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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-849]

Antidumping Duty Investigation on Refillable Stainless Steel Kegs from Mexico: Preliminary Affirmative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist for imports of refillable stainless steel kegs (kegs) from Mexico.

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

FOR FURTHER INFORMATION CONTACT: Allison Hollander at (202) 482-2805, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In response to petitions filed on September 20, 2018, on behalf of the American Keg Company LLC (the petitioner),¹ Commerce initiated antidumping duty (AD) investigations concerning kegs from Germany, Mexico, and the People's Republic of China (China) and a countervailing duty investigation concerning kegs from China.² THIELMANN Mexico S.A. de C.V. (THIELMANN) is the sole mandatory respondent in the investigation of kegs from Mexico.

¹ See the petitioner's Letter, "Petition for the Imposition of Antidumping Duties on Imports of Refillable Stainless Steel Kegs from Germany, Mexico, and the People's Republic of China and Countervailing Duties on Imports of Refillable Stainless Steel Kegs from the People's Republic of China," dated September 20, 2018 (the Petition).

² See *Refillable Stainless Steel Kegs from the People's Republic of China, the Federal Republic of Germany, and Mexico: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 52195 (October 16, 2018) (*Initiation Notice*); see also *Refillable Stainless Steel Kegs from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 52192 (October 16, 2018).

On December 3, 2018, THIELMANN informed Commerce that it did not intend to respond to the initial questionnaire. On December 10, 2018, the petitioner timely filed an allegation that critical circumstances exist with respect to imports of kegs from Mexico.³ In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist by no later than the date of the preliminary determination. In the subject AD investigation, the petitioner requested that Commerce issue a preliminary critical circumstances determination on an expedited basis.⁴

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, 2019.⁵ On March 19, 2019, Commerce postponed the deadline for the preliminary determination at the request of the petitioner.⁶ Accordingly, the revised deadline for the preliminary determination is May 28, 2019.⁷

Section 733(e)(1) of the Tariff Act of 1930, as amended (the Act) provides that Commerce, upon receipt of a timely filed allegation of critical circumstances, will preliminarily determine that critical circumstances exist in AD investigations 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

³ See the petitioner's Letter, "*Refillable Stainless Steel Kegs from Mexico: Petitioner's Critical Circumstances Allegation*," dated December 10, 2018 (Allegation).

⁴ *Id.* at 2.

⁵ 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.

⁶ See *Refillable Stainless Steel Kegs from the Federal Republic of Germany, Mexico and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 10033 (March 19, 2019) (*Postponement Notice*).

⁷ *Id.*

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)(2) of Commerce's regulations provides that, generally, imports must increase by at least 15 percent during the "relatively short period" to be considered "massive" and § 351.206(i) 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)⁸ and ending at least three months later.⁹ Commerce's 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.¹⁰

Critical Circumstances Allegation

In its allegation, the petitioner contends that, based on the dumping margin alleged in the Petition, importers knew, or should have known, that the merchandise under consideration was being sold at less than fair value.¹¹ The petitioner also contends that, based on the preliminary determination of injury by the U.S. International Trade Commission (ITC), there is a reasonable basis to impute importers' knowledge that material injury is likely by reason of such imports.¹² Finally, the petitioner contends that, because verifiable shipment data do not exist because of the respondent's failure to cooperate in the investigation, an adverse inference can be made that

⁸ See 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

⁹ See 19 CFR 351.206(h)(2) and (i).

¹⁰ See 19 CFR 351.206(i).

¹¹ See Allegation at 5-9.

¹² *Id.* at 9-10.

imports were massive during the relevant time period.¹³

Critical Circumstances Analysis

Use of Facts Available with 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. Because the mandatory respondent THIELMANN has not provided necessary information in this investigation, we preliminarily find that necessary information is not on the record, pursuant to section 776(a)(1) of the Act. Furthermore, because THIELMANN is not participating in this investigation, we also preliminarily find that THIELMANN withheld information that was requested by Commerce, significantly impeded this proceeding, and failed to provide information within the deadlines established, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, respectively. Therefore, we have made this preliminary determination of critical circumstances on the basis of the facts otherwise available.

Section 776(b) of the Act 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) of the Act 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. Because THIELMANN determined not to participate in this

¹³ *Id.* at 10-11.

investigation, we find that THIELMANN did not cooperate to the best of its ability in this investigation, pursuant to section 776(b) of the Act. Therefore, we find that adverse inferences are warranted in selecting from the facts available regarding certain aspects of this preliminary determination of critical circumstances. We detail our use of adverse inferences in selecting from among the facts otherwise available below.

History of Dumping and Material Injury/Knowledge of Sales Below Fair Value and Material Injury

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on the 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.¹⁴ In this case, the current investigation of the subject merchandise marks the first instance that Commerce has examined whether sales of the subject merchandise have been made at less than fair value in the United States. Accordingly, Commerce previously has not imposed an AD order on the subject merchandise. Moreover, Commerce is not aware of any AD order on the subject merchandise from Mexico in another country. Therefore, Commerce finds no history of injurious dumping of the subject merchandise pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether importers knew or should have known that exporters were selling the subject merchandise at less than fair value, pursuant section 733(e)(1)(A)(ii) of the Act, we typically consider the magnitude of dumping margins, including margins alleged in the

¹⁴ 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); *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).

petition.¹⁵ Commerce has found margins of 15 percent or more (for constructed export price or CEP) to 25 percent or more (for export price or EP) to be sufficient for this purpose.¹⁶

Commerce initiated this AD investigation based on an estimated margin of 18.48 percent for EP sales. For the reasons discussed above, we find that an adverse inference is warranted in selecting from the facts available. THIELMANN's quantity and value questionnaire response

¹⁵ See, e.g., *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) (CORE Critical Circumstances Prelim); see also *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016) (India Final); *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016) (Italy Final); *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016) (Korea Final); *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) (China Final); *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35313 (June 2, 2016) (Taiwan Final); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (China CVD Final); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Taiwan: Final Negative Countervailing Duty Determination*, 81 FR 35299 (June 2, 2016) (Taiwan CVD Final); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Italy: Final Affirmative Determination and Final Affirmative Critical Circumstances, in Part*, 81 FR 35326 (June 2, 2016) (Italy CVD Final); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016) (Korea CVD Final); *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*, 67 FR 19157, 19158 (April 18, 2002) unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Australia*, 67 FR 47509 (July 19, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From the People's Republic of China*, 67 FR 62107 (October 3, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from India*, 67 FR 47518 (July 19, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Korea*, 67 FR 62124 (October 3, 2002), *Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From The Netherlands*, 67 FR 62112 (October 3, 2002), *Notice of the Final Determination Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From the Russian Federation*, 67 FR 62121 (October 3, 2002).

¹⁶ *Id.*; see also *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 (November 20, 1997); *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672 (July 16, 2004) unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

indicates a mix of EP and CEP sales.¹⁷ Furthermore, the petition identifies the existence of a U.S. affiliate, Thielmann US LLC.¹⁸ As such, as an adverse inference in selecting from among the facts otherwise available, we preliminarily find that THIELMANN's sales were a mix of CEP and EP sales. The margin alleged in the petition exceeds the 15 percent threshold for CEP sales necessary to impute importer knowledge.¹⁹ Because THIELMANN's sales were a mix of CEP and EP sales, and the margin alleged in the petition, the only relevant fact on the record, exceeds the 15 percent threshold for CEP sales, we preliminarily find that knowledge of sales at less than fair value may be imputed to importers. Thus, we preliminarily determine that importers knew or should have known that exporters in Mexico were selling subject merchandise at less than fair value, satisfying the criteria under section 733(e)(1)(A)(ii) of the Act.

To determine whether importers knew or should have known that there was likely to be material injury caused by reason of such imports pursuant to section 733(e)(1)(A)(ii) of the Act, Commerce normally will look to the preliminary injury determination of the ITC.²⁰ If the ITC finds a reasonable indication of material injury (rather than the threat of injury) to the relevant

¹⁷ See Letter from THIELMANN, "Refillable Stainless Steel Kegs from Mexico: Quantity and Value Questionnaire Response," dated October 24, 2018.

¹⁸ See Letter to the Secretary of Commerce from the petitioners, "Petitions for the Imposition of Antidumping Duties on Imports of Refillable Stainless Steel Kegs from Germany, Mexico, and the People's Republic of China and Countervailing Duties on Imports of Refillable Stainless Steel Kegs from the People's Republic of China," dated September 20, 2018 at Volume I, Exhibit GEN-24 and Volume IV, Exhibit MEX-AD-1.

¹⁹ In other preliminary critical circumstances determinations, Commerce has applied the 15 percent CEP threshold when sale types were mixed and the majority of the sales were CEP. See e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309 (May 26, 2012) unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (November 17, 2012); *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 76 FR 67688 (Nov. 2, 2011) unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422 (March 26, 2012).

²⁰ 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) unchanged in *Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry*, 75 FR 30377 (June 1, 2010).

U.S. industry, Commerce will normally determine that a reasonable basis exists to impute to importers sufficient knowledge of injury by such imports. In the subject AD investigation, the ITC found that there is a “reasonable indication” of material injury to the domestic industry because of the imported subject merchandise.²¹ Therefore, the ITC’s preliminary injury determination in this investigation is sufficient to impute knowledge of the likelihood of material injury to importers. Thus, we preliminarily determine that importers knew, or should have known, that there was likely to be material injury caused by reason of such imports, pursuant to section 733(e)(1)(A)(ii) of the Act.

Massive Imports

In determining whether imports of subject merchandise from Mexico were “massive” 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”). Imports will normally be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

As discussed above, we are applying adverse facts available in reaching our findings for certain aspects of this preliminary determination of critical circumstances. We do not have information regarding import volumes for THIELMANN, based on its non-participation in this investigation. We preliminarily find, on the basis of adverse facts available, that THIELMANN

²¹ See USITC, Investigation Nos. 70I-TA-610 and 73I-TA-1425-1427 (Preliminary), *Refillable Stainless Steel Kegs from China, Germany, and Mexico* at 1 (November 5, 2018); see also *Refillable Stainless Steel Kegs From China, Germany, and Mexico*, 83 FR 56102 (November 9, 2018).

had massive imports of subject merchandise over a relatively short period, satisfying the criteria under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). Thus, we preliminarily determine that critical circumstances exist regarding imports of kegs from Mexico shipped by THIELMANN, pursuant to section 733(e) of the Act and 19 CFR 351.206.

To determine massive imports for all other companies, Commerce's normal practice is to subtract shipments reported by the cooperating mandatory respondents from shipment data of subject merchandise compiled by the ITC.²² However, due to the broad nature of the HTSUS numbers under which the subject merchandise is entered, there are no reliable shipment data available.²³ Additionally, there is no cooperating mandatory respondent in this investigation.²⁴ Therefore, we have made this preliminary determination on whether massive imports exist for all other companies using adverse facts available, pursuant to sections 776(a) and (b) of the Act. Accordingly, we preliminarily find that all other companies have massive imports of subject merchandise over a relatively short period and, thus, critical circumstances exist regarding imports of kegs from Mexico produced and/or exported by all other companies, pursuant to section 733(e) of the Act and 19 CFR 351.206.

Final Critical Circumstances Determination

We will issue our final determination concerning critical circumstances when we issue our final less-than-fair-value determination. All interested parties will have the opportunity to address this preliminary determination regarding critical circumstances in case briefs to be submitted after completion of the preliminary less-than-fair-value determination, in accordance

²² See, e.g., *CORE Critical Circumstances Prelim and India Final, Italy Final, Korea Final, China Final, Taiwan Final, China CVD Final, Taiwan CVD Final, Italy CVD Final, Korea CVD Final*.

²³ See *Initiation Notice*.

²⁴ Commerce sent quantity and value questionnaires to each of the companies identified in the Petition, but of those five companies only THIELMANN responded. See Letter from Commerce to interested parties, "Quantity and Value Questionnaire for the Antidumping Duty Investigation of Refillable Stainless Steel Kegs from Mexico" (October 11, 2018).

with Commerce's instructions to be issued following the publication of the preliminary determination of sales at less than fair value.

ITC Notification

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

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to all imports of kegs from Mexico, if we make an affirmative preliminary determination of sales at less than fair value at above *de minimis* rates,²⁵ we will instruct Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of "provisional measures" (*e.g.*, the date of publication in the *Federal Register* of the notice of an affirmative preliminary determination of sales at less than fair value at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the *Federal Register*. The suspension of liquidation will remain in effect until further notice.

²⁵ Commerce intends to issue its preliminary determinations concerning the sales at less than fair value investigations no later than May 28, 2019. *See* Postponement Notice.

This notice is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.206(c).

Dated: April 26, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

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