



DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-837]

Aluminum Extrusions from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Less-Than-Fair Value Investigation

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that critical circumstances exist regarding certain imports of aluminum extrusions from the Socialist Republic of Vietnam (Vietnam).

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

FOR FURTHER INFORMATION CONTACT: Rebecca Janz at (202) 482-2972; AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2023, Commerce initiated a less-than-fair value (LTFV) investigation concerning aluminum extrusions from Vietnam.¹ On April 19, 2024, the U.S. Aluminum Extruders Coalition and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners) filed a timely critical circumstances allegation, pursuant to section 703(e)(1) of the Tariff Act of 1930,

¹ See *Aluminum Extrusions from the People's Republic of China, Colombia, the Dominican Republic, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 88 FR 74421 (October 31, 2023) (*Initiation Notice*).

as amended, (the Act) and 19 CFR 351.206, alleging that critical circumstances exist with respect to aluminum extrusions from Vietnam.² Commerce published its preliminary LTFV determination on May 7, 2024.³

In accordance with 19 CFR 351.206(c)(1) and (c)(2)(ii), when a critical circumstances allegation is filed 30 days or more before the scheduled date of the final determination, but later than 20 days before the scheduled date of the preliminary determination, Commerce will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist and will issue a preliminary critical circumstances determination within 30 days after the allegation is filed.

Legal Framework

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” Commerce will normally examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “in general, unless the imports during the ‘relatively short period’ . . . have increased by at least 15 percent

² See Petitioners’ Letter, “Critical Circumstances Allegation,” dated April 19, 2024 (Critical Circumstances Allegation).

³ See *Aluminum Extrusions from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 38075 (May 7, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” Section 351.206(i) of Commerce’s regulations defines “relatively short period” generally as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section of the regulations further provides that, if 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.

Critical Circumstances Allegation

In their allegation, the petitioners state that based on the dumping margins calculated in the petition (*i.e.*, 41.84 percent), importers knew or should have known that imports of aluminum extrusions from Vietnam were being sold at LTFV because this margin exceeds the 25 and 15 percent thresholds established for export price (EP) and constructed export price (CEP), respectively.⁴ Additionally, the petitioners contend that the U.S. International Trade Commission’s (ITC’s) affirmative determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of aluminum extrusions from Vietnam is sufficient to impute knowledge of the likelihood of material injury.⁵

Finally, as part of their allegation and pursuant to 19 CFR 351.206(h)(2), the petitioners provided monthly import data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings included in the scope of the investigation for the period between May 2023 and February 2024 as evidence of massive imports of aluminum extrusions from Vietnam during a relatively short period.⁶

⁴ See *Initiation Notice*, 88 FR at 77426.

⁵ See *Aluminum Extrusions from China, Colombia, Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, and Vietnam*, 88 FR 82913 (November 27, 2023) (*ITC Preliminary Determination*).

⁶ See *Critical Circumstances Allegation* at 7-8.

On April 29, 2024, GameChange Solar (GameChange), a U.S. importer of bearings that contain aluminum extrusions, responded to the Critical Circumstances Allegation, asserting lack of knowledge of injurious dumping and arguing that Commerce should make a critical circumstances determination specific to GameChange.⁷

Analysis

Generally, when determining whether critical circumstances exist pursuant to the statutory criteria, Commerce examines record evidence, including: (1) the evidence presented in the petitioners' allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to Commerce by the respondents selected for individual examination.⁸ Consistent with Commerce practice, here we examined record information obtained since the initiation of this investigation, as well as the ITC's preliminary injury determination.⁹

Section 733(e)(1)(A)(i) of the Act: History of Dumping and Material Injury by Reason of Dumped Imports in the United States or Elsewhere of the Subject Merchandise

In determining whether there is a history of dumping pursuant to section 733(e)(1)(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 in any other country with regard to imports of subject merchandise.¹⁰ Currently, there are no AD orders on aluminum extrusions from Vietnam in the United States, and Commerce is not aware of the

⁷ See GameChange's Letter, "GameChange's Response to Petitioners' Critical Circumstances Allegation," dated April 29, 2024 (GameChange Response), at 2-5 (citing *Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States*, 432 F.3d 1363, 1367 (Fed. Cir. 2005) (*Zhejiang Native Produce*)); see also GameChange's Letter, "Errata to GameChange's Response to Petitioners' Critical Circumstances Allegation," dated April 29, 2024.

⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009).

⁹ See, e.g., *Critical Circumstances Allegation*; *GameChange Response*; and *ITC Preliminary Determination*.

¹⁰ See, e.g., *Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

existence of any AD orders on aluminum extrusions from Vietnam in other countries. Therefore, we preliminarily find that there is no history of injurious dumping of aluminum extrusions from Vietnam; thus, this criterion is not met.

Section 733(e)(1)(A)(ii): The Importer Knew or Should Have Known That the Exporter Was Selling at Less Than Fair Value and That There Was Likely to Be Material Injury

In determining whether importers knew or should have known that exporters were selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales, Commerce must rely on the facts before it at the time the determination is made.

Commerce generally bases its decision with respect to knowledge on the margins calculated in the preliminary determination and the ITC's preliminary injury determination.

Commerce normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.¹¹ In this investigation, we preliminarily calculated a weighted-average dumping margin of 2.85 percent for East Asia Aluminum Company Limited (East Asia), the only respondent for which we calculated an individual rate, and we preliminarily assigned this same rate, *i.e.*, 2.85 percent, to the non-individually investigated separate rate companies.¹² Additionally, we preliminarily assigned a dumping margin of 41.84 percent to the Vietnam-wide entity based on total adverse facts available (AFA).¹³

Based on the foregoing margins, we preliminarily find no reasonable basis to believe or suspect that importers of subject merchandise from East Asia or the non-individually investigated separate rate companies knew, or should have known, that their exporters were selling subject merchandise at LTFV. Because this criterion is not met for East Asia or the non-

¹¹ See, e.g., *Carbon and Alloy Steel Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002) (*Steel Wire Rod Preliminary*), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (August 30, 2002) (*Steel Wire Rod Final*).

¹² See *Preliminary Determination*, 89 FR at 38076.

¹³ *Id.*; see also *Preliminary Determination PDM* at 6.

examined separate rate companies, we preliminarily determine that critical circumstances do not exist for these companies.

However, given the preliminary dumping margin for the Vietnam-wide entity (*i.e.*, 41.84 percent) exceeds the threshold sufficient to impute knowledge of dumping, we preliminarily find that there is a reasonable basis to believe or suspect that producers/importers of subject merchandise from the Vietnam-wide entity knew, or should have known, that the exporters were selling subject merchandise at LTFV.

In determining whether an importer knew or should have known that there was likely to be material injury caused by reason of such imports, Commerce normally will look to the preliminary injury determination of the ITC.¹⁴ If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, Commerce will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports.¹⁵ Here, the ITC preliminarily found that there is “reasonable indication” of material injury to the domestic industry because of the imported subject merchandise from Vietnam.¹⁶ Therefore, the ITC’s preliminarily injury determination is sufficient to impute knowledge to imports of the likelihood of material injury. Thus, Commerce determines that importers knew, or should have known, that there was likely to be material injury by reason of sales of aluminum extrusions by the Vietnam-wide entity.

GameChange argues that it did not, and could not, know that its exporters were selling bearings at LTFV because the company did not notice any change in prices or other indicia of unfair trade after the filing of the petition, and, because the ITC’s preliminary injury determination focused on aluminum extrusions, GameChange did not, or have reason to, know that imports of subject merchandise might be materially injuring the domestic industry.¹⁷ We

¹⁴ See, *e.g.*, *Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010).

¹⁵ See, *e.g.*, *Steel Wire Rod Preliminary*, 67 FR at 6225, unchanged in *Steel Wire Rod Final*.

¹⁶ See *ITC Preliminary Determination*.

¹⁷ See GameChange Response at 4.

preliminarily find that GameChange’s claims about its individual experience are insufficient to rebut the objective evidence on the record indicating that importers of merchandise from the Vietnam-wide entity knew, or should have known, that there was likely to be material injury by reason of these sales of aluminum extrusions.¹⁸ Additionally, we note that GameChange claims that its bearing imports are not subject merchandise, and, *arguendo*, if that is correct, its experiences are irrelevant to our determination with respect to sales of subject merchandise.

Section 733(e)(1)(B): Whether There Have Been Massive Imports of the Subject Merchandise Over a Relatively Short Period

In determining whether there have been “massive imports” over a “relatively short period,” pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h), Commerce 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”). The regulations also provide, however, that if 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.¹⁹ Pursuant to 19 CFR 351.206(h)(2), imports must increase by at least 15 percent during the “relatively short period” to be considered “massive.”

As discussed above, we preliminarily find critical circumstances do not exist for East Asia or the non-individually investigated separate rate companies; thus, whether there was a massive increase in imports from these companies between the base and comparison periods is moot.

¹⁸ We preliminarily find GameChange’s arguments regarding imputed knowledge moot with respect to East Asia and the non-individually investigated separate rate companies.

¹⁹ See 19 CFR 351.206(i).

However, as explained in the *Preliminary Determination*, we preliminarily applied total AFA to the Vietnam-wide entity.²⁰ Specifically, we determined that the use of facts available is warranted, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act “{b}ecause necessary information is not available on the record and the Vietnam-wide entity, which includes the Vietnamese exporters and/or producers that did not respond to our {quantity and value} Questionnaire, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information.”²¹ We also determined that an adverse inference is warranted pursuant to section 776(b) of the Act because the Vietnam-wide entity was not cooperative. Thus, for the Vietnam-wide entity, we preliminarily determine, as AFA in accordance with section 776 of the Act, that there was a massive surge in imports between the base and comparison periods.²²

Regarding whether imports were massive within a relatively short period of time, GameChange argues that we should analyze the volume of its imports of bearings that contain aluminum extrusions because GameChange did not import its bearings under the HTSUS subheadings for which the petitioners provided import data and, according to GameChange, its imports compete with finished products in the United States, not aluminum extrusions.

GameChange also relies on *Zhejiang Native Produce* as support for its argument that Commerce is required to make a critical circumstances determination specific to GameChange.²³ However, in *Zhejiang Native Produce*, the U.S. Court of Appeals for the Federal Circuit’s holding was limited to whether Commerce could impute knowledge of dumping when the price of imports complied with a suspension agreement that existed prior to the filing of the petition;

²⁰ See *Preliminary Determination* PDM at 6.

²¹ *Id.*

²² See *Countervailing Duty Investigation of Tin Mill Products from the People’s Republic of China: Preliminary Determination of Critical Circumstances, in Part*, 88 FR 46738 (July 20, 2023).

²³ See GameChange Allegation at 5 (citing *Zhejiang Native Produce*, 432 F.3d at 1367).

there is no such suspension agreement at issue here nor any information that detracts from the record evidence that supports our usual practice.²⁴

Additionally, for the separate rate companies and East Asia, we preliminarily determine that critical circumstances do not exist because section 733(e)(1)(A) is not met, as discussed above, and, thus, we do not reach the issue of whether imports were massive for these companies. Regarding the Vietnam-wide entity, as discussed above, we preliminarily find that imports are massive based on total AFA. Lastly, GameChange's argument again relies on its contention that its imported bearings are not subject merchandise. As noted above, if we were to assume *arguendo*, that GameChange's merchandise is not subject to the investigation, then its arguments are inapposite to the issue of whether imports of subject merchandise were massive during a relatively short period of time.

Preliminary Affirmative Determination of Critical Circumstances, in Part

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances do not exist with respect to imports of aluminum extrusions from Vietnam produced or exported by East Asia and the non-individually examined separate rate companies that we preliminarily found qualified for a separate rate, and we preliminarily determine that critical circumstances do exist with respect to imports of aluminum extrusions from Vietnam with respect to the Vietnam-wide entity.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances in the final LTFV determination, which is currently scheduled for September 19, 2024.

Public Comment

In the *Preliminary Determination*, Commerce stated that case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance and set

²⁴ See *Zhejiang Native Produce*, 432 F.3d at 1367-68. We also note that, in *Zhejiang Native Produce*, there was no finding that a case-by-case basis needed to be company-specific rather than specific to the instant investigation.

a deadline for case briefs or other written comments on non-scope issues as no later than seven days after the date on which the final verification report is issued.²⁵ Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.²⁶ All comments regarding this preliminary critical circumstances determination are subject to the same request for public, executive summaries in case and rebuttal briefs, as noted in the *Preliminary Determination*.²⁷

Suspension of Liquidation

In accordance with section 733(e)(2)(A) of the Act, for the Vietnam-wide entity, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from Vietnam entered, or withdrawn from warehouse for consumption, on or after February 7, 2024, which is 90 days prior to the date of publication of the *Preliminary Determination* in the *Federal Register*. For such entries, CBP shall require a cash deposit equal to the estimated weighted-average dumping margin established in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

U.S. International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of this preliminary determination of critical circumstances.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act and 19 CFR 351.206(c)(2)(ii).

Dated: May 20, 2024.

Ryan Majerus,

Deputy Assistant Secretary

for Policy and Negotiations,

performing the non-exclusive functions and duties

of the Assistant Secretary for Enforcement and Compliance.

²⁵ See *Preliminary Determination*, 89 FR at 38076-77.

²⁶ *Id.*; see also 19 CFR 351.309(d)(1).

²⁷ See *Preliminary Determination*, 89 FR at 38076-77

