

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-533-823]

Notice of Preliminary Determination of Critical Circumstances: Silicomanganese From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of critical circumstances; silicomanganese from India

EFFECTIVE DATE: October 19, 2001.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Abdelali Elouaradia at (202) 482-0197 and (202) 482-1374, respectively; AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2000).

Background

On May 3, 2001, the Department of Commerce (the Department) initiated an investigation to determine whether imports of silicomanganese from India are being, or are likely to be, sold in the United States at less than fair value (LTFV) (66 FR 22209, May 3, 2001). On June 11, 2001, the International Trade Commission (ITC) published its determination that there is a reasonable indication of material injury to the domestic industry from imports of silicomanganese from India. On July 16, 2001, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of silicomanganese from India. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination. In a policy bulletin issued on October 8, 1998, the Department stated that it may

issue a preliminary critical circumstances determination prior to the date of the preliminary determinations of sales at less than fair value, assuming sufficient evidence of critical circumstances is available (see *Policy Bulletin 98/4: Timing of Issuance of Critical Circumstances Determinations* (63 FR 55364)). In accordance with this policy, at this time we are issuing the preliminary critical circumstances decision in the investigation of silicomanganese from India for the reasons discussed below and in the concurrent *Memorandum from Elfi Blum through Sally Gannon to Barbara Tillman: Antidumping Duty Investigation of Silicomanganese from India—Preliminary Affirmative Determinations of Critical Circumstances*, dated October 4, 2001 (*Critical Circumstances Preliminary Determinations Memorandum*), on file in Import Administration's Central Records Unit (CRU), Room B-099, of the Department of Commerce building.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if 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. Section 351.206(h)(1) of the Department's regulations 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, § 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "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. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had

reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above criteria have been satisfied, we examined: (1) The evidence presented by petitioners in their July 16, 2001 and September 7, 2001 letters; (2) exporter-specific shipment data requested by the Department on August 2, 2001; (3) United States Customs Service import statistics available after the initiation of the LTFV investigation; and, (4) the International Trade Commission (ITC) preliminary injury determinations.

History of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. The Department's practice has been to rely on the existence of evidence that there is a history of dumping of subject merchandise from the country in question to either the United States or any other countries. See *Preliminary Determination of Critical Circumstances: Steel Concrete reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). In this case, we are not aware of any dumping order in any country on silicomanganese from India. For this reason, we do not find a history of injurious dumping of the subject merchandise from India pursuant to section 733(e)(1)(A)(i) of the Act.

Importer Knowledge

To determine whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling silicomanganese at LTFV, in accordance with section 733(e)(1)(ii) of the Act, the Department normally considers margins of 25 percent or more for EP sales sufficient to impute knowledge of dumping. See, *e.g.*, *Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Steel Seamless Standard, Line and Pressure Pipe from the Czech Republic*, 65 FR 33803 (May 25, 2000). The Department normally bases its preliminary decision with respect to knowledge on the margins determined in the preliminary determination.

In this case, because we are issuing our preliminary critical circumstance

determination prior to our preliminary LTFV determination, the Department has relied on margin information provided in the petition to determine if there is a reasonable basis to believe or suspect that the importers knew or should have known that the subject merchandise was being sold at LTFV. In the petition, the estimated dumping margin, based on a comparison between adjusted U.S. price based on average unit value and price(s) in India, is 5.89 percent. The estimated dumping margin for price-to-constructed value (CV) comparisons is 86.98 percent. Because the highest estimated dumping margin calculated in the petition for India is greater than 25 percent, there is a reasonable basis to impute knowledge of dumping with respect to imports from this country. Therefore, we have imputed to importers knowledge of dumping of the subject merchandise from each of the two cooperating exporters and to importers of subject merchandise from all other producers/exporters in India.

Regarding knowledge of material injury by reason of the LTFV sales, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for subject imports of silicomanganese from India. See *Silicomanganese From India, Kazakhstan, and Venezuela*, 66 FR 31258 (June 11, 2001). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers of silicomanganese from India from all exporters knew or should have known that there was likely to be material injury by reason of dumped imports of the subject merchandise from India, in accordance with section 733(e)(1)(ii) of the Act.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.*, the base period), to the import volume of subject merchandise in the three months following the filing of the petition (*i.e.*, the comparison period). However, as

stated in § 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In the Critical Circumstances Allegation submitted on July 16, 2001, petitioners cite an industry publication to document that importers, exporters and producers had reason to believe that a proceeding was likely prior to the filing of the petition on April 6, 2001. Petitioners state that, on March 8, 2001, a month before filing the petition, Eramet (a petitioner) issued a press release confirming that it intended to file an antidumping petition covering imports of silicomanganese. This intent was discussed in an industry publication, "Ryan's Notes," on March 12, 2001, which specified India as a likely target. On March 5, 2001, the same industry publication had already reported that petitioner "was on the verge of launching a dumping case." (See "Ryan's Notes," March 5, 2001, p. 5.) According to petitioners, numerous other articles in other industry publications demonstrate that, in early March 2001, importers and exporters of Indian silicomanganese had reason to believe that an antidumping petition covering India was likely. We examined the sources cited by petitioners to determine whether they provide a basis for inferring knowledge that a proceeding was likely. We find that such industry publications, particularly the one cited above, are sufficient to establish that, by early March 2001, importers, exporters, and producers knew or should have known that a proceeding was likely concerning silicomanganese from India.

With regard to the issue of massive imports, in accordance with our current practice (see *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5554 (February 4, 2000)), we first considered the shipment data reported by the mandatory respondents for the base and comparison periods (October 2000 through February 2001 and March 2001 through July 2001, respectively). We found massive imports for one respondent, Universal Ferro & Allied Chemicals (Universal Ferro), based on

an increase in imports exceeding the required 15 percent, but no massive imports for the other respondent, Nava Bharat Ferro Alloys (Nava Bharat).

With respect to the "all others" category, we considered the fact that we found massive imports for one of the investigated exporters but not the other. We also considered whether U.S. Customs Service data, as available on the International Trade Commission's Dataweb, would permit the Department to analyze imports of subject merchandise. The U.S. Customs import data does include low-carbon silicomanganese, which is excluded from the scope. However, the PIERS information submitted by petitioners indicates that low-carbon imports make up a low percentage of total imports. Thus, we believe it is appropriate to use the aggregate import data in our analysis of whether there have been massive imports from "all others." This data shows massive imports of the subject merchandise from India. Even if we were to subtract the shipment data provided by the two respondents from the aggregate data and to compare the remaining volume of imports in the base period to the remaining imports in the comparison period, this would indicate that massive imports occurred. See *Memorandum to Barbara Tillman through Sally Gannon from Elfi Blum: Antidumping Duty Investigation of Silicomanganese from India-Preliminary Affirmative and Negative Determinations of Critical Circumstances*, dated October 4, 2001 (*Critical Circumstances Memorandum*). Therefore, we find that there is a reasonable basis to believe or suspect that there were massive imports from "all others."

Conclusion

Given the above-referenced analysis, we preliminarily determine that critical circumstances exist for Universal Ferro and for companies in the "all others" category, but not for Nava Bharat.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, if the Department issues an affirmative preliminary determination of sales at LTFV in the investigation with respect to Universal Ferro or the "all others" category, the Department, at that time, will direct Customs to suspend liquidation of all entries of silicomanganese from India from these exporters that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at LTFV. Customs shall require a cash

deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determination of sales at LTFV published in the **Federal Register**. The suspension of liquidation to be issued after our preliminary determination of sales at LTFV will remain in effect until further notice.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for India when we make our final determination regarding sales at LTFV in the investigation, which will be 75 days (unless extended) after the preliminary LTFV determination.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 10, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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extent to which processors utilize domestic harvest. These analyses are necessary to carry out the provision of the Magnuson-Stevens Fishery Conservation and Management Act.

Affected Public: Business and other for-profit organizations.

Frequency: Annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

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helicopter or skiff. The requirement is necessary to aid enforcement of fishery regulations.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

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DEPARTMENT OF COMMERCE

[I.D. 101501C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Processed Products Family of Forms.

Form Number(s): NOAA Forms 88-13 and 88-13c.

OMB Approval Number: 0648-0018.

Type of Request: Regular submission.

Burden Hours: 680.

Number of Respondents: 1,320.

Average Hours Per Response: 30 minutes for a NOAA Form 88-13; 15 minutes for a NOAA Form 88-13c.

Needs and Uses: This is a survey of seafood and industrial fishing processing firms. Firms processing fish from certain fisheries must report on their annual volume, the value of products, and monthly employment figures. Data are used in economic analyses to estimate the capacity and

DEPARTMENT OF COMMERCE

[I.D. 101501D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Vessel

Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0361.

Type of Request: Regular submission.

Burden Hours: 286.

Number of Respondents: 356.

Average Hours Per Response: 45 minutes for all but purse seine vessels; 75 minutes for purse seine vessels.

Needs and Uses: Vessels in certain federally-regulated fisheries off the West Coast or in the Western Pacific are required to display the vessel's official number in three locations. Purse seine vessels in the South Pacific are required to display their international radio call sign in three locations and on any

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101201C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Oversight Committee in November, 2001. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, November 6, 2001, at 5:30 p.m.

ADDRESSES: The meeting will be held at the Tavern on the Harbor, 30 Western Ave., Gloucester, MA 01930; telephone: (978) 283-4200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New