

December 17, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Antidumping Duty Investigation of Steel Wire Garment Hangers
from the Socialist Republic of Vietnam: Issues and Decision
Memorandum for the Final Determination

SUMMARY

We have analyzed the comments submitted in the investigation of steel wire garment hangers from the Socialist Republic of Vietnam (“Vietnam”). As a result of our analysis, we have made no changes to the issue discussed below from the Preliminary Affirmative Critical Circumstances Determination.¹

We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum.

DISCUSSION OF THE ISSUES

Comment 1: The Department’s Preliminary Affirmative Determination of Critical Circumstances

Joobles’/Godoxa’s² Case Brief:

- The Department must provide interested parties an opportunity to respond to the critical circumstances allegation.
- The Department must meet a higher threshold in reaching an affirmative final determination of critical circumstances than in reaching an affirmative preliminary determination, *i.e.*, it must determine whether the factors exist, not merely whether there is a “reasonable basis to believe or suspect” that they exist.
- Joobles’ and Hamico’s³ post-petition shipments were not massive and declined when compared to pre-petition shipments. Therefore, the final determination of critical

¹ See Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation, 77 FR 51514 (August 24, 2012) (“Preliminary Affirmative Critical Circumstances Determination”).

² Joobles LLC (“Joobles”) and Godoxa International LLC (“Godoxa”).

circumstances must be negative with respect to (1) exports by Quoc Ha⁴ or imports by Joobles, and (2) exports by Hamico.

No other interested parties commented on this issue.

Department's Position:

The Department continues to find critical circumstances with respect to imports from the separate rate companies – CTN Limited Company, Ju Fu Co., Ltd., and Triloan Hangers, Inc. – and the Vietnam-wide entity. Moreover, the arguments raised by Joobles and Godoxa are without merit.

First, the Department disagrees with Joobles and Godoxa that interested parties were not provided with an opportunity to respond to Petitioners' critical circumstances allegation. Pursuant to 19 CFR 351.301(c)(1), interested parties are afforded the opportunity to "submit factual information to rebut, clarify, or correct the factual information no later than 10 days after the date such factual information is served on the interested party or, if appropriate, made available under APO to the authorized applicant." Petitioners' critical circumstances allegation was filed on August 2, 2012. Therefore, interested parties had the opportunity to respond to the allegation by August 12, 2012. Neither Joobles nor Godoxa submitted any comments regarding Petitioners' allegation before the August 12, 2012, deadline. Indeed, the Department notes that Joobles and Godoxa did not file their entries of appearance as U.S. importers for this proceeding until August 31, 2012, long after the deadline for the submission of rebuttal factual information and after the Department published both its Preliminary Determination⁵ and its Preliminary Affirmative Critical Circumstances Determination.

Second, the Department disagrees with Joobles and Godoxa with respect to the requirements regarding critical circumstances determinations. In determining whether critical circumstances exist in a proceeding, section 733(e)(1) of the Tariff Act of 1930, as amended ("the Act"), directs the Department to examine "whether there is a reasonable basis to believe or suspect that": (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, 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. In addition, 19 CFR 351.206(h)(2) provides that, "{i}n general, unless the imports during the 'relatively short period' . . . have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not

³ South East Asia Hamico Export Joint Stock Company ("Hamico").

⁴ Quoc Ha Production Trading Service.

⁵ See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 46044 (August 2, 2012) ("Preliminary Determination").

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. 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. We find that Joobles’ and Godoxa’s argument that the Department is required to follow two different standards of examination for a preliminary critical circumstances determination and a final critical circumstances determination is unsupported by the language of the Act and the Department’s regulations implementing the Act, as noted above. No language in the Act or in the regulations suggests that the Department must satisfy a higher threshold before finding critical circumstances in the final determination of an investigation.

Finally, we find that Joobles’ and Godoxa’s respective import data from two Vietnamese exporters are irrelevant to the Department’s final affirmative determination of critical circumstances because, pursuant to our practice, we do not analyze whether a massive surge of imports have occurred on an importer-specific basis.⁶ Furthermore, both Joobles and Godoxa provided import data exclusively from their respective Vietnamese suppliers. This import data reflects exports from two Vietnamese producers/exporters that we determined to be part of the Vietnam-wide entity. Specifically, in the Preliminary Determination, we determined that there were Vietnamese producers/exporters of steel wire garment hangers during the POI that: (1) did not respond to the Department’s request for information, (2) did not provide compliant or complete information in a timely manner. Therefore, we preliminarily treated these Vietnamese producers/exporters as part of the Vietnam-wide entity because they did not qualify for a separate rate.⁷ Further, we stated that because these producers/exporters did not respond to our questionnaires requesting either quantity and value information and provided pervasively non-compliant, incomplete, and untimely information requested by the Department, use of FA, pursuant to section 776(a)(2)(A) and (B) of the Act was appropriate to determine the Vietnam-wide rate. Pursuant to section 776(b) of the Act, we found that an adverse inference was warranted because the Vietnam-wide entity did not respond to our requests for information and did not provide complete, compliant and timely information requested by the Department, thus failing to cooperate to the best of its ability.⁸

Further, in the Preliminary Affirmative Critical Circumstances Determination, the Department stated that:

because the Vietnam-wide entity has been unresponsive for the duration of the proceeding, the record does not contain shipment data from the Vietnam-wide entity for purposes of our critical circumstances analysis. Therefore, there is no verifiable information on the record with respect to the Vietnam-wide entity’s base and comparison period shipment volumes. For those reasons, we determined

⁶ 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 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 13.

⁷ See Preliminary Determination, 77 FR at 46049.

⁸ See *id.*, 77 FR at 46049-51; see also SAA, at 870; see also 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).

that affirmative critical circumstances exist with respect to the Vietnam-wide entity.⁹

Moreover, for this final determination, we now consider the TJ Group as part of the Vietnam-wide entity due to the TJ Group's decision to withdraw its participation after the Preliminary Determination. As stated in the notice released concurrently with this memorandum, we also have found that the TJ Group withheld information requested by the Department, significantly impeded the proceeding, and did not allow its information to be verified pursuant to sections 776(a)(2)(A), (C), and (D) of the Act. As a consequence of the TJ Group now belonging to the Vietnam-wide entity, these findings also apply to the Vietnam-wide entity. For these reasons and those articulated in the Preliminary Determination on the Vietnam-wide entity, we continue to find that the use of FA is appropriate to determine the Vietnam-wide rate and that the Vietnam-wide entity failed to act to the best of its ability. Thus, we also continue to apply an adverse inference.

Pursuant to our practice, and as stated in the Preliminary Affirmative Critical Circumstances Determination, in circumstances where an adverse inference is determined for the non-market economy ("NME") entity, the Department likewise infers an adverse finding in critical circumstance determinations, without conducting a "massive surge" of imports analysis.¹⁰ In the Steel Wheels CVD Final, we stated that:

in {the} final determination of the AD investigation the Department has determined that the NME entity was uncooperative because it failed to respond the Department's quantity and value questionnaires. As a result, in the final critical circumstances determination of the AD investigation, the Department is not using import data to conduct a 'massive imports' analysis with regard to the PRC entity but instead is assuming, as AFA, that critical circumstances exist with regard to the PRC-entity.¹¹

Similarly, here, the Vietnam-wide entity, of which Hamico,¹² the TJ Group, and Quoc Ha¹³ are a part, has been uncooperative and impeded the investigation, which warrants the application of adverse facts available ("AFA"). And, consistent with our practice, this adverse inference also extends to the Department's critical circumstances determinations that: (1) importers from the

⁹ See Preliminary Affirmative Critical Circumstances Determination, 77 FR at 51517.

¹⁰ 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) ("Salt Critical Circumstances Prelim"); see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China, 74 FR 2049, 2052-2053 (January 14, 2009) and accompanying Issues and Decision Memorandum at Comment 4 (stating that "we have based our determination of whether there were massive imports with respect to the Fangda Group on AFA...the Department may employ adverse inferences in selecting from among the facts available 'to ensure that the party does not obtain a more favorable result by failing to cooperate fully...' To ensure that the Fangda Group does not obtain a more favorable result by failing to cooperate, for this final determination, we continue to find, as AFA, that imports of subject merchandise were massive for the Fangda Group.")

¹¹ See Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012) ("Steel Wheels CVD Final") and accompanying Issues and Decision Memorandum at Comment 30.

¹² See Preliminary Determination, 77 FR at 46049-51.

¹³ See id., 77 FR at 46049.

Vietnam-wide entity knew or should have known that subject merchandise was being sold at less than fair value,¹⁴ and that (2) imports were massive during the comparison period.¹⁵ In this case, the Department only conducted a “massive surge” of imports analysis for the cooperative separate rate respondents, which resulted in a preliminary affirmative critical circumstances finding.¹⁶ Thus, Joobles’ and Godoxa’s submission of their respective import data is irrelevant here because we continue to find that Hamico and Quoc Ha are part of the Vietnam-wide entity for the final determination, to which we continue to assign AFA, both as a dumping margin and as an adverse inference for an affirmative critical circumstances determination. For the final determination, we affirm our preliminary affirmative determination of critical circumstances and continue to find that critical circumstances exist with respect to imports of steel wire garment hangers from the Vietnam-wide entity and the separate rate respondents.

RECOMMENDATION

Based on our analysis of the comment received, we recommend not changing our preliminary affirmative critical circumstances determination. If accepted, we will publish the final determination of this investigation and the final dumping margins in the Federal Register.

AGREE _____ DISAGREE _____

Paul Piquado
Assistant Secretary
for Import Administration

Date

¹⁴ See Preliminary Affirmative Critical Circumstances Determination, 77 FR at 51517.

¹⁵ See id.

¹⁶ See id.