

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-804, A-570-872, A-533-826, A-580-848, A-421-810, A-821-815]

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

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

ACTION: Notice of preliminary determinations of critical circumstances in the less-than-fair-value investigations of certain cold-rolled carbon steel flat products from Australia, the People's Republic of China, India, the Republic of Korea (with the exception of one company), the Netherlands, and the Russian Federation.

SUMMARY: The Department of Commerce ("Commerce") has preliminarily determined that critical circumstances exist for imports of certain cold-rolled carbon steel flat products ("CRS") from Australia, the People's Republic of China ("China"), India, the Republic of Korea ("Korea") (with the exception of one responding company), the Netherlands, and the Russian Federation ("Russia").

DATES: April 18, 2002.

FOR FURTHER INFORMATION CONTACT:

Paige Rivas at 202-482-0651 (Australia); Carrie Blozy at 202-482-0165 (China); Mark Manning at 202-482-5253 (India); Mark Young at 202-482-6397 (Korea); Geoffrey Craig at 202-482-4161 (the Netherlands); or Juanita H. Chen at 202-482-0409 (Russia), Import Administration, International Trade Administration, U.S. Department of Commerce, 1401

Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On October 26, 2001, the Department initiated investigations to determine whether imports of CRS from, *inter alia*, Australia, China, India, Korea, the Netherlands, and Russia are being, or are likely to be, sold in the United States at less-than-fair-value ("LTFV"). See *Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) ("Initiation Notice"). On November 19, 2001, the International Trade Commission ("Commission") published its determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of CRS from all of these countries. See *Certain Cold-Rolled Carbon Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001). On November 29, 2001, the petitioners¹ alleged that there is a

¹ Of the petitioners in the concurrent antidumping duty investigations (Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation), the petitioners alleging critical circumstances are Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., and Weirton Steel Company (hereinafter collectively "Petitioners").

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reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of CRS from Russia. On December 7, 2001, Petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of CRS from Argentina, Australia, China, India, the Netherlands, Russia, South Africa, Korea, and Taiwan. Petitioners also requested that the Department make an expedited finding with regard to critical circumstances.

In accordance with 19 C.F.R. 351.206(c)(2)(i), because Petitioners submitted their critical circumstances allegations 20 days or more before the scheduled date of the preliminary determinations, the Department must issue the preliminary critical circumstances finding not later than the date of the preliminary determinations. Accordingly, at this time we are issuing the preliminary critical circumstances finding in the investigations of CRS from Australia, China, India, Korea, the Netherlands, and Russia.² A full discussion of our analyses may be found below and in the two concurrent country-specific memoranda ("Critical Circumstances Memoranda"), dated April 10, 2002. Parties can find public versions of these memoranda on file at the U.S. Department of Commerce, in the Central Records Unit, in room B-099.

CRITICAL CIRCUMSTANCES

Section 733(e)(1) of the Act provides that the Department will 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

² We intend to issue our preliminary critical circumstances findings with respect to Argentina, South Africa and Taiwan concurrently with our preliminary dumping determinations.

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, section 351.206(h)(2) of the Department's regulations provides that, "In 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 consider the imports massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as generally 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 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 relevant statutory criteria have been satisfied, we considered: (i) the evidence presented by Petitioners in their November 9, 2001, December 7, 2001 and January 14, 2002 letters; (ii) exporter-specific shipment data requested by the Department; (iii) import data available through the Commission's DataWeb website; and (iv) the Commission's 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. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). Imports of CRS from Korea and the Netherlands were subject to antidumping duties from 1993 through December 2000. *See Revocation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products From Canada, Germany, Korea, the Netherlands, and Sweden*, 65 FR 78467 (December 15, 2000). Accordingly, we find a history of dumping of CRS from Korea and the Netherlands. Imports of CRS from Russia are currently subject to a Canadian antidumping duty order, the

final determination of which was dated July 28, 1999. *See Canadian International Trade Tribunal Cold-Rolled Decision* (August 27, 1999). Accordingly, we find a history of dumping of CRS from Russia. However, we are not aware of any antidumping order in any country on CRS from Australia, China or India. For this reason, we do not find a history of dumping and material injury of the subject merchandise from Australia, China or India pursuant to section 733(e)(1)(A)(i) of the Act.

Importer Knowledge of Injurious Dumping

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known the exporter was selling CRS at LTFV, the Department normally considers margins of 25 percent or more for export price ("EP") sales and 15 percent or more for constructed export price ("CEP") sales sufficient to impute importer knowledge of dumping. *See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224 (February 11, 2002). The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary determination. However, because section 733(e)(1) of the Act permits the Department to make a preliminary critical circumstances determination prior to the issuance of the preliminary dumping determination, we may rely on other information to determine whether importers had knowledge exporters were selling CRS at LTFV.

In the instant cases we find the antidumping petitions contain sufficient information to conduct our analysis of this criterion. The petition estimated dumping margins for China of 70.68 to 74.16 percent. See Initiation Notice, 66 FR 54198. The petition estimated dumping margins for India of 153.65 percent which, based on additional information provided after the petitions were filed, the Department recalculated as 128.38 percent. Because the highest estimated dumping margin calculated in the petition for each of these countries is greater than 25 percent, there is a reasonable basis to impute knowledge of dumping with respect to imports from these countries. Therefore, we have imputed importer knowledge of dumping of the subject merchandise exported from China and India.

The petition estimated dumping margins for Australia of 24.06 percent. After initiation of the antidumping duty

investigation against Australia, the mandatory respondent selected by the Department reported that 100 percent of its U.S. sales during the POI are CEP sales. Given that the respondent's reported CEP sales include the sales that constitute the average unit value ("AUV") used by Petitioners in the estimated dumping margin, and the AUV is based on the customs import value (which contains no CEP expenses that must be deducted in order to be used in an estimated margin calculation), it is appropriate to apply the estimated dumping margin against the 15 percent threshold for CEP sales. *See Critical Circumstances Memorandum for Australia*, at 5–6. Accordingly, because the estimated dumping margin calculated in the petition for Australia is greater than 15 percent, there is a reasonable basis to impute knowledge of dumping with respect to imports from Australia. Therefore, we have imputed importer knowledge of dumping of the subject merchandise exported from Australia.

In determining whether there is a reasonable basis to believe or suspect an importer knew or should have known there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the Commission. If the Commission 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 there was likely to be material injury by reason of dumped imports. *See 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 (November 20, 1997). In the present case the Commission has found a reasonable indication that an industry in the United States is materially injured or threatened with material injury due to dumping of imports of CRS from each of the named countries. *See Determinations and Views of the Commission: Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, Investigations Nos. 701-TA-422-425 and 731-TA-964-983 (Preliminary), USITC Publication No. 3471, November 2001 ("Commission Determination"). Section 771(11) of the Act provides that in the event the Commission is "evenly divided as to whether the determination should be affirmative or negative, the

{Commission} shall be deemed to have made an affirmative determination." By analogy, the Department finds that, where the Commission is evenly divided between a finding of material injury and a finding of threat of material injury, it is reasonable to treat the finding as an affirmative finding of material injury. As a result, the Department has determined there is a reasonable basis to believe or suspect importers of CRS from Australia, China, India, Korea, the Netherlands, and Russia knew or should have known there was likely to be material injury by reason of these dumped imports.

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 volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). However, as stated in section 351.206(i) of the Department's regulations, "if the Secretary finds 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 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.

For the reasons set forth in the Critical Circumstances Memoranda, we find sufficient bases exist for finding importers, or exporters or producers, knew or should have known antidumping cases were pending on CRS from Australia, China, India, Korea, the Netherlands, and Russia by May 2001 at the latest. Accordingly, we determined December 2000 through May 2001 should serve as the "base period," while June 2001 through November 2001 should serve as the "comparison period," in determining whether or not imports have been massive over a relatively short period.

According to 19 C.F.R. 351.206(i), the comparison period normally should be at least three months; however, if we determine that importers, exporters or producers had reason to believe that a proceeding was likely, then the Department may consider a longer period. In this case, we have chosen a period of six months as the period for

comparison in preliminarily determining whether imports of the subject merchandise have been massive for several reasons. First, at this time we have shipment data covering the six-month period for all exporters being examined for this purpose. We do not believe it is appropriate to use different periods for different exporters. Second, we believe that choosing a six-month period in general properly reflects the "relatively short period" commanded by the statute for determining whether imports have been massive. *See Section 733(e)(1)(B) of the Act.* Finally, we are concerned that selecting a longer period for comparison might, in some cases, hamper our ability to fulfill our obligation under the statute to determine whether a genuine surge in imports has occurred *shortly* after exporters knew or should have known about the likelihood of an antidumping petition. However, we welcome comments about the use of a six-month period both in this case and in general.

Pursuant to 19 C.F.R. 351.206(h), we found imports of CRS increased by more than 15 percent for CRS from Australia, China, India, Korea, the Netherlands, and Russia in the comparison period; accordingly, we find that imports have been massive for each of the named countries. With respect to Korea, we noted that the import statistics from Korea indicated that imports from Korea increased 97.12 percent. The imports for one of the respondents, Pohang Iron & Steel Co., Ltd. ("POSCO"), increased by well over 15 percent as well. However, imports for the other respondent, Dongbu Steel Co., Ltd. ("Dongbu"), increased by less than 15 percent. Accordingly, we find imports were massive for POSCO and all other producers/exporters, except for Dongbu.

In summary, we find there is a history of dumping and material injury by reason of dumped imports of CRS from Korea, the Netherlands, and Russia. We also find there is a reasonable basis to believe or suspect importers knew or should have known exporters were selling CRS from Australia, China and India at LTFV and had knowledge of the likelihood of material injury with respect to such imports of CRS. We further find there have been massive imports of CRS over a relatively short period from Australia, China, India, Korea (with the exception of Dongbu), the Netherlands, and Russia.

CONCLUSION

Given the analysis summarized above, and described in more detail in the Critical Circumstances Memoranda, we preliminarily determine critical circumstances exist for imports of CRS

from Australia, China, India, Korea (with the exception of Dongbu), the Netherlands, and Russia.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, if the Department issues affirmative preliminary determinations of sales at LTFV in the investigations with respect to imports of CRS, the Department, at that time, will direct the U.S. Customs Service ("Customs") to suspend liquidation of all entries of Australia, China, India, Korea (with the exception of Dongbu), the Netherlands, and Russia 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 determinations in these investigations. Customs shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations published in the **Federal Register**. The suspension of liquidation to be issued after our preliminary determinations will remain in effect until further notice.

Final Critical Circumstances Determinations

We will make final determinations concerning critical circumstances for all countries named in Petitioners' allegations when we make our final dumping determinations in these investigations, which will be 75 days (unless extended) after issuance of the preliminary dumping determinations.

Commission Notification

In accordance with section 733(f) of the Act, we will notify the Commission of our determinations.

We are issuing and publishing these results and notice in accordance with section 777(i) of the Act.

Dated: April 10, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.
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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-504]

Petroleum Wax Candles From the People's Republic of China (PRC): Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

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