

November 13, 2017

Inv. No. 701-TA-573-574 and
731-TA-1349-1358 (Final)

PUBLIC VERSION

Business Proprietary Information
removed from brackets at pages 5, 6, 7 and Exhibit A.

VIA EDIS AND HAND-DELIVERY

Secretary Lisa R. Barton
U.S. International Trade Commission
500 E. Street S.W.
Washington, DC 20436

RE: Carbon and Certain Alloy Steel Wire Rod From Belarus, Italy, Korea, Russia, South
Africa, Spain, Turkey, Ukraine, The United Arab Emirates, and The United Kingdom

Dear Secretary Barton:

On behalf of our client, NMLK-Ural, respondent in this case, we hereby submit the non-confidential version of NMLK-Ural's Pre-hearing Brief in the above-captioned proceeding.

In accordance with Section 207.15 of the Commission's rules, we filed the confidential version of this Brief electronically and submitted true paper copies on November 9, 2017. This non-confidential version will be filed electronically and true paper copies will be submitted today.

Pursuant to Section 201.6, we request business proprietary treatment of the information contained in brackets in the Brief. This includes proprietary domestic industry, importer, and foreign producer data; and other information released to this firm under administrative protective order ("APO"). Disclosure of this information would cause substantial commercial and

competitive harm to the parties subject to the APO and would impair the ability of the Commission to obtain information in the future necessary to fulfill its statutory functions.

The certifications required by Sections 201.6(a) and 207.3(a) are enclosed. Copies of the submission are being served on the parties identified in the attached certificate of service. Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Peter Koenig

Carolina Mederos
George Grammas
Peter Koenig

Counsel for NMLK-Ural

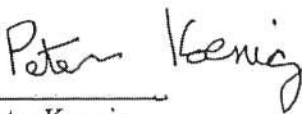
CERTIFICATION

I, Peter Koenig, of Squire Patton Boggs (US) LLP, counsel to NLMK-Ural, certify pursuant to section 207.3(a) of the Commission's rules that I have reviewed the attached submission and the information in the submission is accurate and complete to the best of my knowledge.

I also certify, pursuant to section 201.6(b)(3)(iii) of the Commission's rules, that information substantially identical to the information for which we are requesting proprietary treatment in the attached submission is not available to the public.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 9, 2017.

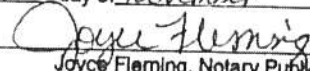

Peter Koenig



JOYCE FLEMING
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires May 31, 2018

District of Columbia: SS

Subscribed and sworn to before me, in my presence,
this 9th day of November, 2017


Joyce Fleming, Notary Public, D.C.
My commission expires May 31, 2018.

CERTIFICATE OF SERVICE

PUBLIC SERVICE

I certify that a copy of the attached public version of NLMK-Ural's Pre-Hearing Brief was served on the following parties, by hand delivery, on November 13, 2017

/s/ Peter Koenig
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**BEFORE THE
U.S. INTERNATIONAL TRADE COMMISSION**

**Inv. No. 701-TA-573-574 and 731-TA-1349-1358 (Final)
Business Proprietary Information removed from pages 5, 6, 7 and Exhibit A**

**CARBON AND CERTAIN ALLOY STEEL WIRE ROD FROM BELARUS, ITALY,
KOREA, RUSSIA, SOUTH AFRICA, SPAIN, TURKEY, UKRAINE, THE UNITED
ARAB EMIRATES, AND THE UNITED KINGDOM**

PRE-HEARING BRIEF OF NLMK-URAL

November 9, 2017

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PRE-HEARING BRIEF OF NLMK-URAL

NLMK-Ural, a Russian producer and exporter to the United States of the subject alloy and carbon steel wire rod, comments as follows:

EXECUTIVE SUMMARY

The Commission should issue a negative critical circumstances finding as to Russia in general and NLMK-Ural in particular. Subject alloy and carbon steel wire rod exports to the United States from Russia, and any inventories thereof in the United States, did not increase to any measurable extent after the filing of the petition compared to before. Indeed, NLMK-Ural ceased making any sales to the United States after the filing of the petition, executing only U.S. sales contracts that preceded the filing of the petition, and none after. Further, on average, pricing as to U.S. shipments of Russian subject wire rod was higher after the filing of the petition compared to before. Prices were not dropped to facilitate an import surge before preliminary remedial measures began.

DETAILED REASONS FOR NEGATIVE CRITICAL CIRCUMSTANCES FINDING AS TO RUSSIA IN GENERAL AND NLMK-URAL IN PARTICULAR

I. INTRODUCTION

The record in this case warrants a negative critical circumstances determination. On September 12, 2017, the U.S. Department of Commerce (“Commerce”) issued a preliminary affirmative critical circumstances determination with respect to Russia in general and NLMK-Ural in particular. Commission Staff Pre-Hearing Report, November 2, 2017 at IV-7 (“Prehearing Report”). This affirmative inference was based only on the fact that neither Abinsk nor NLMK-Ural, mandatory respondents for Russia, answered Commerce’s dumping questionnaire. However, the now established record before the U.S. International Trade

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Commission (“Commission”) for NLMK-Ural in particular and Russia in general compels a negative critical circumstances determination.

II. THE COMMISSION SHOULD ISSUE A NEGATIVE CRITICAL CIRCUMSTANCES DETERMINATION AS TO NLMK-URAL IN PARTICULAR AND RUSSIA IN GENERAL

The Commission must determine if the imports subject to this affirmative injury determination and a Commerce critical circumstances finding “are likely to undermine seriously the remedial effect of the antidumping duty order.” 19 U.S.C. § 1673d(b)(4)(A)(i). In making this determination, the Tariff Act of 1930, as amended (the “Act”), instructs the Commission to consider three factors, “among other factors it considers relevant:” (I) the timing and volume of the imports, (II) a rapid increase in inventories of the imports, and (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined. 19 U.S.C. § 1673d(b)(4)(A)(ii).

The legislative history explains that the Act was designed, in part, to “deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination.” H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979). *See also ICC Indus., Inc. v. United States*, 812 F.2d 694, 699-700 (Fed. Cir. 1987). The Statement of Administrative Action further explains that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.” Uruguay Round Agreements Act: Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, at 877 (1994), reprinted in 1994 U.S.C.C.A.N. 4040. The critical circumstances standard set by Congress is a high standard

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to meet and is the reason why the Commission rarely reaches an affirmative critical circumstance determination since the provision was enacted in 1979, 38 years ago.

A. The Timing and Volume of Imports Support A Negative Critical Circumstances Determination

When evaluating the first critical circumstances factor, the timing and volume of imports, the general practice of the Commission is to rely on monthly data for a period of equal length before and after the filing of the petition. *See Emulsion Styrene-Butadiene Rubber from Brazil, Korea, Mexico, and Poland*, Inv. Nos. 731-TA-1337, USITC Pub. 4717 (Aug. 2017) at 32. The Commission generally focuses on a six-month period before and after that filing. However, the Commission has discretion to focus on other time periods. *Id.* at 33. Generally, the Commission finds that an increase in imports, even a substantial increase, does not warrant an affirmative critical circumstances determination – that is, the increase must be significant enough to seriously undermine the remedial effect of the order. *See Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal*, Inv. No. 731-TA-1264-1268 (Final), USITC Pub. 4592 (Feb. 2016), at 32-33 (finding that although there was an increase in imports, it was only a modest increase and did not warrant an affirmative critical circumstances determination); *Certain Folding Metal Tables and Chairs from China*, Inv. No. 731-TA-932 (Final), USITC Pub. 3515 (Jun. 2002), at 25 (finding that a “substantial increase” in the volume of the imports was not “sufficiently large” to make an affirmative critical circumstances determination).

In this case, the petition was filed on March 28, 2017. Therefore, the six-month periods of comparison are October 2016 through March 2017 (pre-petition period)¹ and April 2017 through September 2017 (post-petition period). Table IV-4 of the Prehearing Report shows that

¹ If the petition is filed in the second half of the month, the month of the filing of the petition is considered the pre-petition period, under Commerce regulations.

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imports from Russia were 35,891 short tons from October 2016 through March 2017 and 35,171 short tons from April 2017 through September 2017.² In other words, imports from Russia actually fell (slightly) after the filing of the petition. A negative critical circumstances finding is warranted.

As evidenced by the statute and the legislative history, a finding of critical circumstances is intended if an exporter circumvented the intent of the law by a massive increase in exports before remedial measures are applied and thereby seriously undermined the effectiveness of such remedies. The above data makes clear that such a finding is not appropriate here. Seeing this, the Commission should issue a negative critical circumstances decision with respect to Russia in general and NLMK-Ural in particular.

For further reasons, the Commission should not find critical circumstances with regard to NLMK-Ural in particular. All 2017 NLMK-Ural contracts for the sale of subject wire rod to the United States were all (100%) contracted before the filing of the petition. None (0%) after. *See* Exhibit A, NLMK-Ural List of U.S. Contracts in 2016-2017. All NLMK-Ural U.S. sales activity as to the subject wire rod ceased immediately when the petition was filed. This fact further supports a negative critical circumstances finding. NLMK-Ural respects U.S. antidumping law.

B. Post-Petition Inventory Levels Support A Negative Critical Circumstances Determination

As discussed above, the Commission also evaluates post-petition inventory levels to ensure that an exporter does not significantly stockpile inventory in the U.S. after petition filing, for sale later. The concern is that such action might undermine the efforts of a remedial antidumping order.

² September 2017 data is now available and included in the figures.

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However, when evaluating inventory levels, the Commission generally finds that an increase in inventory after petition filing is not sufficient to find critical circumstances. *See Certain Orange Juice from Brazil*, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 (Mar. 2006), at 29-30 (finding no critical circumstances, even though there was an increase in U.S. inventory after petition filing). Further, the Commission has also found that even an increase in inventory coupled with an increase in imports is insufficient for an affirmative critical circumstances finding, especially if the increase is immaterial relative to the overall U.S. market. *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom*, Inv. No. 731-TA-1291-1297 (Final), USITC Pub. 4638 (Sept. 2016), at 49-51.

Commerce's preliminary dumping decision was effective September 12, 2017. Here, according to Table C-1 in the Pre-Hearing Report, the U.S. inventory quantity for Russia subject wire rod as of September 30, 2017 (the end of the Commission's interim 2017 period, the most pertinent data) was [] short tons. In contrast, the inventory for September 30, 2016 was [] short tons and for end of 2016 [] short tons. Based on prior Commission findings, this increase in inventory is not sufficient to demonstrate an effort to stockpile inventory after the filing of a petition, much less to support a finding that an antidumping remedy is undermined.

Relative to U.S. industry inventory levels, the post-petition U.S. inventory of Russian subject wire rod is insignificant. Per the Commission Staff Report, the U.S. inventory of all subject imports from the accused countries on September 30, 2017 was [] short tons and [] short tons for all imports. Russia's September 30, 2017 inventory is a mere [] of the September 30, 2017 inventory from the subject accused countries and an even more inconsequential [] of such inventory as to imports from all accused countries. Furthermore,

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September 30, 2017 inventory of U.S. producers was [] short tons. The September 30, 2017 inventory for Russia was only a de minimis fraction ([]) of that amount. Moreover, inventory of U.S. product increased [] short tons between September 30, 2016 and September 30, 2017, while the inconsequential increase in U.S. inventory of subject Russian wire rod was a token [] of that amount. One could go on. Nevertheless, by any measure, there was no significant increase of U.S. inventory of subject Russian wire rod after the filing of the petition, much less to a degree to undermine the remedial effect of any anti-dumping remedy.

C. Additional Circumstances Support A Negative Critical Circumstances Determination – A Respect For U.S. Law And Not Undermining It.

The Commission also relies on additional circumstances as to whether there was an intent to undermine an antidumping remedy. In our case, there are no such circumstances, indeed quite the opposite. There was no increase in imports and inventories to undermine any antidumping remedy.

This conclusion is especially apparent after reflecting on the body of Commission experience. Since the enactment of the critical circumstances provision in 1979, the Commission has rarely made an affirmative critical circumstances determination. In fact, the Commission frequently finds no critical circumstances in cases where import volumes, inventory, or even both have increased in the period after the filing of the petition. This demonstrates the very high standard applied by the Commission to find an antidumping remedy undermine, a standard not met in our case.

Consider rare few cases when, over the last 38 years, the Commission found critical circumstances.

First, the Commission found critical circumstances in *Honey from Argentina and China*. See Inv. No. 731-TA-892-892 (Final), USITC Pub. 3470 (Nov. 2001), at 23. In that case,

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imports surged 78.5 percent in the six-month period after the filing of the petition, and inventories skyrocketed a staggering 292 percent. *Id.* Along with these percentages, the Commission relied on evidence of low and depressed domestic honey prices that were used to facilitate the surge. *Id.*

Second, in *Synthetic Indigo from China*, Inv. No. 731-TA-851 (Final), USITC Pub. 3310 (Jun. 2000), at 15, the Commission also made an affirmative critical circumstances finding when imports increased 300 percent after the filing of the petition and the price of the subject imports fell to their lowest levels in the entire period of the investigation.

In stark contrast, in our case, there was no increase in imports after the filing of the petition. In addition, the average import price of products 1 (grade C1006) and 2 (grade C1008 and C1010) as to which there were Russian subject imports and thus pricing data, actually increased from [] to [] over the 2016 to 2017 period. *See* Pre-Hearing Report. There was no Russian price drop to facilitate an import surge before Commerce's preliminary dumping determination, to undermine any antidumping remedy. The facts in the above cases, which resulted in an affirmative critical circumstances determination, are not present in our case.

Further, the Commission has assessed injury on a cumulated basis as to all ten countries. *See, e.g.,* its preliminary determination. Russia and NLMK-Ural in particular as a percent of total accused imports are only an inconsequential [] and [] respectively, in 2017.³ Such insignificant percentages are insufficient to lead to undermining any antidumping remedy.

In addition, the U.S. industry has generally seen improvements when comparing January – September 2017 to the same time frame in 2016. For example, U.S. producers' production and capacity utilization increased in 2017 as well as U.S. producers' total shipments. Beyond that,

³ These percentages were calculated from data from the USITC Pre-Hearing Report and the NLMK-Ural Questionnaire Response.

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U.S. industry employment improved in 2017 compared to 2016, as to total hours worked, wages paid, and productivity (measured in short tons per 1,000 hour). *See* Commission Staff Pre-Hearing Report. Again, there was no surge in Russian imports to hurt the U.S. industry and thereby undermine any antidumping remedy.

Finally, as noted in pre-hearing briefs of other respondents, Petitioners' injury case is unsupported, further supporting a negative critical circumstances finding.

III. CONCLUSION

Here, there is no evidence of an intent to undermine any antidumping remedy, much less evidence that would meet the Commission's high standard for an affirmative critical circumstances finding for Russia generally or NLMK-Ural in particular.

Indeed, all the evidence is otherwise. After the filing of the petition: (a) imports of Russian subject wire rod fell, (b) average prices of Russian subject wire rod increased, (c) NLMK-Ural ceased making any new U.S. sales, and (d) U.S. industry performance improved.

In short, as the Commission has found in the vast majority of cases for over thirty years, a negative critical circumstances finding is warranted, as to Russia in general and NLMK-Ural in particular.

Respectfully submitted,

Squire Patton Boggs

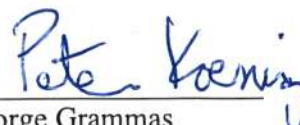

George Grammas
Peter Koenig

EXHIBIT A

Exhibit A
NMLK-Ural List of U.S. Contracts in 2016-2017

	Contract date	Clients Contract	Client	Quantity, metric tons	Quantity, Short tons
[
TOTAL:			[

1

1