

DEPARTMENT OF COMMERCE**International Trade Administration**

(C-570-957)

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

EFFECTIVE DATE: October 15, 2009.

FOR FURTHER INFORMATION CONTACT: Yasmin Nair and Joseph Shuler, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3813 and (202) 482-1293, respectively.

SUPPLEMENTARY INFORMATION:**The Petition**

On September 16, 2009, the Department of Commerce ("Department") received a countervailing duty ("CVD") petition concerning imports of certain seamless pipe ("seamless pipe") from the People's Republic of China ("PRC") filed in proper form by United States Steel Corporation and V&M Star L.P. (collectively, "Petitioners").¹ On September 25, 2009, the Petition was amended to add TMK IPSCO and The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Worker International Union as additional Petitioners. On September 21 and 22, 2009, 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 September 25, 2009 ("Supplement to the AD/CVD Petitions"). On September 25, 2009, the Department requested further information from Petitioners, including suggested refinements to the scope. On September 28, 2009, Petitioners filed a supplement to the Petition, regarding the CVD allegations. On September 29, 2009, Petitioners filed an additional supplement to the Petition in response to the Department's September 25, 2009 request ("Second

Supplement to the AD/CVD Petitions"). Also, on September 29, 2009, the Department issued a further request to Petitioners for information and clarification of certain aspects of the Petition. In response to the Department's request, Petitioners filed a supplement to the Petition regarding general issues, on October 1, 2009.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended ("Act"), Petitioners allege that producers/exporters of seamless pipe 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) 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, 2008, through December 31, 2008.

Scope of Investigation

The products covered by this investigation are seamless pipe 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.

Comments on the Scope of Investigation

During our review of the Petition, we discussed the scope of the investigation with Petitioners and suggested a number of revisions to the scope language, including the removal from the scope of all language that relies on end-use to define covered merchandise. While Petitioners made a number of the suggested revisions to the scope, they did not remove end-use language from the scope. *See* Supplement Regarding General Issues to the AD/CVD Petition at 4; Second Supplement Regarding General Issues to the AD/CVD Petition, Item 3; and memorandum to the file from Drew Jackson regarding "Initiation of the Antidumping Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China". The Department has inherent authority to define the scope of the investigation and may depart from the scope as proposed by a petition. *NTN Bearing Corp. v. U.S.*, 747 F. Supp. 726, 731 (CIT

1990). In this case, consistent with the position taken in circular welded carbon quality steel pipe from the PRC, we have revised the scope by removing all end-use language from it. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008) ("*Circular Welded Pipe*") at Comment 1 ("the Department prefers to define product coverage by the physical characteristics of the merchandise subject to investigation."). As noted in *Circular Welded Pipe*, excluding end-use language from the scope provides certainty with respect to product coverage and will enable any potential future orders to be effectively administered by the Department and enforced by U.S. Customs and Border Protection ("CBP"). Further, clarity with respect to scope will ensure that respondents in the investigation will know precisely what is included in the definition of subject merchandise.

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 the product coverage of the scope. The Department encourages all interested parties to submit such comments by October 26, 2009, which is 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 for 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 in this investigation.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on September 22, 2009, the Department invited representatives of the Government of the PRC for consultations with respect to the Petition. The Government of the PRC did not request such consultations.

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

¹ *See* Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as Amended: Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China, dated September 16, 2009 ("Petition").

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 to poll the industry.

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 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 (*see* 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.²

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 did not offer a definition of domestic like product distinct from the scope of the

investigation requested in the Petition. As noted, the Department has changed the definition of the class or kind of merchandise to be investigated from that which was initially requested by Petitioners. The reference point from which the domestic like product is defined is the class or kind of merchandise that is the basis for the Department's initiation of this investigation. Based on our analysis of the information submitted on the record, we have determined that seamless pipe constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.³

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 the Investigation" in Appendix I of this notice. To establish industry support, Petitioners provided their own 2008 production of the domestic like product, and compared this to the estimated total production of the domestic like product for the entire domestic industry.⁴ To estimate 2008 production of the domestic like product, Petitioners used data from an industry publication, published by the American Iron and Steel Institute ("AISI"), which compiles data on domestic producers' shipments of seamless standard, line and pressure pipe. Petitioners approximated domestic production of seamless pipe by inflating the volume of domestic shipments reported by AISI by the ratio of the difference between Petitioners' own production and shipments in the applicable calendar year.⁵

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department, including a search of the Internet, 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).⁶ 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.⁷ 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.⁸

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

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 imports of seamless pipe 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 seamless pipe. In addition, Petitioners alleged that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contended 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

² 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).

³ For a discussion of the domestic like product analysis in this case, see Countervailing Duty Investigation Initiation Checklist: Certain Seamless Pipe from the PRC ("Initiation Checklist") at Attachment II ("Industry Support"), dated concurrently with this notice and on file in the Central Records Unit (≥CRU≥), Room 1117 of the main Department of Commerce building.

⁴ See Initiation Checklist at Attachment II.

⁵ See *id.*

⁶ See Section 702(c)(4)(D) of the Act, and Initiation Checklist at Attachment II.

⁷ See Initiation Checklist at Attachment II.

⁸ See *id.*

⁹ See *id.*

revenue, reduced production, reduced shipments, increased inventory overhang, reduced employment and wages, and an overall decline in financial performance.¹⁰ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.¹¹

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 seamless pipe 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 seamless pipe 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

1. Policy Loans to the Seamless Pipe Industry
2. Export Loans
3. Treasury Bond Loans
4. Preferential Loans for State-Owned Enterprises (“SOEs”)
5. Preferential Loans for Key Projects and Technologies
6. Preferential Lending to Seamless Pipe Producers and Exporters Classified as “Honorable Enterprises
7. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program

B. Equity Programs

1. Debt-to-Equity Swaps
2. Equity Infusions
3. Exemptions for SOEs From Distributing Dividends to the State

4. Loan and Interest Forgiveness for SOEs
- #### C. Tax Benefit Programs
1. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
 2. Preferential Income Tax Policy for Enterprises in the Northeast Region
 3. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
 4. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
- #### D. Subsidies for Foreign Invested Enterprises (“FIEs”)

1. “Two Free, Three Half” Program
2. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
3. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
4. Income Tax Reductions for Export-Oriented FIEs

E. Tariff and Indirect Tax Programs

1. Stamp Exemption on Share Transfers Under Non-Tradable Share Reform
2. Value Added Tax (“VAT”) and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program
3. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
4. Deed Tax Exemption For SOEs Undergoing Mergers or Restructuring
5. Export Incentive Payments Characterized as “VAT rebates”

F. Government Provision of Goods and Services for Less Than Adequate Remuneration

1. Provision of Land to SOEs for Less Than Adequate Remuneration
2. Provision of Land Use Rights for Less Than Adequate Remuneration
3. Provision of Steel Rounds for Less Than Adequate Remuneration
4. Provision of Electricity for Less Than Adequate Remuneration
5. Provision of Electricity and Water for Less Than Adequate Remuneration to Seamless Pipe Producers Located in Jiangsu Province
6. Export Restrictions on Coke
7. Provision of Coking Coal for Less Than Adequate Remuneration

G. Grant Programs

1. The State Key Technology Project Fund
2. Foreign Trade Development Fund (Northeast Revitalization Program)
3. Export Assistance Grants

4. Program to Rebate Antidumping Duties
 5. Subsidies for Development of Famous Export Brands and China World Top Brands
 6. Sub-central Government Programs to Promote Famous Export Brands and China World Top Brands
 7. Grants to Loss-Making SOEs
 8. Export Interest Subsidies
- #### H. Other Regional Programs
1. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area
 2. High-Tech Industrial Development Zones

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. Tax Benefit Programs

Income Tax Benefits for Domestically-Owned Enterprises Engaging in Research and Development

Petitioners allege that according to the PRC’s World Trade Organization subsidies notification, domestic industrial enterprises whose research and development expenses increased by 10 percent from the previous year may offset 150 percent of the research expenditures from their income tax obligations. Petitioners have not sufficiently established that this tax reduction program is specific. Consequently, we do not plan to investigate this program.

B. Provision of Inputs for Less than Adequate Remuneration

Export Restrictions on Steel Rounds

Petitioners allege that effective January 1, 2008, the Government of the PRC increased the export tax on steel billets, including steel rounds, from 15 to 25 percent. The result, according to Petitioners, was a decline in exports of this product from the PRC. Specifically, Petitioners provide information indicating that exports of steel rounds fell by 92.6 percent on an annual basis for the first two months of the year, and were zero in the month of February 2008. The further result of the export tax, according to Petitioners, was a sharp divergence in domestic PRC and world prices of steel rounds. While Petitioners have provided reasonably available information showing that domestic PRC prices are less than world prices, the information does not show a connection between the export

¹⁰ See Initiation Checklist at Attachment III for details.

¹¹ See *id.*

restraints and this price difference. Consequently, we do not plan to investigate this program.

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 seamless pipe 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.

Dated: October 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

Attachment I

The merchandise covered by this investigation is certain seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm)

in outside diameter, regardless of wall-thickness, manufacturing process (e.g., hot-finished or cold-drawn), end finish (e.g., plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (e.g., bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or "hollow profiles" suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing and Materials ("ASTM") or American Petroleum Institute ("API") specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, ASTM A-1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusion discussed below.

Specifically excluded from the scope of the investigation are unattached couplings.

The merchandise covered by the investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

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