



A-570-082
Investigation
Public Document
Office VII: AC/LW

March 21, 2019

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Less-Than-Fair-Value Investigation of Certain Steel Wheels
from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that certain steel wheels (steel wheels) from the People's Republic of China (China) are being 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 period of investigation is July 1, 2017, through December 31, 2017.

We analyzed the comments of the interested parties. As a result of this analysis, we have clarified the scope and have found that critical circumstances exist with respect to the China-wide entity. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from interested parties.

Comment 1: Scope Clarification for Rims and Discs Processed in a Third Country

Comment 2: Critical Circumstances

Comment 3: Application of Adverse Facts Available

Comment 4: Separate Rate Status for CIMAC

II. BACKGROUND

On October 30, 2018, Commerce published the *Preliminary Determination* of sales at less than fair value of steel wheels from China and invited interested parties to comment.¹ Commerce did not conduct verification of the examined respondents because both respondents did not cooperate with Commerce's investigation.² On October 25, 2018, we issued a separate rate supplemental questionnaire to CIMAC Wheel Industries Co., Limited (CIMAC) concerning its separate rate application, to which CIMAC filed a timely response.³ The petitioners⁴ filed rebuttal comments on November 13, 2018.⁵

On October 19, 2018, the petitioners submitted a critical circumstances allegation with respect to imports of subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1).⁶ We are issuing a critical circumstances finding in this final determination, *see* the "Affirmative Determination of Critical Circumstances" section, below.

On October 23, 2018, pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(b)(2)(ii), Xiamen Sunrise Wheel Group Co., Ltd. (Sunrise) requested that Commerce postpone the final determination and extend provisional measures from four months to six months.⁷ On October 29, 2018, the petitioners requested Commerce to limit the extension to 45 days.⁸

On December 4, 2018, the petitioners filed a case brief.⁹ On December 11, 2018, the petitioners requested permission to submit additional factual information for the final scope determination to ensure that an order resulting from this investigation and the concurrent countervailing duty (CVD) investigation would effectively provide a remedy for unfairly-traded imports.¹⁰ Commerce allowed the petitioners to submit the requested information on December 14, 2018,

¹ *See Certain Steel Wheels from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value*, 83 FR 54568 (October 30, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² *See* Zhejiang Jingu's Letter, "Antidumping Duty Investigation of Certain Steel Wheels from the People's Republic of China: Notice of Decision to Not Participate in the Investigation," dated June 22, 2018; *see also* Sunrise's Letter, "Certain Steel Wheels from the People's Republic of China: Withdrawal from Participation," dated October 4, 2018.

³ *See* Commerce's Letter, "Separate Rate Application Supplemental Questionnaire," dated October 25, 2018; *see also* CIMAC's November 2, 2018 Supplemental Separate Rate Application Questionnaire Response (CIMAC's November 2, 2018 SSRAQR).

⁴ The petitioners are Accuride Corporation and Maxion Wheels Akron LLC (collectively, the petitioners).

⁵ *See* Petitioners' Letter, "Certain Steel Wheels from China – Petitioners' RFI to CIMAC's Supplemental Separate Rate Response," dated November 13, 2018.

⁶ *See* Petitioners' Letter, "Certain Steel Wheels from China – Petitioners' Critical Circumstances Allegation," dated October 19, 2018 (Critical Circumstances Allegation).

⁷ *See* Sunrise's Letter, "Certain Steel Wheels from the People's Republic of China: Request to Extend Final Determination," dated October 23, 2018.

⁸ *See* Petitioners' Letter, "Certain Steel Wheels from China – Extension of Final Determination," dated October 29, 2018.

⁹ *See* Petitioners' Letter, "Certain Steel Wheels from China: Case Brief," dated December 4, 2018, (Petitioners' Case Brief).

¹⁰ *See* Petitioners' Letter, "Certain Steel Wheels from China (A-570-082) – Petitioners' Request to Submit Additional Factual Information Relevant to Scope," dated December 11, 2018.

and gave interested parties an opportunity to comment.¹¹ Accordingly, on December 19, 2018, the petitioners submitted a request for clarification of the scope of the investigation.¹² On February 4, 2019, Sunrise and Zhejiang Jingu Company Limited (Zhejiang Jingu) each submitted rebuttal comments concerning the Petitioners' Scope Comments.¹³

On February 1, 2019, we postponed the final determination to February 11, 2019.¹⁴ Furthermore, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.¹⁵ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Accordingly, the revised deadline for the final determination is now March 21, 2019.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2017, through December 31, 2017.

IV. SCOPE OF THE INVESTIGATION

As discussed in Comment 1 below, we have clarified the scope of this investigation to include the following provision:

The scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the proceeding if performed in China.

For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

¹¹ See Memorandum, "Certain Steel Wheels from the People's Republic of China: Opportunity to Submit Factual Information and Comments Pertaining to the Scope of Investigations," dated December 14, 2018 (Scope Clarification Comment Memo).

¹² See Petitioners' Letter, "Certain Steel Wheels from the People's Republic of China (A-570-082, C-570-083) – Petitioners' Request for Clarification of the Scope of the Investigations and Submission of Additional Factual Information Relevant to Scope," dated December 19, 2018 (Petitioners' Scope Comments).

¹³ See Sunrise's Letter, "Certain Steel Wheels from the People's Republic of China: Response to Petitioners' Request for Clarification of the Scope of the Investigations and Submission of Additional Factual Information Relevant to Scope," dated February 4, 2019 (Sunrise's Scope Comments); *see also* Zhejiang Jingu's Letter, "Antidumping and Countervailing Duty Investigations of Certain Steel Wheels from the People's Republic of China: Response to Petitioners' Request for Clarification of Scope of Investigations," dated February 4, 2019 (Zhejiang Jingu's Scope Comments).

¹⁴ See *Steel Wheels from the People's Republic of China: Postponement of Final Determination of Sales at Less-Than-Fair-Value*, 84 FR 1063 (February 1, 2019).

¹⁵ See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”¹⁶ Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁷

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “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 concerning the subject merchandise.”¹⁸ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹⁹ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.²⁰ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.²¹

In the *Preliminary Determination*, we relied on AFA in determining the dumping margin for the China-wide entity, which includes both mandatory respondents Zhejiang Jingu and Sunrise.²²

¹⁶ See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*); 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).

¹⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

¹⁸ See, e.g., SAA at 870.

¹⁹ See SAA at 870.

²⁰ See, e.g., SAA at 869.

²¹ See SAA at 869-70.

²² See PDM at 9-10.

As explained in the *Preliminary Determination*, neither respondent responded to our requests for information, and withdrew their participation. We continue to rely on AFA to determine the dumping margin for the China-wide entity for this final determination. In addition, we are also relying on AFA, in part, to determine that critical circumstances exist, as discussed below.

VI. AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

In their allegation, the petitioners argued that importers of subject merchandise knew or should have known the dumping was occurring because the average and the highest dumping margins alleged in the Petition²³ exceed Commerce's thresholds for imputing knowledge of sales-at-less-than-fair value (*i.e.*, 15 percent and 25 percent for export price (EP) and constructed export price (CEP) transactions, respectively).²⁴ The petitioners further alleged that those importers have been on notice that dumped imports are likely to cause injury since the United States International Trade Commission's (USITC)'s preliminary affirmative finding of material injury.²⁵ Furthermore, the petitioners alleged the existence of "massive" imports of subject merchandise over a relatively short period of time.²⁶

Section 735(a)(3) of the Act provides that Commerce will determine that critical circumstances exist in an LTFV investigation if: (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 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 provides that imports must increase by a least 15 percent during the "relatively short period" to be considered "massive" and defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.²⁷ The regulation also provides, however, that, if the Commerce 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, Commerce may consider a period of not less than three months from that earlier time.²⁸

In order to determine whether there is a history of dumping pursuant to section 735(a)(3)(A)(i) of the Act, Commerce generally considers current or previous antidumping duty (AD) orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise. Commerce has previously not issued an AD order on the subject merchandise, and USITC states that there has

²³ See Petitioners' Letter, "Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Imports of Certain Steel Wheels from the People's Republic of China," dated March 27, 2018 (the Petition).

²⁴ See Critical Circumstances Allegation at 3-5.

²⁵ *Id.* at 5-6 (citing the ITC's May 18, 2018 Letter).

²⁶ *Id.* at 6-11.

²⁷ See 19 CFR 351.206(i).

²⁸ *Id.*

not been an AD investigation outside the United States on the subject steel wheels.²⁹ Thus, we find that there is not a history of injurious dumping of steel wheels from China.

To determine whether importers knew or should have known that exporters were selling at less-than-fair-value, Commerce typically consider the magnitude of dumping margins, including margins alleged in the Petition.³⁰ Commerce has found margins of 15 to 25 percent (depending on whether sales are export price sales or constructed export price sales) to be sufficient for this purpose.³¹ As noted below, the AFA rate of 231.70 percent applied to the China-wide entity is significantly above that threshold, and thus, we conclude that importers knew or should have known exporters were selling at less-than-fair value.

To determine whether importers knew or should have known that there was likely to be material injury, we typically consider the preliminary injury determination of the ITC. If the ITC finds material injury (as opposed to the threat of injury), we normally find that the ITC's determination provided importers with sufficient knowledge of injury. Following the ITC's finding of material injury, we conclude importers knew or should have known that there was likely to be material injury as a result of sales sold at less than fair value.³²

With respect to whether there have been massive imports, because the China-wide entity has not cooperated to the best of its ability, the record does not reflect the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period. Accordingly, consistent with our practice,³³ as adverse facts available, we are determining that there was a massive increase in the volume of imports of the subject merchandise from the China-wide entity during the critical circumstances period.

Based on the record evidence described above, we determine that critical circumstances exist for imports of steel wheels from China.

²⁹ See *Steel Wheels from China*, 83 FR 22990 (May 17, 2018) and accompanying USITC Publication 4785 (May 2018) (*ITC Preliminary Determination*) at VII-11.

³⁰ See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

³¹ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964, 61967 (November 20, 1997).

³² See *ITC Preliminary Determination*.

³³ See, e.g., *Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part*, 81 FR 3108, 3109 (January 20, 2016), and accompanying Issues and Decision Memorandum (*UCP Australia*) at 13-14.

VII. DISCUSSION OF THE ISSUES

Comment 1: Scope Clarification for Rims and Discs Processed in a Third Country.

Petitioners' Scope Comments

- The new factual information submitted in the petitioners' December 19, 2018, comments – the market research report regarding Chinese-owned facilities in Thailand and Vietnam and the International Trade Commission's import statistics for October 2018 – was not available until early December 2018.³⁴
- Commerce should clarify the scope to include steel wheels processed in a third country using rims and discs from China, as follows:

The scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the People's Republic of China.³⁵

- Similar to *Solar Products from Taiwan*, Commerce should rely on a substantial transformation analysis to determine the country of origin for steel wheels assembled and painted in a third country from rims and discs manufactured in China.³⁶
- In order to determine whether substantial transformation has occurred in the third country, Commerce analyzes (1) whether the processed downstream products falls into a different class or kind of product when compared to the upstream product; (2) whether the essential component of the merchandise is substantially transformed in the country of exportation; and (3) the extent of processing.³⁷
- As in *Solar Products from Taiwan*, the upstream and processed downstream products are both within the scope and should be considered within the same "class or kind."³⁸
- As in *Solar Products from Taiwan*, the upstream and processed downstream products have the same physical characteristics, chemical properties, and use before and after the assembly, as made clear in the Petitions.³⁹ Accordingly, the essential component of the

³⁴ See Petitioners' Scope Comments at Exhibits 2-3.

³⁵ *Id.* at 5-6 (citing, e.g., *Certain Cold-Rolled Steel Flat Products from Brazil: Determination of Sales at Less Than Fair Value*, 81 FR 44946, 44948 (July 29, 2016) (*Cold-Rolled Steel from Brazil*); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, In Part*, 81 FR 35316 (June 2, 2016) (*CORE from China*)).

³⁶ *Id.* (citing *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value*, 79 FR 49754 (August 22, 2014); *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 76966 (December 23, 2014), and accompanying Issues and Decision Memorandum (IDM) (*Solar Products from Taiwan*); and *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008)).

³⁷ *Id.* at 6 (citing *Solar Products from Taiwan*, IDM at 19).

³⁸ *Id.* at 7 (citing *Solar Products from Taiwan*, IDM at 19).

³⁹ *Id.* at 8 (citing the Petition Volume II at II-11; *Erasable Programmable Read Only Memories (EPROMs) from Japan: Final Determination of Sales at Less Than Fair Value*, 51 FR 39680 (October 30, 1986) (*EPROMs from Japan*) and *Solar Products from Taiwan*, IDM at 19).

merchandise is not substantially transformed during the assembly and painting of the steel wheels.

- Assembling the rim and disc and painting the steel wheels is not substantial or sophisticated processing,⁴⁰ but rather, account for only a minor portion of the costs of manufacturing a steel wheel.⁴¹

Sunrise's Scope Comments

- It is the petitioners' obligation to consider the scope at the beginning of the case to ensure any relief granted will be effective.⁴²
- The petitioners' suggested scope clarification seeks to include imports of non-subject merchandise from other countries under the scope of these investigations. If Commerce accepts the petitioners' scope clarification, it should permit an importer to certify that wheels entering the United States are not subject to the scope of these orders. This would facilitate imports of non-subject merchandise.⁴³

Zhejiang Jingu's Scope Comments

- In the court-affirmed precedent from *Diamond Sawblades from China*, Commerce determined that “the controlling factor in a substantial transformation determination is not whether there is a change in class or kind of merchandise{,}” but “where the essential quality of the imported product was imparted, as well as the extent of manufacturing and processing in the exporting country and in the third country.”⁴⁴
- Similar to *Diamond Sawblades from China*, the rim and disc alone lack the functionality of a finished steel wheel, thus, the “essential quality” is not imparted until the rim and disc are joined through welding to create a finished steel wheel.⁴⁵
- The processing at issue includes capital-intensive and highly technical welding and a sophisticated coating and painting process: more extensive than that for which Commerce found a substantial transformation in *Diamond Sawblades from China*.⁴⁶
- The proposed scope language is overly broad and vague, potentially expanding the scope to include other merchandise that also originates in third countries (*e.g.*, the language does not explicitly require that both the rim and disc be produced in China for China to be considered the country of origin).⁴⁷

⁴⁰ *Id.* (citing, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons from France*, 69 FR 10674 (March 8, 2004)).

⁴¹ *Id.* at 9, Exhibit 5 (citing *Solar Products from Taiwan*).

⁴² See Sunrise's Scope Comments.

⁴³ *Id.* at 2-3.

⁴⁴ See Zhejiang Jingu's Scope Comments (citing *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Part Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum (IDM) at 18).

⁴⁵ See Zhejiang Jingu's Scope Comments at 4.

⁴⁶ *Id.* at 4 and Exhibit 1 (citing *ITC Preliminary Determination* at I-13).

⁴⁷ *Id.* at 6.

- If only the rim or disc were produced in China, substantial transformation, namely a majority (7 of 12) of the steps to produce a finished steel wheel, would occur in a third country.⁴⁸
- If Commerce were to improperly expand the scope of these investigations to include third-country merchandise based on circumvention concerns, this would deny exporters and importers the procedural protection afforded by 19 CFR 351.225(l).
- The petitioners' scope request must nevertheless be rejected because the lateness of the filing deprives Commerce of the ability to develop an adequate record and denies interested parties their right of due process.⁴⁹

Commerce's Position:

Following Commerce precedent, we will show "ample deference to the petitioner with respect to the definition of the product of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding"⁵⁰ and clarify the scope of this investigation as follows:

The scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the proceeding if performed in China.

Contrary to Sunrise's claim that the petitioner has the obligation of considering the scope at the beginning of an investigation, both the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC) have stated that Commerce has the discretion to clarify the scope, even in a way that "expand{s} the language of a petition," in the course of an AD/CVD investigation.⁵¹ In *Mitsubishi I*, the CIT stated that Commerce "has a certain amount of discretion to expand the language of a petition...with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law."⁵² Notably, "the purpose of the petition is to propose an investigation," and the "purpose of the investigation is to determine what merchandise should be included in the final order."⁵³ Commerce has "inherent power to establish the parameters of the investigation, so that it {is} not...tied to an initial scope definition that...may not make sense in light of the information available to Commerce or subsequently obtained in the investigation."⁵⁴

⁴⁸ *Id.* at 6-7 at Exhibit 1.

⁴⁹ *Id.* at 2, 11.

⁵⁰ See, e.g., *Cold-Rolled Steel from Brazil*, 81 FR at 44948; see also *CORE from China*; see also *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) and accompanying Issues and Decision Memorandum at comment 1.

⁵¹ See *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538 at 555 (CIT 1988) (*Mitsubishi I*); see also *Mitsubishi Elec. Corp. v. United States*, 898 F.2d 1577 (CAFC 1990) (affirming the CIT's ruling).

⁵² See *Mitsubishi I*, 700 F. Supp at 555.

⁵³ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014), and accompanying Issues and Decision Memorandum (*Solar Products from China*) at 12 (citing *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1096-97 (CAFC 2002) (*Duferco*)).

⁵⁴ See *Duferco*, 296 F.3d at 1089 (citing *CMTS from Japan*, 50 FR at 45449).

Furthermore, the CIT has held that “{t} here is no clear point during the course of an {LTFV} investigation at which {Commerce} loses the ability to adjust the scope.”⁵⁵ In *Kyocera*, the CIT considered Commerce’s decision to add language to the scope of the investigation of solar cells from Taiwan.⁵⁶ Commerce had included additional language in that scope after the preliminary determination and before the final determination, which covered “modules, laminates, and panels produced in a third-country from cells produced in Taiwan.”⁵⁷ The CIT sustained Commerce’s decision, explaining that “Commerce has the authority to initially determine the scope of the investigation, as well as the authority to modify the scope language until the final order is issued, based on the agency’s findings during the course of the investigation.”⁵⁸

In this investigation, the petitioners have provided information that indicates that the scope, as proposed in the Petition, may not provide effective relief to the domestic steel wheels industry. Specifically, the petitioners have shown that two major Chinese producers of steel wheels have facilities in Thailand and Vietnam, thus showing that the Chinese producers have some manufacturing capabilities in Thailand and Vietnam.⁵⁹ The petitioners have also shown that imports of steel wheels from Thailand and Vietnam have increased in recent months.⁶⁰ This information was not available to the petitioners until December 2018.⁶¹ As we have a long-standing practice of taking potential circumvention concerns into consideration when defining the scope of an investigation, we find that it is appropriate to do so here.⁶² Furthermore, because we find that the scope language is administrable should this investigation go to order, we find it unnecessary to further consider interested parties’ arguments regarding whether it is appropriate to include language on substantial transformation within the scope.

Both petitioners and Zhejiang Jingu make arguments with respect to the substantial transformation test, which we have frequently used to determine the country of origin of particular merchandise. We understand the petitioners to be arguing that “the assembly and painting of steel wheels does not result in a substantial transformation of the rims and discs such that performance of these steps in a third country would not change the country of origin of the rims and discs,” and they refer to information from the Petition to argue that “the two steps of assembly and painting account for only about ten percent of the costs of manufacturing a steel wheel.”⁶³ In contrast, Zhejiang Jingu suggests that “Chinese rims and discs that are welded and painted in a third country are ‘substantially transformed’ in that third country, such that the third

⁵⁵ See *Allegheny Bradford Corp. v. United States*, 342 F. Supp. 2d. 1172 at 1187 (CIT 2004) (*Allegheny Bradford*).

⁵⁶ See *Kyocera Solar, Inc. v. United States*, 253 F. Supp. 3d 1294 (CIT 2017).

⁵⁷ *Id.* at 1303.

⁵⁸ *Id.* at 1315.

⁵⁹ See Petitioners’ Scope Comments at 3 and Exhibit 2.

⁶⁰ *Id.* at 3-4 and Exhibit 3.

⁶¹ *Id.* at 4.

⁶² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 61 FR 38166, 38169 (January 23, 1996) (“it was {Commerce’s} intent to use the language at issue to avoid creating loopholes for circumvention”); *Cellular Mobile Telephones and Subassemblies from Japan; Final Determination of Sales at Less Than Fair Value*, 50 FR 45447, 45448 (October 31, 1985) (*CMTS from Japan*) (“The determination {to expand the scope} was based on the need to prevent circumvention of any antidumping order on {the product}...”).

⁶³ See Petitioners’ Scope Comments at 9.

country is the country of origin for AD and CVD purposes.”⁶⁴ As discussed above, Commerce and has the authority to set the scope of the investigation to describe with adequate clarity the subject merchandise that the petitioners are seeking to address. While in some instances Commerce has relied on a substantial transformation analysis to address country-of-origin issues, the decision to conduct such an analysis is contingent upon the facts and circumstances of a particular case.⁶⁵ However, here, we find that we can properly frame the scope of the investigation and properly address issues concerning circumvention by incorporating the petitioners’ proposed clarification of the scope, subject to the minor change discussed further below. In addition, Commerce has incorporated such third country processing language in other recent investigation scopes without conducting a substantial transformation analysis.⁶⁶

We need not disregard the petitioners’ requested scope clarification because of its “lateness,” as claimed by Zhejiang Jingu.⁶⁷ As explained above, the information relied upon by the petitioners was not available until early December 2018.⁶⁸ Moreover, contrary to Zhejiang Jingu’s claim, all parties to this investigation were allowed the opportunity to comment on the information submitted by the petitioners, as well as to provide their own factual information to rebut, clarify, or correct the petitioners’ submitted factual information pursuant to 19 CFR 351.301(c)(5)(ii).⁶⁹ In addition, Zhejiang Jingu claims that we gave interested parties “only one week” to comment on the petitioners’ request with “a deadline falling on December 26, 2018.”⁷⁰ However, we determine that one week is an adequate amount of time to respond to the petitioners’ request and, in any event, we note that the December 26, 2018, deadline cited by Zhejiang Jingu was ultimately tolled 40 days to February 4, 2019, to account for the partial shutdown of the federal government.⁷¹

Likewise, Zhejiang Jingu argues that the inclusion of this language in the scope would deny importers and exporters the “procedural protection afforded by 19 CFR 351.225(l).”⁷² Zhejiang Jingu argues that if Commerce were to conduct an anti-circumvention determination after the issuance of this order, that determination would only apply to import entries prospectively from the date of initiation of the circumvention inquiry. Zhejiang Jingu cites to *Bell Supply*, in which the CAFC found that “if Commerce applies the substantial transformation test and concludes that the imported article has a country of origin different from the country identified in an AD or CVD order, then Commerce can include such merchandise within the scope of an AD or CVD order only if it finds circumvention” under the anti-circumvention provision of the statute.⁷³ According to Zhejiang Jingu, if Commerce finds that rims and discs are substantially

⁶⁴ See Zhejiang Jingu’s Scope Comments at 2-3.

⁶⁵ See *Canadian Solar, Inc. v. United States*, 2019 U.S. App. LEXIS 7181 at *20 (CAFC 2019).

⁶⁶ See, e.g., *Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders*, 81 FR 64432 (September 20, 2016).

⁶⁷ See Zhejiang Jingu’s Scope Comments at 10.

⁶⁸ See Petitioners’ Scope Comments.

⁶⁹ See Scope Clarification Comment Memo.

⁷⁰ See Zhejiang Jingu’s Scope Comments at 11.

⁷¹ See Memorandum, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁷² See Zhejiang Jingu’s Scope Comments at 9.

⁷³ *Id.* (citing *Bell Supply Co., LLC v. United States*, 888 F.3d 1222, 1229 (CAFC 2018) (*Bell Supply*)).

transformed in a third country then, pursuant to *Bell Supply*, Commerce can only include such merchandise within the scope by conducting an anti-circumvention determination, and that such a determination could only apply prospectively from the date of initiation.

Zhejiang Jingu's arguments are misplaced. As explained above, the substantial transformation test does not govern our authority to modify a scope prior to the issuance of an order. Furthermore, in *Bell Supply*, the CAFC considered a scope ruling made by Commerce *after* the issuance of an order.⁷⁴ The CAFC's findings were therefore limited to situations where Commerce employs the substantial transformation test to determine whether a product is included in the scope of an order that has already been issued. *Bell Supply* did not address Commerce's authority to modify a scope prior to the issuance of an order.

Zhejiang Jingu's argument is additionally contradicted by the CAFC's decision in *Canadian Solar*. In that case, the CAFC considered whether Commerce could depart from the substantial transformation test when determining the country of origin in an investigation to address evasion concerns. The appellants argued in part that Commerce was bound to apply the substantial transformation test when determining country of origin, and that the petitioners should have addressed evasion concerns through other means, such as filing new petitions to cover the merchandise at issue. With respect to this argument, the CAFC found that "it is unnecessary for Commerce to engage in a game of whack-a-mole when it may reasonably define the class or kind of merchandise in a single set of orders, and within the context of a single set of investigations, to include all imports causing injury."⁷⁵ We find that the logic of the CAFC with respect to this issue is instructive here. Although this issue does not involve the application of the substantial transformation test, the petitioners have placed information on the record such that they have identified an evident concern that the scope may not provide relief from injurious dumped goods, and we find that we may reasonably clarify the scope accordingly. Contrary to Zhejiang Jingu's claim, we need not wait for a problem to arise after the issuance of an order to address the petitioners' concerns.

However, we agree with Zhejiang Jingu that the proposed scope amendment should include further clarifying language. The scope of this investigation makes clear that steel wheels, discs, and rims from China are covered by the scope.⁷⁶ However, we understand the petitioners' statements in their scope comments filed in December 2018 to be requesting that rims and discs from China that have been further processed in a third country into finished steel wheels be included within scope.⁷⁷ We have, therefore, clarified the petitioners' proposed scope language to reflect the petitioners' intention.

Finally, we disagree with Sunrise's claim that Commerce should permit importers to certify that wheels entering the United States are not subject to the scope. We find that the scope language,

⁷⁴ See *Bell Supply*, 888 F.3d at 1230 (noting that the Court was considering whether Commerce is allowed to use the substantial transformation test to "determine whether an imported article is covered by AD or CVD orders in the first instance.").

⁷⁵ See *Canadian Solar, Inc. v. United States*, 2019 U.S. App. LEXIS 7181 at *25-*26 (CAFC 2019).

⁷⁶ See *Preliminary Determination*.

⁷⁷ See Petitioners' Scope Comments at 4 ("In-Scope Rims and Discs from China That Are Assembled into Steel Wheels in a Third Country Should Be Included in the Scope in Any Orders so that They Will Be More Effective") (emphasis added).

as clarified, does not seek to include non-subject imports because not all steel wheels exported from a third country are covered by the scope of this investigation. Therefore, it is unclear how having importers certify that imported wheels are not subject to the investigation would facilitate entries of non-subject merchandise from a third country. As such, we find a certification process for this investigation is unnecessary.

Comment 2: Critical Circumstances

Petitioners' Case Brief

- Critical circumstances exist for at least some Chinese exporters of the subject merchandise. As such, Commerce should determine, as AFA, that there was a surge of imports of subject merchandise. Commerce must then conclude that critical circumstances exist for the noncooperative China-wide entity, consistent with its practice.⁷⁸

No other parties commented on this issue.

Commerce's Position: Commerce has determined that critical circumstances exist for imports of certain steel wheels from the China-wide entity for the final determination. For a full discussion of this issue, *see* the "Affirmative Determination of Critical Circumstances" section above.

Comment 3: Application of Adverse Facts Available

Petitioners' Case Brief

- Commerce should continue to find all producers or exporters of steel wheels from China to be part of the China-wide entity. Commerce should continue to apply AFA to the entity, as members of that entity failed to cooperate by not acting to the best of their ability to comply with Commerce's requests for information.⁷⁹
- Commerce should continue to select the highest dumping margin from the Petition, 231.70 percent, for the final determination.⁸⁰
- Selecting the highest dumping margin alleged in the Petition helps to fulfil Commerce's purpose in selecting an AFA rate that "is sufficiently adverse to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."⁸¹

No other parties commented on this issue.

⁷⁸ See Petitioners' Case Brief at 5-6 (citing *1,1,1,2-Tetrafluoroethane from the People's Republic of China: Antidumping Duty Investigation, Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 30817 (May 29, 2014), accompanying preliminary decision memorandum at 14).

⁷⁹ See Petitioners' Case Brief at 3-3; *see also* Section 776(b) of the Act.

⁸⁰ See Petitioners' Case Brief at 3-4; *see also* Section 776(2)(b)(2)(A) of the Act.

⁸¹ See Petitioners' Case Brief at 4 (citing *Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part*. 81 FR 3108 (January 20, 2016), accompanying Issues and Decision Memorandum (*UCP Australia*) at Comment 1).

Commerce’s Position: We made no changes to the *Preliminary Determination* with respect to the application of AFA for the final determination. Specifically, we have continued to find that the China-wide entity has failed to provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information, and provided information that cannot be verified, such that we are relying on the facts available to determine the dumping margin for the China-wide entity. Furthermore, we have continued to find that Jingu’s and Sunrise’s failures, as part of the China-wide entity, to respond to our questionnaires, based on their withdrawals from this investigation, demonstrates that the China-wide entity has failed to cooperate to the best of its ability in this investigation, such that it is appropriate to resort to adverse inferences in selecting from among the facts available. Thus, we continue to determine that the use of AFA is appropriate in determining the estimated weighted-average dumping margin for the China-wide entity. Furthermore, we continue to assign the highest dumping margin alleged in the Petition (231.70 percent) to the China-wide entity as AFA.⁸²

Comment 4: Separate Rate Status for CIMAC

Petitioners’ Case Brief:

- Commerce correctly determined that CIMAC has not rebutted the presumption of government control. Information added to the record following the *Preliminary Determination* provides additional reasons to continue to hold that CIMAC is therefore ineligible for a separate rate.⁸³
- Since “CIMAC has failed to provide full and accurate information regarding its corporate structure, location, operations, and control (amongst other issues), CIMAC remains ineligible for a separate rate.”⁸⁴
- Commerce should reject CIMAC’s SRA as unreliable, and continue to find that CIMAC is part of the China-wide entity.⁸⁵

No other parties rebutted this comment.

Commerce’s Position: We have made no revisions to the *Preliminary Determination* with respect to CIMAC for the final determination. Information submitted to the record after the *Preliminary Determination*, indicates that CIMAC still has not rebutted the presumption of government control. Therefore, we continue to find the CIMAC in not eligible for a separate rate.⁸⁶

⁸² See *Preliminary Determination*, PDM at 9-12.

⁸³ See Petitioners’ Case Brief at 9; see also CIMAC’s November 2, 2018 SSRAQR at Exhibit 1.

⁸⁴ See Petitioners’ Case Brief at 11 (BPI omitted).

⁸⁵ *Id.*

⁸⁶ For the BPI discussion of this issue, see Memorandum, “Certain Steel Wheels from the People’s Republic of China: Less Than Fair Value Investigation – Final Separate Rate Status Analysis,” dated concurrently with this memorandum.

VIII. RECOMMENDATION

We recommend approving all the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree

Disagree

3/21/2019

X 

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance