

The Petition

On March 31, 2010, the Department of Commerce (“Department”) received a countervailing duty (“CVD”) petition concerning imports of certain aluminum extrusions from the People’s Republic of China (“PRC”) filed in proper form by the Aluminum Extrusions Fair Trade Committee¹ and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, “Petitioners”). See The Petitions for the Imposition of Antidumping and Countervailing Duties Against Aluminum Extrusions from the People’s Republic of China, dated March 31, 2010 (the Petition). On April 6, 2010, the Department issued requests to Petitioners for additional information and for clarification of certain areas of the Petition. Based on the Department’s requests, Petitioners filed a supplement to the Petition, regarding general issues, on April 9, 2010 (“Supplement to the AD/CVD Petitions”).

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (“Act”), Petitioners allege that producers/exporters of aluminum extrusions from the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, and threaten further material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties, as defined in section 771(9)(C),(D), and (F) of the Act, and have demonstrated sufficient industry support with respect to the investigation that they request the Department to initiate (*see* “Determination of Industry Support for the Petition” below).

Period of Investigation

The period of investigation is January 1, 2009, through December 31, 2009.

Scope of Investigation

The products covered by this investigation are aluminum extrusions from the PRC. For a full description of the scope of the investigation, please *see* the “Scope of the Investigation” in Appendix I of this notice.

¹ The individual members of the Aluminum Extrusions Fair Trade Committee are Aerolite Extrusion Company, Alexandria Extrusion Company, Benada Aluminum of Florida, Inc., William L. Bonnell Company, Inc., Frontier Aluminum Corporation, Futura Industries Corporation, Hydro Aluminum North America, Inc., Kaiser Aluminum Corporation, Profile Extrusion Company, Sapa Extrusions, Inc., and Western Extrusions Corporation.

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–968)

Aluminum Extrusions from the People’s Republic of China: Initiation of Countervailing Duty Investigation

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

EFFECTIVE DATE: April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Tran and Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1503 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Comments on Scope of Investigation

During our review of the 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 Department's regulations (*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 of the scope. The Department encourages all interested parties to submit such comments by May 10, 2010, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of the 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 determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on April 1, 2010, the Department invited representatives of the Government of the PRC (GOC) for consultations with respect to the CVD petition. On April 12, 2010, the Department held consultations with representatives of the GOC via conference call. See Ex-Parte Memorandum on Consultations regarding the Petition for Imposition of Countervailing Duties on Aluminum Extrusions from the People's Republic of China. Further discussions were held with representatives of the GOC on April 19, 2010. See Ex-Parte Memorandum on Meeting with Ambassador Zhang Yesui.

Determination of Industry Support for the 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 subtitle." 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 aluminum extrusions constitute 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: Aluminum Extrusions from the PRC

("Initiation Checklist") at Attachment II, dated concurrently with this notice and on file in the Central Records Unit, Room 1117 of the main Department of Commerce building.

In determining whether Petitioners have standing, under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigation" section above. To establish industry support, Petitioners provided their production of the domestic like product in 2009. See Volume I of the Petition at Exhibit I-3. In addition, Petitioners provided letters of support from ten additional companies that produce the domestic like product. See *id.* Petitioners compared their production and the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry. See Volume I of the Petition at 3-4 and Exhibits I-3 and I-4. Petitioners estimated total industry production of the domestic like product for 2009 using industry-wide shipment data from the Aluminum Association, which according to Petitioners is "an independent and authoritative source for aluminum industry data." See Volume I of the Petition, at 3. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, see Checklist at Attachment II.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the 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 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 Petition account for at least 25 percent of the total production of the domestic like product. See 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 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 Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See id.*

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C),(D) and (F) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. *See id.*

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 aluminum extrusions 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 aluminum extrusions. 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 raw material cost, lost sales, declining capacity, production, shipments, underselling and price depression or suppression, reduced employment, hours worked, and wages paid, declines in financial performance, lost sales and revenue, and an increase in import penetration. *See* Volume I of the Petition, at 16, 19–27, 30–33, and Exhibits I–10 through I–15, III–33, and Supplement to AD/CVD Petitions, dated April 9, 2010, at 8–9, and Attachment 4. 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* Initiation Checklist at Attachment III.

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a 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 petitioner(s) supporting the allegations.

The Department has examined the Petition on aluminum extrusions 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 manufacturers, producers, or exporters of aluminum extrusions in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

- A. Preferential Loans and Interest Rates
 - 1. Policy Loans to the Aluminum Extrusion Producers
 - 2. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- B. Income Tax Programs
 - 1. Tax Exemptions for “Productive” FIEs (Two Free, Three Half)
 - 2. Provincial Tax Exemptions and Reductions for “Productive” FIEs
 - 3. Tax Reductions for FIEs Purchasing Chinese–Made Equipment
 - 4. Tax Reductions for FIEs in Designated Geographic Locations
 - 5. Tax Reductions for Technology- or Knowledge- Intensive FIEs
 - 6. Tax Reductions for FIEs that are also HNTes
 - 7. Tax Reductions for HTNEs Involved in Designated Projects
 - 8. Tax Offsets for Research and Development at FIEs
 - 9. Tax Credits for Domestically Owned Companies Purchasing Chinese–Made Equipment
 - 10. Tax Reductions for Export–Oriented FIEs
 - 11. Tax Refunds for Reinvestment of FIE Profits in Export–Oriented Enterprises
 - 12. Accelerated Depreciation for Enterprises Located in the Northeast Region
 - 13. Forgiveness of Tax Arrears for

Enterprises in the Old Industrial Bases of Northeast China

- C. Other Tax Programs
 - 1. VAT and Tariff Exemptions on Imported Equipment
 - 2. VAT Rebates on FIE Purchases of Chinese–Made Equipment
 - 3. City Tax and Surcharge Exemptions for FIEs
 - 4. Exemptions from Administrative Charges for Companies in Zhaoqing High-Tech Industry Development Zone
- D. Grant Programs
 - 1. The State Key Technology Renovation Project Fund
 - 2. “Famous Brands” Awards
 - 3. Grants to Cover Legal Fees in Trade Remedy Cases in Shenzhen
 - 4. Special Fund for Energy Saving Technology Reform: Guangdong Province
 - 5. The Clean Production Technology Fund
 - 6. Grants for Listing Shares: Liaoyang City (Guangzhou Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)
 - 7. The Northeast Region Foreign Trade Development Fund
 - 8. The Northeast Region Technology Reform Fund
- E. Government Provision of Goods or Services For Less Than Adequate Remuneration (“LTAR”)
 - 1. Land Use Rights in the Liaoyang High–Tech Industry Development Zone
 - 2. Allocated Land Use Rights for SOEs
 - 3. Primary Aluminum
- F. Government Purchase of Goods For More Than Adequate Remuneration (“MTAR”)

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

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

- A. Debt Forgiveness of Asia Aluminum

Petitioners allege that the GOC allowed managers of Asia Aluminum to buy the company’s assets free of certain obligations and prohibited the original debt holders from enforcing their legal rights, thus effectively mandating forgiveness of the company’s debt. Petitioners fail to establish a financial contribution by the government for the alleged debt forgiveness. The facts presented do not demonstrate that there was a financial contribution on the part of the government. Consequently, we do not plan on investigating this program.

B. Debt-to-Equity ("D/E") Swaps for Companies in the Aluminum Sector

Petitioners allege that the China Development Bank and two state-owned asset management corporations traded approximately 3.4 billion renminbi ("RMB") of debt owed by Aluminum Corporation of China and additional debt owed by Pinguo Aluminum for equity in the companies. The D/E swaps detailed by Petitioners occurred prior to the December 11, 2001, cut-off date that the Department uses for investigating subsidies in the PRC. Consistent with recent CVD determinations, we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.² Therefore, Petitioners have not provided the Department with a factual basis to conclude that D/E swaps conferring benefits to producers of aluminum extrusion occurred in the period in which the Department will identify and measure subsidies in the PRC for purposes of the CVD law. Consequently, we do not plan on investigating this program.

C. Tax Exemptions and Reductions for Enterprises that Utilize Recycled Materials

Petitioners allege that, as reported to the WTO, the GOC has implemented a program to assist companies that recycle. Petitioners fail to establish that any subsidies under the program are specific. In particular, they do not support their contention that the program is limited to an enterprise or industry or group of enterprises or industries. Consequently, we do not plan on investigating this program.

D. The State Science and Technology Support Scheme

According to Petitioners, this program provides grants to promote research aimed at resolving scientific or technological problems regarding economic and social development. The Department finds there is insufficient evidence to establish specificity for this program. While Petitioners allege that recipients of benefits under this program are selected based on the GOC's designation of certain industries for development, the evidence provided does not support this claim.

Consequently, we do not plan on investigating this program.

We are deferring a decision on whether to initiate an investigation of the following programs:

A. Land Use Rights Conferred to Asia Aluminum

Petitioners assert that the Zhaoqing City High-Tech Development Zone allowed aluminum producer Asia Aluminum to acquire land use rights for 50 years, and then later, the Development Zone returned the payment to Asia Aluminum because of the company's construction of infrastructure. The Department will decide whether to initiate this allegation only if Asia Aluminum is selected as a respondent.

B. Currency Undervaluation

Petitioners allege that the GOC intervenes in the foreign exchange market by buying dollars and artificially bidding up their value to ensure that the RMB/dollar exchange rate understates the value of the RMB vis a vis the dollar. The Department has carefully considered the currency allegation, which is similar to an allegation currently under consideration in the pending coated paper countervailing duty investigation from the PRC. At this time, given the unique nature of the alleged subsidy and the complex methodological issues that it raises under the CVD law, the Department has determined that additional study of the allegation is appropriate before an initiation decision may be made.

Respondent Selection

For this investigation, the Department expects to select respondents based on CBP data for U.S. imports during the period of investigation. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

Distribution of Copies of the 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 Government of the PRC. 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 Government of the PRC, 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 45 days after the date on which the Petition is filed, whether there is a reasonable indication that imports of subsidized aluminum extrusions from the PRC are causing material injury, or threatening to cause 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; 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.

April 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Attachment I

Scope of the Investigations

The merchandise covered by these investigations is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or

² See *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) ("KASR from the PRC"), and accompanying IDM at Comment 3.

leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion ("drawn aluminum") are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes aluminum extrusions that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise.

Subject extrusions may be identified with reference to their end use, such as heat sinks, door thresholds, or carpet trim. Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are finished products and ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the

number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors, picture frames, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "kit." A kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTS"): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope in this proceeding is dispositive.

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