

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

[C-570-950]

**Wire Decking From the People's Republic of China: Initiation of Countervailing Duty Investigation**

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

**DATES:** *Effective Date:* July 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 4014, Washington, DC 20230; telephone: (202) 482-2209.

**SUPPLEMENTARY INFORMATION:****The Petition**

On June 5, 2009, the Department of Commerce ("Department") received a petition filed in proper form by AWP Industries, Inc., ITC Manufacturing, Inc., J&L Wire Cloth, Inc., Nashville Wire Products Mfg. Co., Inc., and Wireway Husky Corporation (collectively, "Petitioners"), domestic producers of wire decking. On June 11, 2009, and June 12, 2009, the Department issued requests for additional information and clarification of certain general areas of the Petition. Based on the Department's request, Petitioners filed supplements to the Petition on June 16, 2009, and June 17, 2009, (respectively, "Supplement to the

General Petition and Supplement to the AD Petition"). On June 18, 2009, and June 22, 2009, the Department also requested clarification of Petitioners' subsidy allegations. Based on the Department's request, Petitioners filed supplements to the countervailing duty ("CVD") petition on June 23, 2009, and June 24, 2009.

The Department requested further clarifications from Petitioners by supplemental questionnaire and phone on June 18, 2009, regarding scope, and issue relating to the AD Petition. On June 22 and 24, 2009, Petitioners filed the information requested in the additional supplemental questionnaire, including a revised scope.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended ("the Act"), Petitioners allege that manufacturers, producers, or exporters of wire decking in the People's Republic of China ("PRC") receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

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) of the Act, and Petitioners have demonstrated sufficient industry support with respect to the CVD investigation (*see* "Determination of Industry Support for the Petition" section below).

#### Period of Investigation

The proposed period of investigation ("POI") is January 1, 2008, through December 31, 2008.

#### Scope of Investigation

The products covered by this investigation are wire decking 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 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 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. The Department encourages all interested parties to submit such comments by July 15, 2009, 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 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, the Department invited representatives of the Government of the PRC for consultations with respect to the CVD Petition. The Department held these consultations in Beijing, China on June 23, 2009. *See* the Memorandum from Sarah C. Ellerman through Melissa Skinner to the File, entitled, "Countervailing Duty Petition on Wire Decking from the People's Republic of China: Consultation with the Government of the People's Republic of China," (June 24, 2009), which is on file in the Central Records Unit ("CRU") of the main Department of Commerce building, Room 1117.

#### 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 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 (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 wire decking 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: Wire Decking from the PRC ("Initiation Checklist") at Attachment II ("Industry Support"), dated concurrently with this notice and on file in the CRU.

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 2008 production of the domestic like product, as well as the 2008 production of the domestic like product for four non-petitioning companies who are supporters of the Petition, and compared this to total production of the

domestic like product for the entire domestic industry. See Volume I of the Petition, at 4, and Exhibit General-1, and Supplement to the AD/CVD Petitions, dated June 16, 2009, at 10, and Attachment 3, and Second Supplement to the AD/CVD Petitions, dated June 22, 2009, at 3, and Attachment 1, and Petitioners' Submission, dated June 22, 2009. Petitioners calculated total domestic production based on their own production plus data provided by the four non-petitioning companies that produce the domestic like product in the United States, who are supporters of the Petition. See Volume I of the Petition, at Exhibit General-1, and Supplement to the AD/CVD Petitions, dated June 16, 2009, at Attachment 3, and Second Supplement to the AD/CVD Petitions, dated June 22, 2009, at 3, and Attachment 1; see also Initiation Checklist as Attachment II, Industry Support. In addition, Petitioners identified one other company as a producer of the domestic like product and were able to obtain its 2008 production of the domestic like product in order to calculate total domestic production of the domestic like product.

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 Petitions 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) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty 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 wire decking from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industries producing wire decking. 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, shipments, capacity, 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 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 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 CVD Petition on wire decking 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 wire decking 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. Loan Programs
  1. Honorable Enterprises Program
  2. Preferential Loans for Key Projects and Technologies
  3. Preferential Loans as Part of the Northeast Revitalization
  4. Policy Loans for Firms Located in Industrial Zones in the City of Dalian in Liaoning Province
- B. Government Provision of Goods and Services for Less Than Adequate Remuneration ("LTAR")
  1. Government Provision of Wire Rod for LTAR
  2. Government Provision of Hot-Rolled Steel for LTAR
  3. Government Provision of Zinc for LTAR
  4. Government Provision of Electricity for LTAR
  5. Provision of Land for LTAR for Firms Located in Designated Geographical Areas in the City of Dailan in Liaoning Province
  6. Provision of Water for LTAR for Firms Located in Designated Geographical Areas in the City of Dailan in Liaoning Province
  7. Provision of Electricity for LTAR for Firms Located in Designated Geographical Areas in the City of Dailan in Liaoning Province
- C. Income and Other Direct Taxes
  1. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
  2. Income Tax Exemption for Investment in Domestic "Technological Renovation"
  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. Income Tax Exemption for Investors in Designated Geographical Regions Within the Province of Liaoning
- D. Indirect Tax and Tariff Exemption Programs
  1. Value Added Tax (VAT) Deductions on Fixed Assets
  2. Export Incentive Payments Characterized as "VAT Rebates"
  3. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises

- Using Imported Equipment in Encouraged Industries
4. VAT Exemptions for Newly Purchased Equipment in the Jinzhou District
- E. Grant Programs
1. "Five Points, One Line" Program
  2. Export Interest Subsidies
  3. The State Key Technology Project Fund.
  4. Subsidies for Development of Famous Export Brands and China World Top Brands
  5. Sub-Central Government Programs To Promote Famous Export Brands and China World Top Brands
  6. Exemption of Fees for Firms Located in Designated Geographical Areas in the City of Dailan in Liaoning Province
- F. Preferential Income Tax Subsidies for Foreign Invested Entities ("FIEs")
1. "Two Free, Three Half" Program
  2. Income Tax Exemption Program for Export-Oriented FIEs
  3. Local Income Tax Exemption and Reduction Programs for "Productive" Foreign-Invested Enterprises
  4. Preferential Tax Programs for Foreign-Invested Enterprises Recognized as High or New Technology Enterprises
  5. Income Tax Subsidies for FIEs Based on Geographic Location
  6. VAT Refunds for FIEs Purchasing Domestically Produced Equipment

For further information explaining why the Department is investigating these programs, see the 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. Policy Lending to Wire Decking Producers

Petitioners allege that the GOC, through various national level industrial plans, directs credit to wire decking producers. Similar to the Department's finding in *Wire Grating from the PRC Initiation*, we find that Petitioners have not sufficiently alleged that the GOC's industrial plans specifically direct credit to producers of wire decking. See *Certain Steel Grating from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 30278, 30281 (June 25, 2009) ("*Steel Grating from the PRC Initiation*"). Petitioners may re-submit this allegation to the extent the Department selects an integrated producer whose affiliated input suppliers are producing a steel input that is covered by the GOC's industrial plans.

#### B. Export Loans

Petitioners allege that in *Line Pipe from the PRC*, the Department found that a number of companies benefitted from export-contingent loans from State owned commercial banks ("SOCBs") and that Chinese wire decking

producers would be eligible for such loans. See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (Nov. 24, 2008) ("*Line Pipe from the PRC*"), and accompanying Issues and Decision Memorandum ("*Line Pipe from PRC Decision Memorandum*") at "Export Loans." According to Petitioners, this program has not been eliminated by any reforms to the Chinese banking system. However, the producers investigated in *Line Pipe from the PRC* are not identified in the Petition filed on the record of this proceeding. Therefore, we find that the support relied on in *Line Pipe from the PRC* to initiate an investigation of the Export Loans program does not apply to the facts of this proceeding. Petitioners have provided insufficient evidence indicating that wire decking producers can benefit from this alleged program.

#### C. Export Assistance Grants

Petitioners allege that grants are provided to exporters. However, Petitioners fail to identify the administering authority that is allegedly providing the grants (*i.e.*, national, provincial, or local governments) or the program under which the alleged benefits are provided. Therefore, we are not initiating an investigation of this allegation.

#### D. Provision of Land for LTAR

Petitioners allege that the GOC prohibits private land ownership in the PRC. According to Petitioners, private companies may purchase land-use rights, but national and local governments do not provide the rights consistently with market principles. Petitioners assert that the government may take land from farmers, often without fair compensation, and transfer this land to industrial users. Further, Petitioners allege that commercial sales are often conducted illegally through opaque processes marked by widespread corruption.

Petitioners did not provide evidence that the GOC is providing land for LTAR at the national level. Further, with the exception of Jiangxi Province and the City of Dalian in Liaoning Province, Petitioners do not provide any information to support their allegation that provincial and local governments in the PRC provide land for LTAR. Therefore, we are limiting our investigation of this allegation to alleged sales of land for LTAR to wire decking producers located in the City of Dalian.

#### D. Government Restraints on Exports of Wire Rod, Flat-Rolled Steel, and Zinc

Petitioners allege that the GOC imposes export restrictions (such as export quotas, export taxes, export licensing, and restrictions on which enterprises are eligible to export) to intervene in markets for such primary raw materials as wire rod, flat-rolled steel, and zinc that are consumed in the production of wire decking. Petitioners contend that these restrictions increase the supply of wire rod, flat-rolled steel, and zinc and thereby artificially lower the prices within the PRC to downstream wire decking producers.

Petitioners have not adequately shown how these particular export taxes and licenses constitute entrustment or direction of private entities by the GOC to provide a financial contribution to producers of subject merchandise. Moreover, Petitioners have not provided sufficient data regarding historic price trends demonstrating, *e.g.*, that price decreases correlated with the imposition of the alleged export restraints. The Department declined to initiate on this program in prior CVD initiations involving the PRC. See, *e.g.*, *Notice of Initiation of Countervailing Duty Investigation: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China*, 73 FR 50304, 50306 (August 26, 2008) (*Racks and Shelves from the PRC Initiation*). Therefore, we are not investigating the government restraints on wire rod, flat-rolled steel, and zinc exports.

#### E. Tax Reduction for Enterprises Making Little Profit

Petitioners allege that, according to China's WTO subsidies notification, enterprises with annual taxable incomes between RMB 30,000 and 100,000 are eligible for a 3 percent reduction in their annual income tax rate.

We find Petitioners have not established with reasonably available information that "enterprises making little profit" are a *de jure* specific group because Petitioners have provided no explanation of why companies with access to this program comprise an enterprise or industry, or group of enterprises or industries, as those terms are normally interpreted by the Department. See, *e.g.*, *Preamble to Countervailing Duty Regulations*, 63 Fed. Reg. 65348, 65357 (November 25, 1998) ("\* \* \* because the user represented numerous and diverse industries, the program was found not to be specific"). Therefore, we are not initiating an investigation of this allegation.

### F. China's Enforced Undervaluation of Its Currency

Petitioners allege that the GOC-maintained exchange rate effectively prevents the appreciation of the Chinese currency (RMB) against the U.S. dollar. In addition, Petitioners allege that the GOC requires that foreign exchange earned from export activities be converted to RMB at the government prescribed rate. Therefore, when producers in the PRC sell their dollars at official foreign exchange banks, as required by law, the producers receive more RMB than they otherwise would if the value of the RMB were set by market mechanisms.

Consistent with past initiations, we are not initiating on this allegation on the grounds that Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. *See, e.g., Racks and Shelves from the PRC Initiation*, 73 FR at 50307.

### G. Reduction in or Exemption From Fixed Assets Investment Orientation Regulatory Tax

The Petitioners claim that producers of wire decking are exempted from or receive preferential income tax rates on investments in fixed assets. These tax breaks apply to both new construction and upgrades in the encouraged industries.

We are not initiating on this program because Petitioners have not provided information to demonstrate that wire decking producers would be covered by the relevant legislation. For example, the legislation includes specific aspects of the iron and steel production process that are eligible for tax benefits, but it does not include any processes related to production of wire decking. However, if one of the mandatory respondents chosen in this investigation is part of a vertically integrated steel company, or cross-owned with a primary steel producer, Petitioners may re-allege this program under a timely-filed new subsidy allegation, at which time the Department will reconsider the information provided.

### H. Preferential Investment Policies for FIEs Located in Liaoning Province

Petitioners allege that the Liaoning Province allows FIEs located in the province to enjoy "preferential policies for foreign investment projects." They further allege that the relevant legislation specifically covers wire decking producers. Petitioners identify several wire decking producers located in Liaoning Province.

The supporting documentation provided by Petitioners does not specifically mention any loans and the term "preferential investment policies" by itself, as indicated in the source document included in the Petition, does not constitute a sufficient basis for initiation. We are not initiating an investigation of this program.

### Respondent Selection

To determine the total and relative volume and value of import data for each potential respondent, the Department normally relies on U.S. Customs and Border Protection import data for the POI. However, in the instant proceeding, the Harmonized Tariff Schedule of the United States ("HTSUS") categories that include subject merchandise are very broad, and include products other than those subject to this investigation. Therefore, because of the unique circumstances of this case, the Department will issue "Quantity and Value Questionnaires" to potential respondents for the purposes of respondent selection. The Department will send the quantity and value questionnaire to PRC companies identified in the June 5, 2009 Petition, at Exhibit 4, Volume 1. The Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration's Web site, at <http://ia.ita.doc.gov/ia-highlights-and-news.html>.

### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the Petition has been provided to the Government of the PRC. As soon as and to the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, consistent with section 351.203(c)(2) of the Department's regulations.

### 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 wire decking 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: June 25, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

### Appendix I—Scope of the Investigation

The scope of the investigation covers welded-wire rack decking, which is also known as, among other things, "pallet rack decking," "wire rack decking," "wire mesh decking," "bulk storage shelving," or "welded-wire decking." Wire decking consists of wire mesh that is reinforced with structural supports and designed to be load bearing. The structural supports include sheet metal support channels, or other structural supports, that reinforce the wire mesh and that are welded or otherwise affixed to the wire mesh, regardless of whether the wire mesh and supports are assembled or unassembled and whether shipped as a kit or packaged separately. Wire decking is produced from carbon or alloy steel wire that has been welded into a mesh pattern. The wire may be galvanized or plated (*e.g.*, chrome, zinc or nickel coated), coated (*e.g.*, with paint, epoxy, or plastic), or uncoated ("raw"). The wire may be drawn or rolled and may have a round, square or other profile. Wire decking is sold in a variety of wire gauges. The wire diameters used in the decking mesh are 0.105 inches or greater for round wire. For wire other than round wire, the distance between any two points on a cross-section of the wire is 0.105 inches or greater. Wire decking reinforced with structural supports is designed generally for industrial and other commercial storage rack systems.

Wire decking is produced to various profiles, including, but not limited to, a flat ("flush") profile, an upward curved back edge profile ("backstop") or downward curved edge profile ("waterfalls"), depending on the rack storage system. The wire decking may or may not be anchored to the rack storage system. The scope does not cover the metal rack storage system, comprised of metal uprights and cross beams, on which the wire decking is ultimately installed. Also excluded from the scope is wire mesh shelving that is not reinforced with structural supports and is designed for use without structural supports.

Wire decking enters the United States through several basket categories in the Harmonized Tariff Schedule of the United States ("HTSUS"). U.S. Customs and Border Protection has issued a ruling (NY F84777) that wire decking is to be classified under HTSUS 9403.90.8040. Wire decking has also been entered under HTSUS 7217.10, 7217.20, 7326.20, 7326.90, 9403.20.0020 and 9403.20.0030. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigations is dispositive.

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