiation Notice*.[29] No potential respondent submitted a separate rate application in this investigation. Therefore, we preliminarily determine that all companies to whom we sent Q&V questionnaires in this investigation are part of the PRC-wide entity.

VII. APPLICATION OF ADVERSE FACTS AVAILABLE

Sections 776(a)(1) and (2) of the Act provides that, if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was unresponsive to the Department's requests for information. Specifically, as discussed above, all but one company did not respond to our questionnaires requesting Q&V information. It is our standard practice to select respondents in NME investigations based on Q&V information we receive from potential respondents.[30] Without a Q&V response from a potential respondent, we are not able to select a respondent for individual examination in accordance with our normal methodology and calculate a rate. As a result, pursuant to section 776(a)(1) and (a)(2)(A) of the Act, we find that the use of facts otherwise available is appropriate to determine the rate for the PRC-wide entity.[31]

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[32] We find that,

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[28] *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review*, 71 FR 26736 (May 8, 2006), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006).

[29] *See Initiation Notice*, 78 FR at 69046.

[30] *Id.*

[31] *See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 74 FR 68232, 68236 (December 23, 2009) unchanged in *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28560 (May 21, 2010).

[32] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. 103-316, 870 (1994) (SAA); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000).

because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate by not acting to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

VIII. RATE FOR THE PRC-WIDE ENTITY

When employing an adverse inference, section 776(b) of the Act indicates that the Department 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. The Department's practice, when selecting an adverse facts available (AFA) rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[33] As guided by the SAA, the information used as AFA should ensure an uncooperative party does not benefit by failing to cooperate than if it had cooperated fully.[34] It is the Department's practice to select, as AFA, the higher of the: (a) highest margin alleged in the petition; or (b) the highest calculated rate of any respondent in the investigation.[35] As AFA, we have preliminarily assigned a rate of 407.52 percent to the PRC-wide entity, the highest margin alleged in the petition.[36]

IX. CORROBORATION

When using facts otherwise available, section 776(c) of the Act provided that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.[37] 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."[38] Thus, because the 407.52 percent AFA rate applied to the PRC-wide entity is derived from the petition and, consequently, is based upon secondary information, the Department must corroborate it to the extent practicable.

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[33] *See 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, 55796 (August 30, 2002); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[34] *See* SAA at 870.
[35] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).
[36] *See Initiation Notice*, 79 FR at 69045; *see also* the petitioner's October 28, 2013, supplemental response at Exhibit S-4.
[37] *See* 19 CFR 351.308(d).
[38] *See* SAA at 870.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.[39] 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.[40] 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.[41]

We determined that the petition margin of 407.52 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.[42]

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 from various independent sources (to the extend that such information was reasonably available) provided either in the petition or, on our request, in the supplements to the petition that corroborates some of the key elements of the EP and NV calculations used in the petition to derive an estimated margin.[43]

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.[44] 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 margin in the petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that this petition rate is reliable for the purposes of assigning an AFA rate as the PRC-wide rate in this investigation.

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[39] *Id.*
[40] *Id.*
[41] *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).
[42] *See* Initiation Checklist: Non-Oriented Electrical Steel from the People's Republic of China," (November 6, 2013) (Initiation Checklist).
[43] *Id.*, at 5-10 for details of our pre-initiation analysis and all source documents we used for our our pre-initiation analysis.
[44] *Id.*

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.[45] 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. As such, we find the petition rate of 407.52 percent relevant to the PRC-wide entity. Furthermore, 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 NOES industry reasonably at the Department's disposal.

Accordingly, the Department has corroborated the AFA rate of 407.52 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.[46]

X. CRITICAL CIRCUMSTANCES

As noted above, on March 6, 2014, the petitioner alleged that critical circumstances exist with respect to imports of NOES from the PRC.[47] In accordance with 19 CFR 351.206(c)(2)(i), because the petitioner submitted the allegation more than 20 days before the scheduled date of this preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.[48] In its allegation, the petitioner contends that there have been massive imports of NOES from the PRC over a relatively short period since the filing of the petition. The petitioner provided import statistics released by the ITC and shipment information for the merchandise under investigation.[49] The petitioner argues that these data demonstrate that imports of subject merchandise from the PRC have increased more than the 15 percent required to be considered "massive" under 19 CFR 351.206(h)(2).

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 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

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[45] *See, e.g., Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999).
[46] *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 the accompanying Issues and Decision Memorandum at Comment 1.
[47] *See* Critical Circumstances Allegation.
[48] *See, e.g., Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998).
[49] *See* Critical Circumstances Allegation at 4 and Attachment.

reason of such sales; and (2) there were massive imports of the subject merchandise over a relatively short period.

In determining whether imports of the subject merchandise have been "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.[50] In addition, the Department will not consider imports to be massive unless imports during the "relatively short period" (comparison period) have increased by at least 15 percent compared to imports during an "immediately preceding period of comparable duration" (base period).[51] Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding commences (*i.e.*, the date the petition is filed) and ending at least three months later.[52] However, if the Department finds that importers, 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.[53] In addition, the Department normally expands the periods as more data are available.

In determining whether a history of dumping and material injury exists pursuant to section 733(e)(1)(A)(i) of the Act, 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 with regard to imports of subject merchandise.[54] No parties made claims regarding completed AD proceedings for NOES from the PRC and we are not aware of the existence of active AD orders on NOES from the PRC in other countries. As a result, we do not find that there is a history of injurious dumping of NOES from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

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.[55] As described above, we preliminarily determine that all respondents in this investigation are part of the PRC-wide entity. Also, all but one of the companies that are part of the PRC-wide entity did not respond to our Q&V questionnaire. For this reason, as explained in

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[50] *See* 19 CFR 351.206(h)(1)
[51] *See* 19 CFR 351.206(h)(2).
[52] *See* 19 CFR 351.206(i).
[53] *Id*.
[54] *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 (January 14, 2009).
[55] *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), 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, 2002) (collectively *Steel Wire Rod Moldova*); *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 5606, 5607 (February 3, 2005), 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) (collectively *Magnesium Metal*).

the "Application of Adverse Facts Available" section above, we preliminarily determine that the PRC-wide entity failed to cooperate by not acting to the best of its ability. Therefore, the Department finds that an adverse inference is appropriate for the PRC-wide entity.[56] The preliminary PRC-wide rate of 407.52 percent exceeds the threshold sufficient to impute knowledge of dumping. Thus, the PRC-wide rate provides a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV to the importers.

In determining whether an importer knew, or should know, 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.[57] 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 knowledge of likely material injury by reason of such imports.[58] 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 …."[59] Therefore, the ITC's preliminary injury determination in this investigation is sufficient to impute knowledge of material injury to importers.

In determining whether imports of the subject merchandise have been "massive" for the PRC-wide entity, we make our preliminary determination with respect to whether or not there were massive imports on facts otherwise available, with an adverse inference, because the PRC-wide entity has been uncooperative with the Department as explained above.[60] Specifically, with respect to critical circumstances, we are making an adverse inference that the PRC-wide entity dumped "massive imports" over a "relatively short period."

Accordingly, we preliminarily determine that critical circumstances exist for the PRC-wide entity in accordance with sections 733(e) and 776(a) and (b) of the Act and 19 CFR 351.206.

We intend to make a final determination concerning critical circumstances when we make the final determination, currently scheduled for July 29, 2014.

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[56] *See* section 776(b) of the Act.
[57] *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).
[58] *See, e.g., Steel Wire Rod Moldova* and *Magnesium Metal.*
[59] *See Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, and Taiwan; Determinations*, 78 FR 73562 (December 6, 2013).
[60] *Id*.

XI. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

✓

Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

May 15, 2014

(Date)