

Petitioner obtained foreign market research relating to two grades of TTR sold in the Japanese market. This sales information is contemporaneous with the sales information used as the basis for CEP and represents sales of products that are either identical or similar to those products for which the Petitioner obtained U.S. sales information.

As detailed in the *Initiation Checklist*, the petition contained documentation supporting the figures used in this NV calculation, which was analyzed by the Department and revised by the Petitioner through answers to supplemental questions issued by the Department.

#### All Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and facts available margins to establish that "All Others" rate. Where the data do not permit weight-averaging such rates, the SAA provides that we use other reasonable methods. *See SAA* at 873. The petition contained only information relating to U.S. sales by DNP, compared against home market sales prices and cost. Since DNP is the largest Japanese producer/exporter of subject merchandise, it is reasonable to use a margin based on its U.S. sales as the "All Others" rate. The estimated dumping margin for subject merchandise from Japan, based on comparisons of CEP and NV, range between 65.9 and 147.3 percent, in the *Initiation Notice*. Accordingly, we calculated a simple average of these two dumping margins in the *Initiation Notice*, and applied this margin of 106.60 percent as the "All Others" rate.

#### Critical Circumstances

On November 26, 2003, the Petitioner alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of TTR from Japan. In accordance with 19 CFR § 351.206(c)(2)(i), because the Petitioner submitted critical circumstances allegations exactly 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances

determinations not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily 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 19 CFR 351.206(h)(1) of the Department's regulations provides 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 19 CFR § 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 19 CFR § 351.206(i) of the Department's regulations defines "relatively short period" as normally being 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 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, the Department may consider a period of not less than three months from that earlier time.

Because we are not aware of any antidumping order in any country on TTR from Japan, we do not find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to the second criterion for determining importer knowledge of dumping.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the TTR at less than fair value, the Department's normal practice is to consider margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price

(CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China (PRC Plate)*, 62 FR 31972, 31978 (June 11, 1997). In the instant case, the mandatory respondents, UC and DNP did not respond to the Department's questionnaire and we have applied, as AFA, the highest of the dumping margins presented in the petition and corroborated by the Department. This is consistent with section 776 of the Act and with Department practice. *See Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan (Vector Supercomputers)*, 62 FR 45623 (August 28, 1997). UC and DNP's assigned dumping margins of 147.30 percent are greater than 15 percent. Therefore, we have imputed knowledge of dumping to importers of subject merchandise from these companies.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC 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 that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for all identified countries. *See ITC Prelim*. As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of subject merchandise from Japan.

In determining whether there are "massive imports" over a "relatively short period," the Department normally compares the import volume of the subject merchandise for three months immediately preceding and following the filing of the petition. Imports normally will be considered massive when imports have increased by 15 percent or more during this "relatively short period."

On December 12, 2003, DNP filed company-specific import data and comments. However, these comments and information were submitted too late for consideration in this preliminary determination. Because we do not have verifiable data from the two uncooperative Japanese companies, the