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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-849]

Refillable Stainless Steel Kegs from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that refillable stainless steel kegs (kegs) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2017, through June 30, 2018. Interested parties are invited to comment on this preliminary determination.

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

FOR FURTHER INFORMATION CONTACT: Allison Hollander at (202) 482-2805 or Minoa Hatten at (202) 482-1690, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this investigation on October 16, 2018.¹ This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce exercised its discretion to toll all deadlines affected by

¹ 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, 2016) (*Initiation Notice*).

the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.² On March 19, 2019, at the request of the petitioner, Commerce postponed the deadline for the preliminary determination until May 28, 2019.³ On May 2, 2019, Commerce preliminarily determined that critical circumstances exist.⁴

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.⁵ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The products covered by this investigation are refillable stainless steel kegs from Mexico. For a complete description of the scope of this investigation, *see* Appendix I.

² *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

³ *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).

⁴ *See Antidumping Duty Investigation on Refillable Stainless Steel Kegs from Mexico: Preliminary Affirmative Determination of Critical Circumstances*, 84 FR 18796 (May 2, 2019) (*Critical Circumstances Determination*).

⁵ *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Refillable Stainless Steel Kegs from Mexico," dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁶ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁷ Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record of this investigation, and a discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁸ The scope case briefs were due on May 6, 2019, 30 days after the publication of *Kegs from China Preliminary CVD Determination*.⁹ There will be no further opportunity for comments on scope-related issues. Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice*.¹⁰ *See* the revised scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a)-(b) of the Act, Commerce has preliminarily used an adverse inference when selecting from among the facts otherwise available for THIELMANN Mexico S.A. de

⁶ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁷ *See Initiation Notice*, 83 FR at 52196.

⁸ *See* Memorandum, "Refillable Stainless Steel Kegs from the People's Republic of China, Germany, and Mexico: Scope Comments Decision Memorandum for the Preliminary Determinations," dated March 29, 2019 (Preliminary Scope Decision Memorandum).

⁹ The scope case briefs were due 30 days after the publication of *Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 13634 (April 5, 2019) (*Kegs from China Preliminary CVD Determination*). *See* the Preliminary Scope Decision Memorandum at 5. Because the deadline fell on Sunday, May 5, 2019, the actual deadline for the scope case briefs was Monday, May 6, 2019. *See* 19 CFR 351.303(b)(1) ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day."). The deadline for scope rebuttal briefs was Monday, May 13, 2019.

¹⁰ *Id.* at 3-4; *see also* Preliminary Scope Decision Memorandum at 15.

C.V. (THIELMANN), Portinox Mexico S.A. de C.V. (Portinox)¹¹ and Geodis Wilson Mexico S.A. de C.V. (Geodis Wilson). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Critical Circumstances

On December 10, 2019, the petitioner filed a timely critical circumstances allegation with respect to imports of the subject merchandise from Mexico. Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A) 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 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. On May 2, 2019, we published our preliminary determination that critical circumstances exist with respect to imports of kegs exported from Mexico.¹²

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers

¹¹ The petitioner stated that Portinox is the former name of THIELMANN. However, because neither Portinox nor THIELMANN responded to our initial questionnaire, we are unable to confirm that Portinox is the former name of THIELMANN. *See* the petitioner's Letter, "Supplement to the Petition for the Imposition of Antidumping Duties on Imports of Refillable Stainless Steel Kegs from Mexico and Germany: Response to the Department's Supplemental Questions," dated September 28, 2019, at 3 (Petition Supplement).

¹² *See Critical Circumstances Determination.*

individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all-other producers or exporters. Commerce has preliminarily determined the estimated weighted-average dumping margin for the individually examined respondent under section 776 of the Act. Consequently, pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances is to calculate the "all-others" rate as a simple average of the alleged dumping margin(s) from the petition.¹³ However, because there was only one dumping margin alleged in the Petition pertaining to kegs from Mexico, consistent with its practice, Commerce is preliminarily assigning the dumping margin alleged in the Petition as the "all-others" rate to all exporters and producers not individually examined. For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

¹³ *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also, Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).

Producer/Exporter	Weighted-Average Margin (percent)
THIELMANN Mexico S.A. de C.V.	18.48
Portinox Mexico S.A. de C.V.	18.48
Geodis Wilson Mexico S.A. de C.V.	18.48
All Others	18.48

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject 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. On May 2, 2019, Commerce preliminarily found that critical circumstances exist for all imports of subject merchandise from Mexico.¹⁴ Therefore, in accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

¹⁴ See *Critical Circumstances Determination*.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied adverse facts available (AFA) to the individually examined company THIELMANN, as well as Portinox and Geodis Wilson in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the Petition, there are no calculations to disclose.

Verification

Because THIELMANN did not provide information requested by Commerce, and Commerce preliminarily determines that THIELMANN has been uncooperative within the meaning of section 776(b) of the Act, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹⁵ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in

¹⁵ See 19 CFR 351.309; *see also*, 19 CFR 351.303 (for general filing requirements).

the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration, and 19 CFR 351.210(e)(1) further provides that Commerce may grant the request, unless Commerce finds compelling reasons to deny the request.

On April 29, 2019, pursuant to 19 CFR 351.210(e), THIELMANN requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹⁶ However, we find that a compelling reason to deny the request to postpone the final determination exists because THIELMANN declined to respond to our original questionnaire or otherwise participate in the investigation. THIELMANN is the sole mandatory respondent in this case, and because it declined to respond to our initial questionnaire and is not participating in the investigation, there is no need to postpone the final determination, and we are thus compelled to deny the request. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(e)(1) and (2), because a compelling reason for denial exists we are not granting THIELMANN's request to postpone the final determination. Therefore, we intend to issue the final determination pursuant to section 735(a)(1) of the Act and 19 CFR 351.210(b)(1).

¹⁶ See THIELMANN's Letter, "Refillable Stainless Steel Kegs from Mexico: Request For Postponement of Final Determination," dated April 29, 2019.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 28, 2019.

Christian Marsh,
Deputy Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation are kegs, vessels, or containers with bodies that are approximately cylindrical in shape, made from stainless steel (*i.e.*, steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a “D Sankey” extractor (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. Refillable stainless steel kegs may be imported assembled or unassembled, with or without all components (including spears, couplers or taps, necks, collars, and valves), and be filled or unfilled.

“Unassembled” or “unfinished” refillable stainless steel kegs include drawn stainless steel cylinders that have been welded to form the body of the keg and attached to an upper (top) chime and/or lower (bottom) chime. Unassembled refillable stainless steel kegs may or may not be welded to a neck, may or may not have a valve assembly attached, and may be otherwise complete except for testing, certification, and/or marking.

Subject merchandise also includes refillable stainless steel kegs that have been further processed in a third country, including but not limited to, attachment of necks, collars, spears or valves, heat treatment, pickling, passivation, painting, testing, certification or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope refillable stainless steel keg.

Specifically excluded are the following:

- (1) vessels or containers that are not approximately cylindrical in nature (*e.g.*, box, “hopper” or “cone” shaped vessels);
- (2) stainless steel kegs, vessels, or containers that have either a “ball lock” valve system or a “pin lock” valve system (commonly known as “Cornelius,” “corny” or “ball lock” kegs);
- (3) necks, spears, couplers or taps, collars, and valves that are not imported with the subject merchandise; and
- (4) stainless steel kegs that are filled with beer, wine, or other liquid and that are designated by the Commissioner of Customs as Instruments of International Traffic within the meaning of section 332(a) of the *Tariff Act of 1930*, as amended.

The merchandise covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050.

These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigation
- V. Scope Comments
- VI. Product Characteristics
- VII. Application of Facts Available and Use of Adverse Inference, and Calculation Of All-
Others Rate
 - A. Application of Facts Available
 - B. Use of Adverse Inference
 - C. Preliminary Estimated Weighted-Average Dumping Margins Based on Adverse
Facts Available
 - D. Corroboration of Secondary Information
 - E. All Others Rate
- VIII. Critical Circumstances
- IX. Verification
- X. Conclusion

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