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DEPARTMENT OF COMMERCE

International Trade Administration

(C-533-858, C-489-817)

Certain Oil Country Tubular Goods from India and Turkey: Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that critical circumstances exist for imports of certain oil country tubular goods (OCTG) from India and Turkey.

DATES: EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION

Background

On July 2, 2013, Petitioners<sup>1</sup> filed antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of OCTG from, *inter alia*, India and Turkey.<sup>2</sup> The Department

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<sup>1</sup> Petitioners are Maverick Tube Corporation, United States Steel Corporation, Boomerang Tube, Energex Tube, a division of JMC Steel Group, Northwest Pipe Company, Tejas Tubular Products, TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA Inc. (collectively, Petitioners).

<sup>2</sup> See Letter from Petitioners, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam" (July 2, 2013).

published the initiation of the investigations on July 29, 2013,<sup>3</sup> and issued the preliminary determinations on December 16, 2013.<sup>4</sup>

On December 18, 2013, Petitioners filed amendments to the petitions, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of OCTG.<sup>5</sup> In accordance with 19 CFR 351.206(c)(2)(ii), when a critical circumstances allegation is submitted later than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding within 30 days after Petitioners submit the allegation.<sup>6</sup>

On December 30, 2013, the Department requested that respondents report their shipment data for a three-year period ending in December 2013, the month of the preliminary subsidies determinations.<sup>7</sup> On January 6, 7, 9 and 14, 2014, respondents submitted their shipment data.

Section 703(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in a CVD investigation if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Subsidies and

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<sup>3</sup> See *Certain Oil Country Tubular Goods From India and Turkey: Initiation of Countervailing Duty Investigations*, 78 FR 45502 (July 29, 2013).

<sup>4</sup> See *Certain Oil Country Tubular Goods From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 78 FR 77421 (December 23, 2013) (Preliminary Determination India) and *Certain Oil Country Tubular Goods From the Republic of Turkey: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 78 FR 77420 (December 23, 2013) (Preliminary Determination Turkey).

<sup>5</sup> See Letter from Petitioners, “Amendment to Petition for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from India” (December 18, 2013) (Amendment India) and “Amendment to Petition for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from Turkey” (December 18, 2013) (Amendment Turkey).

<sup>6</sup> Petitioners also alleged critical circumstances exist with respect to imports of merchandise in the companion AD investigations. In accordance with 19 CFR 351.206(c)(2)(i), the Department will issue preliminary critical circumstances findings in those investigations no later than the preliminary AD determinations scheduled for February 13, 2014.

<sup>7</sup> The Department requests three years of data in order to identify seasonal fluctuations, if any.

Countervailing Measures Agreement (SCM Agreement) (*i.e.*, so called “prohibited subsidies”),<sup>8</sup> and (B) there have been massive imports of the subject merchandise over a relatively short period.

The Alleged Countervailable Subsidy is Inconsistent with the SCM Agreement

The SCM Agreement prohibits “subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance.”<sup>9</sup> In the India proceeding, based on information the Government of India and respondents reported, the Department determined that subsidies provided under the following four programs are contingent upon export performance and countervailable: 1) Advance License Program/Advance Authorization Program; 2) Export Promotion Capital Goods (EPCG) Program; 3) Pre-Shipment and Post-Shipment Export Financing; and, 4) SGOM Sales Tax Program.<sup>10</sup>

In the Turkey proceeding, based on information the Government of Turkey and respondents reported, the Department determined that subsidies provided under the following two programs are contingent upon export performance and countervailable: 1) Deductions from Taxable Income for Export Revenue; and, 2) Export Financing.<sup>11</sup>

There Have Been Massive Imports of the Subject Merchandise Over a Relatively Short Period

Pursuant to 19 CFR 351.206(h), the Department will not consider imports to be massive unless imports during a relatively short period (comparison period) have increased by at least 15 percent over imports in an immediately preceding period of comparable duration (base period).

The Department normally considers the comparison period to begin on the date that the

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<sup>8</sup> See section 771 (8)(A) of the Act. The SCM Agreement is the agreement referred to in section 101(d)(12) of the Uruguay Round Agreements Act, 19 USC § 3551(d)(12).

<sup>9</sup> See SCM Agreement, Article 3.1(a).

<sup>10</sup> See Preliminary Determination India and accompanying Preliminary Decision Memorandum at 14-21.

<sup>11</sup> See Preliminary Determination Turkey and accompanying Preliminary Decision Memorandum at 10-12.

proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later.<sup>12</sup>

Furthermore, the Department may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed.<sup>13</sup> In addition, the Department expands the periods as more data are available.

Petitioners maintain that importers, exporters, or foreign producers, through industry media and conferences, had reason to believe that the petitions were likely two months before they were filed. As such, Petitioners argue that the comparison period should begin in May 2013, not July, when the petitions were filed. Furthermore, supported by import data published by the Department's Bureau of Census and the U.S. International Trade Commission, Petitioners claim that imports of OCTG from India and Turkey increased by 50.92 percent and 25.76 percent, respectively, between the base and comparison periods.<sup>14</sup>

After reviewing the information Petitioners submitted to support their claims that parties had advance knowledge of the petitions, we have determined parties did not have reason to believe that petitions were likely until they were filed in July 2013. Petitioners have presented evidence which they claim shows that certain parties considered these proceedings likely or even "imminent." The evidence also refers specifically to AD and CVD proceedings. Specifically, Petitioners presented evidence of the following:

- March 2013 – Two trade lawyers publish an article in Global Trade Monitor (GTM), a publication of their own law firm, stating proceedings against Korea may come as

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<sup>12</sup> See 19 CFR 351.206(i). Since the Department typically uses monthly import/shipment data in its analysis, if a petition is filed in the first half of the month, the Department's practice has been to consider the month in which the petition was filed as part of the comparison period.

<sup>13</sup> *Id.*

<sup>14</sup> See Amendment India at 5 and Amendment Turkey at 8.

soon as the end of the month. Their analysis also presents data for India, Turkey, Ukraine, and Vietnam.<sup>15</sup>

- March 2013 – The president of the American Institute for International Steel (AIIS) mentions the possibility of proceedings against India, Turkey, Vietnam, and “others” during an AIIS luncheon in Houston.<sup>16</sup>
- April 2013 – An article in American Metal Market (AMM) reports that proceedings against Korea are imminent and mentions the possibility of proceedings against “other Asian” and “Eastern European” countries.<sup>17</sup>
- May 2013 – Another article in AMM reports that proceedings against Korea will be filed in July and mentions the possibility of proceedings against India, the Philippines, and Turkey, among other countries.<sup>18</sup>
- June 2013 – A third AMM article reports that a “suspension deal” is possible for Korea and that the end of June (the end of the fiscal quarter) will be a “decisive day” for the U.S. industry to decide whether proceedings should be filed against Korea, India, Turkey, Ukraine, and Vietnam.<sup>19</sup>

However, all the evidence provided is speculative and also demonstrates that much doubt still existed. For example, while the GTM article states proceedings against Korea might be filed by “the end of the month,” it also notes rumors of such filings might be “empty threats.”<sup>20</sup> Likewise, the AMM articles use words such as “imminent” when discussing proceedings against

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<sup>15</sup> See Amendment India at Exhibit Supp. II-32 and Exhibit Supp. III-157, and Amendment Turkey at Exhibit 1.

<sup>16</sup> See Amendment India at Exhibit Supp. II-33 and Exhibit Supp. III-158, and Amendment Turkey at Exhibit 2.

<sup>17</sup> See Amendment India at Exhibit Supp. II-34 and Exhibit Supp. III-159, and Amendment Turkey at Exhibit 3.

<sup>18</sup> See Amendment India at Exhibit Supp. II-35 and Exhibit Supp. III-160, and Amendment Turkey at Exhibit 4.

<sup>19</sup> See Amendment India at Exhibit Supp. II-36 and Exhibit Supp. III-161, and Amendment Turkey at Exhibit 5.

<sup>20</sup> See Amendment India at Exhibit Supp. II-32 and Exhibit Supp. III-157, and Amendment Turkey at Exhibit 1.

Korea, but also refer to the U.S. industry as “mulling the possibility” of filing petitions.<sup>21</sup> The articles also quote industry insiders noting that such “rumors” have been circulating for years and that U.S. producers must first decide whether their profits will prevent an affirmative injury determination before filing.<sup>22</sup> In sum, we preliminarily find that the evidence does not rise to the level of showing that importers or foreign exporters/producers had reason to believe, prior to the filing of the petitions, that a proceeding was likely. Therefore, we have relied on the periods before and after the filing of the petitions in July in determining whether imports have been massive (*i.e.*, January through June 2013 compared with July through December 2013).<sup>23</sup>

Respondents in both the India and Turkey proceedings provided their shipment data from April 2010 through November or December 2013. After analyzing the data submitted, we determine imports from Jindal SAW Limited (Jindal SAW) in the India investigation were massive (*i.e.*, increased by more than 15 percent between the base and comparison periods) over a relatively short period of time within the context of 19 CFR 351.206(h). Imports from GVN Fuels Limited (GVN), the other mandatory respondent in the India investigation, however, were not massive. Combining Jindal SAW’s and GVN’s imports, we determine imports from all other producers/exporters likewise were not massive. Both mandatory respondents, Borusan Istikbal Ticaret and Borusan Mannesmann Born Sanayi (Borusan) and Tosyali Dis Ticaret A.S (Tosyali), in the Turkey investigation had massive imports according to our analysis, and thus so did all

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<sup>21</sup> See Amendment India at Exhibit Supp. II-34 and Exhibit Supp. III-159, and Amendment Turkey at Exhibit 3.

<sup>22</sup> See Amendment India at Exhibit Supp. II-35 and Exhibit Supp. III-160, and Amendment Turkey at Exhibit 4.

<sup>23</sup> One respondent in the India investigation stated its shipment data for December would be provided at a later date. Therefore, we compared its imports for the five-month periods February through June and July through November.

other producers/exporters. The details of our calculations are contained in business-proprietary analysis memoranda.<sup>24</sup>

#### Final Critical Circumstances Determinations

The Department will make final determinations concerning critical circumstances when we make final subsidy determinations in these investigations, currently scheduled for April 29, 2014. All interested parties will have the opportunity to address these determinations further in case briefs.

#### U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, the Department will notify the U.S. International Trade Commission about these preliminary determinations.

#### Suspension of Liquidation

Section 703(e)(2) of the Act provides that in the case of an affirmative preliminary CVD determination, any suspension of liquidation shall apply (or, if notice of suspension has already been published, be amended to apply) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. As discussed above, we preliminarily find that critical circumstances exist for imports from India produced and/or exported by Jindal SAW and imports from Turkey produced and/or exported by Borusan, Toscelik, and all other producers/exporters. However, we also reached negative preliminary CVD determinations for

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<sup>24</sup> See Memorandum to the File from Mark Hoadley, Calculation of Increase of Imports Over a Relatively Short Period of Time: CVD Investigation of OCTG from India (January 17, 2014) and Memorandum to the File from Mark Hoadley, Calculation of Increase of Imports Over a Relatively Short Period of Time: CVD Investigation of OCTG from Turkey (January 17, 2014).

Jindal SAW in India and also for Borusan, Toscelik, and all others producers/exporters in Turkey.

Accordingly, there is no suspension of liquidation of entries from these entities.

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

Dated: January 17, 2014.

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Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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