

Dated: February 19, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I – Issues and Decision Memorandum

I. Analysis Of Programs

A. Programs Determined to Be Not Used

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DEPARTMENT OF COMMERCE

International Trade Administration

(C-570-931)

Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation

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

EFFECTIVE DATE: February 25, 2008.

FOR FURTHER INFORMATION CONTACT:

Darla Brown or Eric Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2849 and (202) 482-6071, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On January 30, 2008, the Department of Commerce (the "Department") received a petition filed in proper form by Bristol Metals, L.P., Felker Brothers Corp., Marcegaglia USA Inc., Outokumpu Stainless Pipe, Inc., and the United Steel Workers of America (the "petitioners"), domestic producers of circular welded austenitic stainless pressure pipe ("CWASPP" or "subject merchandise"). In response to the Department's request, the petitioners provided timely information supplementing the petition on February 5, February 11, and February 14, 2008.

In accordance with Section 702(b)(1) of the Tariff Act of 1930, as amended ("the Act"), the petitioners allege that manufacturers, producers, or exporters of CWASPP 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 the 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 the petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation (*see* "Determination of Industry Support for the Petition" section below).

Period of Investigation

The period of investigation ("POI") is January 1, 2007, through December 31, 2007.

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe ("CWASPP") not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778

specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) Welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States ("HTSUS"). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with the 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, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit ("CRU"), 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 countervailing duty petition. The Department held these consultations in Beijing, China, with representatives of the Government of the PRC on February 15, 2008. *See* the February 15, 2008, Memorandum to The File, entitled,

“Consultations Regarding the Petition on Welded Stainless Steel Pressure Pipe from the People’s Republic of China” on file in the CRU of the Department of Commerce, Room 1117.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed by or 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 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, the 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 CWASPP constitutes a single domestic like product, which is defined further in the “Scope of the Investigation” section above, 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: Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China* (“PRC Initiation Checklist”) at Attachment II, on file in the CRU.

In determining whether the petitioners have standing (*i.e.*, those domestic workers and producers supporting the 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 petition), we considered the industry support data contained in the petition with reference to the domestic like product as defined in Attachment I (Scope of the Petition), to the *PRC Initiation Checklist*. To establish industry support, the petitioners provided their shipments for the domestic like product for the year 2007 and compared them to shipments of the domestic like product for the industry. In their February 13, 2008, supplement to the petition, the petitioners demonstrated the correlation between shipments and production. *See* February 13, 2008, Supplement to the petition. Based on the fact that total industry production data for the domestic like product for 2007 is not reasonably available, and that the petitioners have established that shipments are a reasonable proxy for production data, we have relied upon shipment data for purposes of measuring industry support. For further discussion *see PRC Initiation Checklist* at Attachment II (Industry Support).

Our review of the data provided in the petition, supplemental submissions, and

other information readily available to the Department indicates that the 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. Second, the domestic producers have met the statutory criteria for industry support under 702(c)(4)(A)(i) 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. Finally, the domestic producers have met the statutory criteria for industry support under Section 702(c)(4)(A)(ii) 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 PRC Initiation Checklist* at Attachment II (Industry Support).

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are an interested party as defined in section 771(9)(C) and (D) 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 PRC Initiation Checklist* at Attachment II (Industry Support).

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

The petitioners allege that imports of CWASPP from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threatening to cause, material injury to the domestic industry producing CWASPP. In addition, the petitioners allege that subsidized imports exceed the negligibility threshold provided for

under Section 771(24)(A) of the Act. The petitioners contend that the industry's injured condition is illustrated by reduced market share, lost sales, reduced production, capacity and capacity utilization rate, reduced shipments, underselling and price depression or suppression, lost revenue, reduced employment, decline in financial performance and increase in import penetration. We have assessed the allegations and supporting evidence regarding 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 *PRC Initiation Checklist* at Attachment III (Injury).

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a countervailing duty 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 countervailing duty petition on CWASPP 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 countervailing duty investigation to determine whether manufacturers, producers, or exporters of CWASPP in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see *PRC 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:

Preferential Lending

1. Loans and Export Credits Pursuant to the Northeast Revitalization Program

Income Tax Programs

2. "Two Free, Three Half" Program
3. Income Tax Reductions for Export-oriented Foreign Investment Enterprises ("FIEs")
4. Reduced Income Tax Rate for FIEs Located in Economic and Technological Development Zones and Other Special Economic Zones
5. Income Tax Credit or Refund for Reinvestment of FIE Profits

6. Provincial and Local Tax Exemptions and Reductions for Productive FIEs
7. Local Income Tax Reductions in Certain Development Zones
8. Preferential Tax Policies for Research and Development at FIEs

Indirect Tax Programs and Import Tariff Program

9. VAT Refunds on Purchases of Domestically-produced Equipment by FIEs
10. Tax Credits on Purchases of Domestically-produced Equipment by Domestically-owned Companies

Provincial Subsidy Programs

11. Guangdong Province's "Outward Expansion" Program
12. Preferential Loans Pursuant to Liaoning Province's Five-Year Framework
13. Preferential Tax Policies for Town and Village Enterprises ("TVEs")

Provision of Goods or Services for Less than Adequate Remuneration

14. Provision of Stainless Steel Coil for Less than Adequate Remuneration
15. Provision of Land Use Rights for Less than Adequate Remuneration

Government Restraints on Exports

16. Export Restraints on Flat-rolled Steel

For further information explaining why the Department is investigating these programs, see the *PRC 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:

1. *Guangshou High Technologic Enterprise*: Petitioners allege that a producer of CWASPP located in Guangshou received subsidies by virtue of its status as a high technology enterprise, but failed to explain what those alleged subsidies were. 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. Therefore, we do not plan to investigate this program.

2. *Exemption of Export Taxes for CWASPP*: Petitioners allege that producers of CWASPP are exempt from paying certain export taxes that the Government of China ("GOC") levies on other steel products. Consistent with the Department's decision in the initiation of Light-walled Rectangular Pipe and

Tube from the PRC, we find that petitioners have failed to adequately allege how CWASPP producers have been relieved of taxes they would otherwise have paid. See *Notice of Initiation of Countervailing Duty Investigation: Light-walled Rectangular Pipe and Tube from the People's Republic of China*, 72 FR 40281, 40283 (July 24, 2007) ("*LWRP Initiation Notice*").

3. *City of Shenzhen's Grants to Exporter to Cover Interest on Loans*: Petitioners allege that the City of Shenzhen provides interest payment grants to exporters in the Shenzhen Special Economic Zone ("SEZ"). Consistent with the Department's practice in recent initiations, we are declining to initiate on the allegation because petitioners have failed to provide information indicating that a producer of CWASPP is located in the Shenzhen SEZ. See, e.g., *LWRP Initiation Notice* 72 FR at 40284.

4. *"Famous Brands" Program*: Petitioners allege that the GOC designates the products of certain firms as "Famous Brands," thereby making the firms eligible for grants and for enhanced trademark protection. In addition, petitioners allege that some provinces have coordinated efforts to build brands from their provinces. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support their allegation with reasonably available information. Therefore, we do not plan to investigate the "Famous Brands" program.

5. *Reduced Income Tax Rate for Technology and Knowledge Intensive FIEs*: Petitioners allege that FIEs that qualify as technology intensive or knowledge intensive and have major products listed in a catalogue issued by the Ministry of Science and Technology ("MOST") pay a reduced income tax of 15 percent. However, there is no mention of "pipe" in the catalogue, a fact that petitioners acknowledge. Thus, based on record evidence, producers of subject merchandise cannot use this program. Therefore, we do not plan to investigate this program.

6. *Provision of Electricity, Natural Gas, and Water for Less than Adequate Remuneration*: Petitioners allege that the GOC controls electricity, natural gas, and water prices through the National Development and Reform Commission. Petitioners state that the government caps the price that power generation companies can charge. Petitioners maintain that the steel industry has benefited from preferential treatment in both the prices of these utilities as well as access to the utilities.

Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support their allegation with reasonably available information. Therefore, we are not investigating the provision of electricity, natural gas, and water for less than adequate remuneration.

7. The State Key Technologies Renovation Project Fund: Petitioners allege that the purpose of this subsidy program is to promote technological renovations and improvements in key industries through the grant of funds equal to two or three years of interest expense payments for the projects depending upon the region of the country in which the project occurs, not to exceed 15 percent of the total cost of the project. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support their allegation with reasonably available information. Therefore, we do not plan to investigate "The State Key Technologies Renovation Project Fund" program.

Because petitioner has not sufficiently alleged countervailable subsidies for these programs, we are not initiating on them at this time.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping duty investigations and administrative reviews. In accordance with Section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and 10 Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500-1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001-2002 Administrative Review*, 68 FR 70488, 70488-89 (December 18, 2003).

In the final affirmative countervailing duty determination on coated free sheet paper from the PRC, the Department determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and the accompanying Issues and Decision

Memorandum at Comment 1. Therefore, because the petitioners have provided sufficient allegations and support of their allegations to meet the statutory criteria for initiating a CVD investigation of CWASPP from the PRC, initiation of a CVD investigation is warranted in this case.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the POI. 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, 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 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 CWASPP 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: February 19, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-840, A-570-920]

Lightweight Thermal Paper From Germany and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations

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

EFFECTIVE DATE: February 25, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or George McMahon (Germany), or Frances Veith (the People's Republic of China), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-3797, (202) 482-1167, (202) 482-4295, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determinations

On October 29, 2007, the Department of Commerce (the Department) initiated the antidumping duty investigations of lightweight thermal paper from Germany, the Republic of Korea, and the People's Republic of China (PRC). *See Notice of Initiation of Antidumping Duty Investigations: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People's Republic of China*, 72 FR 62430 (November 5, 2007). The notice of initiation stated that the Department would issue its preliminary determinations for these investigations no later than 140 days after the date of issuance of the initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act). On December 5, 2007, the International Trade Commission (ITC) determined that imports of lightweight thermal paper from the Republic of Korea were negligible, and therefore, terminated the investigation with regard to the Republic of Korea. *See Certain Lightweight Thermal Paper From China, Germany, and Korea*, 72 FR 70343 (December 11, 2007). On February 6, 2008, the petitioner, Appleton Papers Inc. (Appleton), made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determinations. The petitioner requested postponement of the preliminary determinations for Germany and the PRC in order to allow