



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

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December 20, 2013

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

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

RE: Decision Memorandum for the Preliminary Determination of
the Antidumping Duty Investigation of Steel Threaded Rod
from Thailand

SUMMARY

The Department of Commerce (“Department”) preliminarily determines that steel threaded rod from Thailand is being, or is likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 733 of the Tariff Act of 1930, as amended (“the Act”). The period of investigation (“POI”) is April 1, 2012, through March 31, 2013. The estimated margins of sales at LTFV are shown in the “Preliminary Determination” section of this notice.

BACKGROUND

Initiation

On June 27, 2013, the Department received an antidumping duty (“AD”) Petition concerning imports of steel threaded rod from Thailand filed in proper form by All America Threaded Products Inc., Bay Standard Manufacturing Inc., and Vulcan Threaded Products Inc. (“Petitioners”).¹ The Department initiated this investigation on July 24, 2013.² The Department

¹ See Petitions for the Imposition of Antidumping Duties On Steel Threaded Rod from Thailand and Antidumping and Countervailing Duties on Steel Threaded Rod from India, filed on June 27, 2013 (“Petition”).

² See *Steel Threaded Rod from India and Thailand: Initiation of Antidumping Duty Investigations*, 78 FR 44526 (July 24, 2013) (“Initiation Notice”).



set aside a period of time for parties to raise issues regarding product coverage and invited parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.³

On August 12, 2013, the U.S. International Trade Commission (“ITC”) determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel threaded rod from Thailand.⁴

Period of Investigation

The POI is April 1, 2012, through March 31, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was June 2013.⁵

Scope of the Investigation

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this investigation are nonheaded and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.*, galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of this investigation are steel threaded rod, bar, or studs, in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or

³ See *Initiation Notice*, 78 FR 44526, 44527.

⁴ See *Certain Steel Threaded Rod from India and Thailand: Investigation Nos. 701 TA-498 and 731-TA-1213-1214 (Preliminary)* (August 2013); *Certain Steel Threaded Rod from India and Thailand*, 78 FR 66382 (November 5, 2013) (“*ITC Preliminary*”).

⁵ See 19 CFR 351.204(b)(1).

- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, 7318.15.5090 and 7318.15.2095 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of this investigation are: (a) threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (“ASTM”) A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, and ASTM A320 Grade L7.

Scope Comments

As discussed in the preamble to the regulations, we set aside a period for interested parties to raise issues regarding product coverage.⁶ The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the *Initiation Notice*.⁷ However, none of the parties to the proceeding provided comments on the scope of the investigation. Therefore, we did not make any changes to the existing scope of the investigation.

Respondent Selection

On July 22, 2013, we released a memorandum to interested parties in which we stated that the Department intended to select mandatory respondents based on U.S. import data obtained from U.S. Customs and Border Protection (“CBP”).⁸ On July 31, 2013, the Department received comments from Petitioners on the CBP Data Release Memorandum. On August 20, 2013, the Department selected a single company, Tycoons Worldwide Group (Thailand) Public Co., Ltd. (“Tycoons”), as the sole mandatory respondent⁹ in this investigation and issued the Questionnaire on September 6, 2013.¹⁰

Application of Facts Available and Adverse Facts Available

Tycoons neither filed an appearance in this proceeding nor responded to the Department’s Questionnaire. Consequently, on September 13, 2013, the Department placed evidence that

⁶ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁷ See *Initiation Notice*, 78 FR 44526, at 44527.

⁸ See Memorandum to the File, “Antidumping Duty Investigation on Steel Threaded Rod From Thailand RE: Release of Customs and Border Protection (“CBP”) Data,” dated July 22, 2013 (“CBP Data Release Memorandum”).

⁹ See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, “Antidumping Duty Investigation of Steel Threaded Rod from Thailand: Respondent Selection,” dated August 20, 2013.

¹⁰ See letter to Tycoons, “United States Department of Commerce, Import Administration, Antidumping And Countervailing Duty Operations, Request for Information,” dated September 6, 2013 (“Questionnaire”).

Tycoons received the Department's Questionnaire on the record of this investigation.¹¹ There was no subsequent communication from Tycoons. 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 Tycoons.

Section 776(a)(2)(A)-(D) of the Act provides that, if an interested party withholds information requested by the administering authority, 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 administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

In this case, because Tycoons did not respond to our Questionnaire, we preliminarily find that Tycoons did not respond to our request for information, withheld information the Department requested, and significantly impeded the proceeding.¹² Because Tycoons failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to section 776(a) of the Act, we are relying upon facts otherwise available for Tycoons' margin.

Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.¹³ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) ("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."¹⁴ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.¹⁵ 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.

¹¹ See Memorandum to the File, "Antidumping Investigation of Steel Threaded Rod from Thailand: Placement on the Record of Confirmation that Tycoons Worldwide Group (Thailand) Public Co., Ltd. Has Received the Initial Questionnaire," dated September 13, 2013.

¹² See Sections 776(a)(2)(A), (B), and (C).

¹³ See *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); see also 19 CFR 351.308.

¹⁴ See SAA at 870; and, e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

¹⁵ See, e.g., *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); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

Tycoon's failure to respond to the Department's Questionnaire indicates that Tycoons determined not to cooperate with our requests for information, or to participate in this investigation. Tycoons' decision not to participate in this investigation precluded the Department from performing the necessary analysis and verification of Tycoons' questionnaire responses, as required by section 782(i)(1) of the Act. Accordingly, the Department concludes that Tycoons failed to cooperate to the best of its ability to comply with a request for information by the Department pursuant to section 776(b) of the Act and 19 CFR 351.308(a). Based on the above, the Department preliminarily determines that Tycoons failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.¹⁶

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.¹⁷ 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.¹⁸ The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.¹⁹ In this investigation, the highest petition dumping margin is 74.90 percent.²⁰

Corroboration of Information

The rates in the Petition range from 63.16 to 74.90 percent.²¹ We selected the Petition rate of 74.90 percent as AFA. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available.²² 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."²³

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.²⁴ The SAA also states 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.²⁵ To corroborate secondary information, the Department

¹⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

¹⁷ See also 19 CFR 351.308(c).

¹⁸ See SAA at 870.

¹⁹ 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).

²⁰ See *Initiation Notice*, 78 FR at 44529.

²¹ *Id.*

²² See also 19 CFR 351.308(d).

²³ See SAA at 870.

²⁴ *Id.*

²⁵ *Id.*

will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.²⁶

We determined that the Petition margin of 74.90 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.²⁷

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 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 an estimated margin.

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the Petitioners’ EP and NV calculations to be reliable. Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the Petition by examining source documents and affidavits, as well as publically available information, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.²⁸ No information was been placed on the record to indicate that the rates in the Petition are unreflective of commercial practices of the steel threaded rod industry and, as such, are find them relevant to Tycoons. Furthermore, as there are no participating respondents in this investigation, we relied upon the rates found in the Petition, which is the only information regarding the steel threaded rod industry reasonably at the Department’s disposal.

²⁶ 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).

²⁷ See “Antidumping Duty Investigation Initiation Checklist: Steel Threaded Rod from Thailand,” dated July 17, 2013 (“Initiation Checklist”).

²⁸ See, e.g., *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (1999).

Accordingly, by using information that was determined to be reliable in the pre-initiation stage of this investigation and preliminarily determining it to be relevant for the uncooperative respondent in this investigation, we corroborated the AFA rate of 74.90 percent to the extent practicable within the meaning of section 776(c) of the Act.²⁹

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "all others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act.

As noted above, Tycoons is the sole mandatory respondent in this proceeding, and its margin is determined entirely under section 776 of the Act, as it was unresponsive. Given the lack of weighted-average dumping margins that are either above *de minimis* or not determined entirely under section 776 of the Act established for individually investigated entities, there is precedent for averaging the margins calculated by the Petitioner in the Petition and applying the result to all other entities not individually examined.³⁰

Averaging the margins established in the Petition (*i.e.*, numerous margins ranging from 63% to 75%) results in an average "All Others" rate of 68%.

Critical Circumstances

On November 22, 2013, Petitioners filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.³¹

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

Legal Framework

Section 733(e)(1) of the Act, provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in

²⁹ 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.

³⁰ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909 (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 (July 8, 2008).

³¹ See letter from Petitioners, "Antidumping Investigation of Steel Threaded Rod from Thailand: Petitioners' Allegation of Critical Circumstances," dated November 22, 2013 ("Petitioners' Critical Circumstances Allegation").

the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

Critical Circumstances Allegation

In their allegation, Petitioners contend that, because the Department did not yet make its preliminary determination in this investigation, the Department may rely on the margins alleged in the Petition and corroborated in the Department's *Initiation Notice* to decide whether importers knew or should know that dumping was occurring.³² The estimated margins in the *Initiation Notice* for Thailand range from 63.16 to 74.90 percent.³³ Therefore, Petitioners maintain that the information on the record of this investigation shows that importers of threaded rod from Thailand had constructive knowledge of dumping.³⁴

Petitioners also contend that, based on the preliminary determination of injury by the ITC, there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports.³⁵ Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), Petitioners submitted import statistics for the "like product" covered by the scope of this investigation for the period between April 2013 and September 2013, as evidence of massive imports of threaded rod from Thailand during a relatively short period.³⁶

Analysis

We considered each of the statutory criteria for finding critical circumstances below.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

In determining whether a history of dumping and material injury exists, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.³⁷ Petitioner did not address this criterion. Therefore, we considered the criterion in section 773(e)(1)(A)(ii) of the Act.

³² See, e.g., *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002).

³³ See *Initiation Notice*, 78 FR at 44529.

³⁴ See Petitioners' Critical Circumstances Allegation, at 3.

³⁵ See *ITC Preliminary*.

³⁶ See Petitioners' Critical Circumstances Allegation at Attachment 1.

³⁷ 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").

Section 733(e)(1)(A)(ii): 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 margins of 25 percent or more for export price sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.³⁸ Because the sole mandatory respondent in this investigation is uncooperative, we are assigning, as AFA, a rate 74.90, the highest margin in the Petition and corroborated in the *Initiation Notice* to Tycoons to the extent practicable. Further, we are assigning a rate of 68.41, the average of the rates recorded in the Petition, to all other companies. Because the preliminary dumping margins exceed the threshold sufficient to impute knowledge of dumping, these margins provide a sufficient basis for imputing knowledge of sales of subject merchandise at LTFV to the importers.

In determining whether an importer knew or should 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.³⁹ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.⁴⁰ 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 India and Thailand of certain steel threaded rod, provided for primarily in subheading 7318.15.50 of the Harmonized Tariff Schedule of the United States * * *.”⁴¹ Therefore, the ITC’s preliminary injury determination in this investigation is sufficient to impute knowledge.

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

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise were “massive,” the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “[i]n general, unless the imports

³⁸ See, e.g., *Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002) (“*Steel Wire Rod Preliminary Determination*”), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (“*Steel Wire Rod Moldova Final Determination*”); *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People’s Republic of China*, 70 FR 5606, 5607 (February 3, 2005) (“*Magnesium Metal Preliminary Determination*”), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People’s Republic of China*, 70 FR 9037 (“*Magnesium Metal Final Determination*”).

³⁹ 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.

⁴⁰ 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.*

⁴¹ See ITC Preliminary at 66382.

during the ‘relatively short period’ ...have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later (*i.e.*, the comparison period). This section of the regulations further provides that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

In its November 22, 2013 allegation, Petitioners maintained that importers, exporters, or foreign producers gained knowledge that this proceeding was possible when the Petition for an antidumping duty investigation was filed on June 27, 2013.⁴² As such, Petitioners noted that the comparison period commences with the month of July 2013, and the base period concludes with the month of June 2013. Petitioners included in their submission U.S. import data collected from the ITC’s Dataweb.⁴³ Based on this data, Petitioners claimed that imports of steel threaded rod from Thailand increased by over 45 percent during the comparison period over the base period. Thus, Petitioners conclude that there were massive imports during a relatively short period.⁴⁴

We agree with Petitioners that using a three-month base period of April through June 2013 and a three-month comparison period of July through September 2013 for import analysis is reasonable. The Department typically determines whether to include the month in which a party had reason to believe that a proceeding was likely in the base, or comparison, period depending on whether the event that gave rise to the reason for belief occurred in the first or second half of the month.⁴⁵ Moreover, it is the Department’s practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.⁴⁶ Based on these practices, we chose to examine the base period April 2013 through June 2013, and the corresponding comparison period July 2013 through September 2013 in order to determine whether imports of subject merchandise were massive. These base and comparison periods satisfy the Department’s practice that the comparison period is at least three months.

It is the Department’s practice to conduct its massive imports analysis based on the experience of investigated companies, using the reported monthly shipment data for the base and comparison

⁴² See *Initiation Notice*, 78 FR at 44526.

⁴³ See Petitioners’ Critical Circumstances Allegation at Attachment 1.

⁴⁴ *Id.*, at 5.

⁴⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31312 (May 25, 2012).

⁴⁶ 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.

periods.⁴⁷ However, as noted above, Tycoons did not respond to any of our requests for information.⁴⁸ 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 merchandise from the Tycoons, pursuant to our practice.⁴⁹

With regard to all other non-individually reviewed entities, it is the Department's practice to conduct its massive imports analysis based on the experience of investigated companies.⁵⁰ However, where the mandatory respondents receive AFA, we do not impute those adverse inferences of massive imports to the non-individually examined companies receiving the "All Others" rate.⁵¹ Therefore, in determining whether there were massive imports for all other companies, we relied upon the USITC Dataweb import statistics as evidence that imports in the post-Petition period for the subject merchandise were massive.⁵² From this data, it is clear that there was an increase in imports of more than 15 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 reviewed companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

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

⁴⁷ See, e.g., *Carbon Steel Pipe Final Determination*, 73 FR at 31972-73; *SDGE Final Determination*, 74 FR 2052-53.

⁴⁸ See the "Application of Facts Available and Adverse Facts Available" section of this memorandum.

⁴⁹ See *SDGE*, 74 FR at 2052-2053.

⁵⁰ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737 (March 4, 1997); see also, 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 24575 (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) ("*Potassium Phosphate Salts*").

⁵¹ See *Potassium Phosphate Salts*.

⁵² See Attachment.

CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

(Date)

ATTACHMENT

**U.S. Imports of Steel Threaded Rod from Thailand
2013**

| <i>Base Period</i> | | | | <i>Comparison Period</i> | | | |
|--------------------|---------|---------|------------------|--------------------------|-----------|---------|------------------|
| <i>Value (USD)</i> | | | | | | | |
| APR | MAY | JUN | Total | JUL | AUG | SEP | Total |
| 1,121,401 | 837,938 | 879,573 | 2,838,912 | 1,090,572 | 2,209,491 | 903,380 | 4,203,443 |

Base: 2,838,912
 Comparison: **4,203,443** % Change in Value
48.07%

| <i>Quantity (KG)</i> | | | | | | | |
|----------------------|---------|---------|------------------|-----------|-----------|---------|------------------|
| APR | MAY | JUN | Total | JUL | AUG | SEP | Total |
| 1,096,228 | 807,649 | 906,490 | 2,810,367 | 1,083,418 | 2,128,314 | 890,212 | 4,101,944 |

Base: 2,810,367
 Comparison: **4,101,944** % Change in Quantity
45.96%

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.