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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-125

Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Ajay Menon or Rebecca Janz, AD/CVD

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SUPPLEMENTARY INFORMATION:

The Petition

On March 18, 2020, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from the People's Republic of China (China) filed in proper form on behalf of Briggs and Stratton Corporation (the petitioner).¹ The Petition was accompanied by an antidumping duty (AD) petition concerning imports of small vertical engines from China.

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China," dated March 18, 2020 (the Petition).

On March 20, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions,² to which the petitioner filed responses on March 24, 2020.³

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of small vertical engines in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing small vertical engines in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is supported by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in sections 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.⁴

Period of Investigation

Because the Petition was filed on March 18, 2020, the period of investigation (POI) is January 1, 2019 through December 31, 2019.⁵

² See Commerce's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Supplemental Questions Concerning Volume I," dated March 20, 2020; *see also* Commerce's Letter "Petition for the imposition of Countervailing Duties on imports of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Supplemental Questions Concerning Volume III," dated March 20, 2020.

³ See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, From The People's Republic of China/Responses of Briggs & Stratton Corporation to Volume I Supplemental Questionnaire," dated March 24, 2020 (General Issues Supplement); *see also* Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, From The People's Republic of China/Responses of Briggs & Stratton Corporation to Volume III Supplemental Questionnaire," dated March 24, 2020.

⁴ See "Determination of Industry Support for the Petition" section, *infra*.

⁵ See 19 CFR 351.204(b)(2).

Scope of the Investigation

The merchandise covered by this investigation is small vertical engines from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,⁷ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on April 27, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 7, 2020, which is 10 calendar days from the initial comment deadline.⁸

Commerce 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 Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD investigation.

⁶ *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁷ *See* 19 CFR 351.102(b)(21) (defining "factual information").

⁸ *See* 19 CFR 351.303(b).

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's (E&C's) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.⁹ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.¹⁰ The GOC did not request 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 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, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as

⁹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on 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_on_Electronic_Filing_Procedures.pdf.

¹⁰ See Commerce's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Invitation for Consultation to Discuss the Countervailing Duty Petition," dated March 19, 2020.

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 Commerce 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 Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹¹ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’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.¹²

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.¹³ Based on our analysis of the information submitted on the record, we have determined that small vertical engines, as defined

¹¹ See section 771(10) of the Act.

¹² 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)).

¹³ See Volume I of the Petition at 13-15; *see also* General Issues Supplement at 2-4 and Exhibit Supp-I-2.

in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁴

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 the appendix to this notice. To establish industry support, the petitioner provided its 2019 shipments of the domestic like product.¹⁵ The petitioner estimated the production of the domestic like product for the entire domestic industry based on its own knowledge of the industry.¹⁶ The petitioner compared its 2019 production of domestic like product to the estimated total production of the domestic like product for the entire domestic industry.¹⁷ We relied on data provided by the petitioner for purposes of measuring industry support.¹⁸

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.¹⁹ 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, Commerce is not required to take further action in order to evaluate industry

¹⁴ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People’s Republic of China (China CVD Initiation Checklist) at Attachment II, “Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People’s Republic of China” (Attachment II), dated concurrently with this notice and on file electronically via ACCESS.

¹⁵ *See* Volume I of the Petition at 3 and Exhibits I-1 and I-2.

¹⁶ *Id.* at 3-4 and Exhibits I-1 through I-6.

¹⁷ *Id.* at 3-4 and Exhibits I-1 and I-2.

¹⁸ *Id.* at 3-4 and Exhibits I-1 through I-6. For further discussion, *see* China CVD Initiation Checklist at Attachment II.

¹⁹ *See* China CVD Initiation Checklist at Attachment II.

support (e.g., polling).²⁰ 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.²¹ 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.²² Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.²³

Injury Test

Because China 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 China 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

²⁰ See section 702(c)(4)(D) of the Act; see also China CVD Initiation Checklist at Attachment II; and Volume I of the Petition at 3–4 and Exhibits I-1 through I-6.

²¹ See China CVD Initiation Checklist at Attachment II; see also Volume I of the Petition at 3–4 and Exhibits I-1 through I-6.

²² See China CVD Initiation Checklist at Attachment II; see also Volume I of the Petition at 3–4 and Exhibits I-1 through I-6.

²³ See China CVD Initiation Checklist at Attachment II; see also Volume I of the Petition at 3–4 and Exhibits I-1 through I-6.

subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁴

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; impacts on the domestic industry's financial condition; and a shuttered manufacturing facility.²⁵ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁶

Initiation of CVD Investigation

Based upon our examination of the Petition on small vertical engines from China and supplemental responses, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of small vertical engines from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all but one of the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* China 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

²⁴ *See* Volume I of the Petition at 18.

²⁵ *Id.* at 18-29 and Exhibits I-2, I-7, and I-11 through I-21.

²⁶ *See* China CVD Initiation Checklist at Attachment III ("Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China" (Attachment III)).

The petitioner named 43 companies in China as producers/exporters of small vertical engines.²⁷ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of small vertical engines from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the "Scope of the Investigation," in the appendix.

On March 31, 2020, Commerce released CBP data on imports of small vertical engines from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.²⁸ We further stated that we will not accept rebuttal comments.

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 on E&C's website at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

²⁷ See Volume I of the Petition at Exhibit I-9.

²⁸ See Memorandum, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated March 31, 2020.

In accordance with section 702(b)(4)(A) 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.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its 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 small vertical engines from China are materially injuring, or threatening material injury to, a U.S. industry.²⁹ A negative ITC determination will result in the investigation being terminated.³⁰ 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 Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³¹ and, if the information is submitted to rebut, clarify, or

²⁹ See section 703(a)(1) of the Act.

³⁰ *Id.*

³¹ See 19 CFR 351.301(b).

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.³²

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. Please review the regulations prior to submitting factual information in this investigation.

Extensions 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 Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.³³ 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, Commerce 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, Commerce will inform parties in a letter or memorandum of 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, standalone submission; under limited circumstances Commerce will grant untimely filed requests for the extension of time limits. Parties should 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 extension requests or factual information in this investigation.

³² See 19 CFR 351.301(b)(2).

³³ See 19 CFR 351.302.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁴ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁵ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on E&C's website at <http://enforcement.trade.gov/apo>.

On January 22, 2008, Commerce 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)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.³⁶

³⁴ See section 782(b) of the Act.

³⁵ 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.

³⁶ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 7, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment, including but not limited to, pressure washers. The subject engines are spark ignition, single-cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 99 cubic centimeters (cc) and a maximum displacement of up to, but not including, 225cc. Typically, engines with displacements of this size generate gross power of between 1.95 kilowatts (kw) to 4.75 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

Certain small vertical shaft engines, whether or not mounted on non-hand-held outdoor power equipment, including but not limited to walk-behind lawn mowers and pressure washers, are included in the scope. However, if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country. Subject engines are covered whether or not they are accompanied by other parts.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as a sump, carburetor spacer, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.*, ignition coils) for synchronizing with the engine to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to this investigation are predominantly classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 8407.90.1010. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. The mounted engines

that are subject to this investigation enter under HTSUS 8433.11.0050, 8433.11.0060, and 8424.30.9000. Engines subject to this investigation may also enter under HTSUS 8407.90.1020, 8407.90.9040, and 8407.90.9060. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

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