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**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-570-948]

**Certain Steel Grating From the People's Republic of China: Initiation of Countervailing Duty Investigation**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

<sup>1</sup> If you believe that another date besides the invoice date would provide a more accurate

**DATES:** *Effective Date:* June 25, 2009

**FOR FURTHER INFORMATION CONTACT:**

Sean Carey or Justin Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3964 and (202) 482-0486, respectively.

**SUPPLEMENTARY INFORMATION:****The Petitions**

On May 29, 2009, the Department of Commerce (the Department) received

representation of your company's sales during the

countervailing duty (CVD) and antidumping (AD) petitions concerning imports of certain steel grating (CSG) from the People's Republic of China (PRC) filed in proper form by Alabama Metal Industries Corp. (AMICO) and Fisher and Ludlow (collectively, the petitioners), domestic producers of CSG. See "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Steel Grating from the People's Republic of China" (the petitions). On June 4, 2009, the Department issued requests for additional information and clarification designated period, please provide a full explanation.

of certain areas of the CVD petition involving countervailable subsidy allegations and further information and clarification concerning general issues common to the petitions. See Letter from Dana Mermelstein, Program Manager, AD/CVD Operations, Office 6, to the petitioners, "Petition for the Imposition of Countervailing Duties on Steel Gratings Imported from the People's Republic of China: Supplemental Questions, June 4, 2009." See also Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the petitioners, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Steel Grating from the People's Republic of China: Supplemental Questions, June 4, 2009." Based on the Department's requests, the petitioners timely filed additional information on June 9, 2009. A second request seeking additional information and clarification concerning general issues common to the petitions was sent to the petitioners on June 11, 2009. See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the petitioners, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Steel Grating from the People's Republic of China: Supplemental Questions, June 11, 2009." Based on the Department's request, the petitioners timely filed additional information pertaining to the petitions on June 15, 2009. Finally, the petitioners clarified the "Scope of Investigation" on June 16, 2009.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that producers/exporters of CSG in the PRC received countervailable subsidies within the meaning of section 701 and 771(5) of the Act, and that imports materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioners filed this CVD petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and the petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate (see "Determination of Industry Support for the CVD Petition" below).

#### Period of Investigation

The anticipated period of investigation (POI) is calendar year 2008. See 19 CFR 351.204(b)(2).

#### Scope of Investigation

The products covered by this investigation are certain steel grating

from the PRC. For a full description of the scope of the investigation, please see the "Scope of Investigation" in Appendix I to this notice.

#### Comments on Scope of Investigation

During our review of the CVD petition, we discussed the scope with petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within twenty calendar days of the date of publication of this notice in the **Federal Register**. Comments should be addressed to the Import Administration's Central Records Unit (CRU), Room 1117, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

#### Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations with the government of the PRC (hereinafter, the GOC) with respect to the CVD petition on June 1, 2009. See Memorandum to the File, *Countervailing Duty Petitions on Pre-Stressed Concrete Steel Wire Strand and Certain Steel Grating from the People's Republic of China: Consultations with the Government of the People's Republic of China*, on file in the CRU, Room 1117 of the main Department of Commerce building.

#### Determination of Industry Support for the CVD Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic

producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that CSG constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see *Countervailing Duty Investigation Initiation Checklist: CSG from the PRC (CVD Initiation Checklist)*

at Attachment II (Industry Support), dated concurrently with this notice and on file in the CRU, Room 1117 of the main Department of Commerce building.

With regard to section 702(c)(4)(A), in determining whether petitioners have standing (*i.e.*, those domestic workers and producers supporting the CVD petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the CVD petition), we considered the industry support data contained in the CVD petition with reference to the domestic like product as defined in the "Scope of Investigation" in Appendix I. To establish industry support, petitioners provided their production of the domestic like product for the year 2008, and compared this to total production of the domestic like product for the entire domestic industry. *See* Volume I of the AD/CVD petitions at 3–6, and Exhibit I–3, and Supplement to the AD/CVD petitions filed June 9, 2009, at 8–10, and Exhibits 3, 4, 5, 6, and 7. To estimate 2008 production of the domestic like product, the petitioners used their own data as well their own industry specific knowledge. Petitioners calculated total domestic production based on information provided by companies that are supporters of the CVD petition and that produce the domestic like product in the United States, as well as estimates of production of non-petitioning producers of the domestic like product. *See* Volume I of the AD/CVD petitions at 3–6, and Exhibit I–3, and Supplement to the AD/CVD petitions filed June 9, 2009, at 8–10, and Exhibits 3, 4, 5, 6, and 7. *See also CVD Initiation Checklist* at Attachment II, Industry Support.

Our review of the data provided in the CVD petition, supplemental submissions, and other information readily available to the Department indicates that petitioners have established industry support. First, the CVD petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 702(c)(4)(D) of the Act and *CVD Initiation Checklist* at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the CVD petition

account for at least 25 percent of the total production of the domestic like product. *See CVD Initiation Checklist* at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the CVD petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the CVD petition. Accordingly, the Department determines that the CVD petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See CVD Initiation Checklist* at Attachment II.

The Department finds that petitioners filed the CVD petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the countervailing investigation that they are requesting the Department initiate. *See CVD Initiation Checklist* at Attachment II.

#### **Injury Test**

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

#### **Allegations and Evidence of Material Injury and Causation**

Petitioners allege that imports of CSG from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing CSG. In addition, petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share, increased import penetration, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production and capacity utilization, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the

statutory requirements for initiation. *See CVD Initiation Checklist* at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Petition).

#### **Initiation of Countervailing Duty Investigation**

Section 702(b) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the CVD petition on CSG from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether producers/exporters of CSG in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see CVD Initiation Checklist*.

We are including in our investigation the following programs alleged in the CVD petition to provide countervailable subsidies to producers/exporters of the subject merchandise:

##### *A. GOC Provision of Inputs for Less Than Adequate Remuneration*

1. Provision of Hot-Rolled Steel for Less than Adequate Remuneration
2. Provision of Steel Bar for Less than Adequate Remuneration
3. Provision of Steel Plate for Less than Adequate Remuneration
4. Provision of Wire Rod for Less than Adequate Remuneration

##### *B. GOC Provision of Land-Use Rights to State-Owned Enterprises (SOEs) for Less Than Adequate Remuneration*

##### *C. GOC Income Tax Programs*

1. "Two Free, Three Half" Program
2. Reduced Income Tax Rates for Export-Oriented Foreign-Invested Enterprises (FIEs)
3. Preferential Income Tax Policy for Enterprises in the Northeast Region
4. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
5. Tax Subsidies for FIEs in Specially Designated Geographic Areas
6. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
7. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

8. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
9. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises

#### D. GOC VAT Programs

1. Import Tariff and Value Added Tax (VAT) Exemptions for Encouraged Industries Importing Equipment for Domestic Operations
2. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund

#### E. Other GOC Programs

1. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
2. Grants to "Third Line" Military Enterprises

#### F. Provincial/Municipal Programs

1. Liaoning Province "Five Points, One Line" Program
2. Guangzhou City Famous Export Brands
3. Grants to Companies for "Outward Expansion" in Guangdong Province
4. Guangdong and Zhejiang Provinces Programs to Rebate Antidumping Fees

For further information explaining why the Department is investigating these programs, *see CVD Initiation Checklist*.

We are not including in our investigation the following programs alleged to benefit producers/exporters of the subject merchandise in the PRC:

- A. GOC Policy Lending and Directed Credit to Steel Producers
- B. Discounted Loans and Interest Rate Subsidies under the Liaoning Province Framework
- C. Grants to Steel Producers for Environmental Purposes.

For further information explaining why the Department is not initiating an investigation of these programs, *see CVD Initiation Checklist*.

#### Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POI (*i.e.*, calendar year 2008). We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of

this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

#### Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

#### ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized CSG from the PRC materially injure, or threaten material injury to, a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; *see* section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 18, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

#### Appendix I—Scope of the Investigation

The products covered by this investigation are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) Size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as "bar grating," although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod.

The scope of this investigation excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of this investigation also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

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