



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

(C-570-054)

Certain Aluminum Foil from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: Effective March 28, 2017.

FOR FURTHER INFORMATION CONTACT: Emily Maloof at (202) 482-5649, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION

The Petition

On March 9, 2017, the Department of Commerce (Department) received a countervailing duty (CVD) Petition concerning imports of certain aluminum foil (aluminum foil) from the People's Republic of China (PRC), filed in proper form on behalf of the Aluminum Trade Enforcement Working Group (the petitioner).<sup>1</sup>

On March 14, 2017, the Department requested additional information and clarification of certain areas of the Petition.<sup>2</sup> The petitioner filed its response to this request on March 16, 2017, and March 22, 2017.<sup>3</sup> In accordance with section 702(b)(1) of the Tariff Act of 1930, as

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<sup>1</sup> See the Petition for the Imposition of Countervailing Duties on Imports of Certain Aluminum Foil from the People's Republic of China," dated March 9, 2017 (the Petition), at Volumes I and III.

<sup>2</sup> See Letters from the Department to the petitioner entitled, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Aluminum Foil from the People's Republic of China: Supplemental Questions," dated March 14, 2017 (General Issues Supplemental Questionnaire).

<sup>3</sup> See Letter from the petitioner to the Department entitled, "Re: Certain Aluminum Foil from the People's Republic of China—Petitioners' Responses to Department's Questions on General Injury Volume of Petition and Amendment

amended (the Act), the petitioner alleges that the Government of the PRC (GOC) is providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) with respect to imports of aluminum foil from the PRC, and that imports of aluminum foil from the PRC are materially injuring, or threaten material injury to, the domestic industry producing aluminum foil in the United States. Also, consistent with section 702(b)(1) of the Act, for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

The Department finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(E) of the Act. The Department also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the CVD investigation that the petitioner is requesting.<sup>4</sup>

#### Period of Investigation

Because the Petition was filed on March 9, 2017, pursuant to 19 CFR 351.204(b)(2), the period of investigation is January 1, through December 31, 2016.

#### Scope of the Investigation

The product covered by this investigation is aluminum foil from the PRC. For a full description of the scope of this investigation, *see* the “Scope of the Investigation,” in Appendix I of this notice.

#### Comments on Scope of the Investigation

During our review of the Petition, we issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition

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to Petition to Modify Scope Language,” dated March 16, 2017 (General Issues Supplement); *see also* Letter from the petitioner, “Re: Certain Aluminum Foil from the People’s Republic of China—Petitioners’ Second Amendment to Petition to Modify Scope Definition,” dated March 22, 2017 (Scope Revision).

<sup>4</sup> *See* the “Determination of Industry Support for the Petition” section below.

would be an accurate reflection of the products for which the domestic industry is seeking relief.<sup>5</sup> As a result of the responses submitted by the petitioner, we have revised the original scope.<sup>6</sup>

As discussed in the preamble to the Department's regulations,<sup>7</sup> we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, April 18, 2017. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, April 28, 2017.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent antidumping duty (AD) investigation.

#### Filing Requirements

All submissions to the Department must be filed electronically using Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>8</sup> An electronically filed document must be received successfully in its entirety by

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<sup>5</sup> *See* General Issues Supplemental Questionnaire and Scope Revision.

<sup>6</sup> *See* Appendix I.

<sup>7</sup> *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>8</sup> *See* 19 CFR 351.303 (describing general filing requirements); *see also Antidumping and Countervailing Duty*

the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement & Compliance's Administrative Protective Order (APO)/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, and stamped with the date and time of receipt by the applicable deadlines.

### Consultations

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the GOC of the receipt of the Petition. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the GOC the opportunity for consultations with respect to the CVD Petition.<sup>9</sup> In response to the Department's letter, the GOC requested that consultations be held. Such consultations were held on March 27, 2017.<sup>10</sup>

### 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

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*Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011) and *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

<sup>9</sup> See Letter of invitation from the Department regarding, "Countervailing Duty Petition Certain Aluminum Foil from the People's Republic of China," dated March 10, 2017 (CVD Petition).

<sup>10</sup> See Department Memorandum, "Countervailing Duty Petition on Certain Aluminum Foil from the People's Republic of China: GOC Consultations," dated March 27, 2017.

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,<sup>11</sup> 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.<sup>12</sup>

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 petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the

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<sup>11</sup> See section 771(10) of the Act.

<sup>12</sup> 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)).

information submitted on the record, we have determined that aluminum foil, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.<sup>13</sup>

In determining whether the petitioner has 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. The petitioner provided 2016 domestic like product production data for U.S. producers that are known to support the Petition. The petitioner also estimated total 2016 production of the domestic like product for the remaining producers in the U.S. industry. To establish industry support, the petitioner compared the production of companies supporting the Petition to the total 2016 production of the domestic like product for the entire domestic industry.<sup>14</sup> We relied on data the petitioner provided for purposes of measuring industry support.<sup>15</sup>

Our review of the data provided in the Petition and other information readily available to the Department indicates that the petitioner has established industry support for the Petition.<sup>16</sup> 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).<sup>17</sup> 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

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<sup>13</sup> For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Certain Aluminum Foil from the People’s Republic of China (PRC CVD Initiation Checklist), at Attachment II, “Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Aluminum Foil from the People’s Republic of China,” (Attachment II). This checklist is dated concurrently with this notice and on file electronically *via* ACCESS. Access to documents filed *via* ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

<sup>14</sup> *See* Volume I of the Petition, at 4-6 and Exhibits GEN-1A and GEN-8.

<sup>15</sup> *Id.* For further discussion, *see* PRC CVD Initiation Checklist, at Attachment II.

<sup>16</sup> *See* PRC CVD Initiation Checklist, at Attachment II.

<sup>17</sup> *See* section 702(c)(4)(D) of the Act; *see also* PRC CVD Initiation Checklist, at Attachment II.

support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>18</sup> 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.<sup>19</sup> 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.

The Department finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(E) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting that the Department initiate.<sup>20</sup>

### 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 petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the

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<sup>18</sup> See PRC CVD Initiation Checklist, at Attachment II.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

Act.<sup>21</sup>

The petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price suppression or depression; lost sales and revenues; decreasing U.S. shipment and production trends, as well as low capacity utilization rates; declines in production-related workers and wages paid; and deterioration in financial performance.<sup>22</sup> 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.<sup>23</sup>

#### Initiation of Countervailing Duty Investigation

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

The petitioner alleges that producers/exporters of aluminum foil in the PRC benefit from countervailable subsidies bestowed by the GOC. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of aluminum foil from the PRC receive countervailable subsidies from the GOC and various authorities thereof.

Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD

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<sup>21</sup> See Volume I of the Petition, at 11 and Exhibit GEN-7.

<sup>22</sup> *Id.*, at 9-23 and Exhibits GEN-4 and GEN-7 through GEN-10.

<sup>23</sup> See PRC CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Aluminum Foil from the People's Republic of China (Attachment III).

and CVD laws were made.<sup>24</sup> The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.<sup>25</sup> The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this CVD investigation.<sup>26</sup>

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 26 of the 27 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* the PRC CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

### Respondent Selection

The petitioner named 232 companies as producers/exporters of aluminum foil in the PRC.<sup>27</sup> Following standard practice in CVD investigations, the Department will, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of aluminum foil during the period of investigation. For this investigation, the Department intends to release U.S. Customs and Border Protection (CBP) data for U.S. imports of subject merchandise during the period of investigation under the following Harmonized Tariff

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<sup>24</sup> *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

<sup>25</sup> *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>26</sup> *Id.*, at 46794-95.

<sup>27</sup> *See* Volume I of the Petition at Exhibit GEN-4.

Schedule of the United States numbers: 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. We intend to release the CBP data under APO to all parties with access to information protected by APO within five business days of the announcement of this *Federal Register* notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found at <http://enforcement.trade.gov/apo/>.

Interested parties may submit comments regarding the CBP data and respondent selection by 5:00 p.m. ET on the seventh calendar day after publication of this notice. Comments must be filed in accordance with the filing requirements stated above. If respondent selection is necessary, we intend to base our decision regarding respondent selection upon comments received from interested parties and our analysis of the record information within 20 days of publication of this 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 GOC *via* ACCESS. 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 delivery of the public version to the government of the PRC, consistent with 19 CFR 351.203(c)(2).

#### ITC Notification

We will notify 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 was filed, whether there is a reasonable indication that imports of aluminum foil from the PRC are materially injuring, or threatening material injury to, a U.S. industry.<sup>28</sup> A negative ITC determination will result in the investigation being terminated;<sup>29</sup> otherwise, this investigation will proceed according to statutory and regulatory time limits.

### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The regulation requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in this investigation.

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<sup>28</sup> See section 703(a)(2) of the Act.

<sup>29</sup> See section 703(a)(1) of the Act.

### Extension of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>30</sup> Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after

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<sup>30</sup> See section 782(b) of the Act.

August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.<sup>31</sup> The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Antidumping and Countervailing Duty Operations

March 28, 2017

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Date

## Appendix I

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<sup>31</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

## **Scope of the Investigation**

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on only one side of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

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