



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-113]

**Certain Collated Steel Staples from the People's Republic of China: Final Affirmative
Countervailing Duty Determination and Final Affirmative Critical Circumstances
Determination**

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain collated steel staples (collated staples) from the People's Republic of China (China).

DATES: Applicable [**INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

FOR FURTHER INFORMATION CONTACT: Joshua Simonidis or Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0608 or (202) 482-9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Determination* in the countervailing duty (CVD) investigation of collated staples from China on November 12, 2019.¹ For a complete description of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.²

Period of Investigation

The period of investigation (POI) is January 1, 2018 through December 31, 2018.

Scope of the Investigation

The products covered by this investigation are collated staples from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

On November 4, 2019, we issued a Preliminary Scope Memorandum making no changes to the scope of this and the companion antidumping duty (AD) investigation.³ For a summary of the product coverage comments and rebuttal comments submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.⁴ Based on the comments received from interested

¹ See *Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 61021 (November 12, 2019) (*Preliminary Determination*).

² See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Certain Collated Steel Staples from the People's Republic of China," dated concurrently with this determination, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ See Memorandum, "Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Collated Steel Staples from the People's Republic of China: Preliminary Scope Decision Memorandum," dated November 4, 2019 (Preliminary Scope Memorandum).

⁴ See Memorandum, "Certain Collated Steel Staples from the People's Republic of China: Final Scope Determination Decision Memorandum," dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

parties, we are revising the scope of this investigation to exclude “hog rings.” The scope in Appendix I reflects this change.

Verification

Commerce normally verifies information relied upon in making its final determination, pursuant to section 782(i) of the Tariff Act of 1930, as amended (the Act). However, on March 16, 2020, Commerce cancelled verification of the questionnaire responses submitted by Zhejiang Best Nail Industrial Co., Ltd. (Best Nail) and the Government of China.⁵ During the course of this investigation, a Level 4 travel advisory was imposed for all of China, preventing Commerce personnel from traveling to China to conduct verification. Due to this, as well as the impending statutory deadline for the completion of the final determination, Commerce was unable to conduct verification in this case.

Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce may use “facts otherwise available” in reaching the applicable determination. Accordingly, as Commerce was unable to proceed to verification in this investigation for reasons beyond its control, we have relied on the information submitted on the record that we used in making the *Preliminary Determination*, as facts available in making our final determination.

Final Affirmative Determination of Critical Circumstances

⁵ See Memorandum, “Cancellation of Verification and Deferment of Upstream Subsidy Investigation,” dated March 16, 2020.

Commerce preliminarily determined in this investigation that critical circumstances exist with respect to imports of collated staples from China shipped by Best Nail and all other producers and exporters.⁶ That determination remains unchanged and a discussion of our final critical circumstances determination can be found in the Issues and Decision Memorandum.

Analysis of Subsidy Programs and Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II to this notice. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a countervailable subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit

⁶ See *Certain Collated Steel Staples From the People's Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in the Antidumping and Countervailing Duty Investigations*, 84 FR 59353 (November 4, 2019).

to the recipient, and that the subsidy is specific.⁷ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

As discussed above, in making this final determination, Commerce relied on facts available pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because one or more respondents did not act to the best of their ability in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. Specifically, Commerce assigned rates based entirely on facts otherwise available with adverse inferences, pursuant to section 776(b) of the Act, to Hai Sheng Xin Group Co., Ltd. and Ningbo Deli Stationery. For further information, *see* the section “Use of Facts Otherwise Available and Adverse Inferences” in the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(5)(A) of the Act, Commerce shall determine an estimated all-others rate for companies not individually examined. Generally, under section 705(c)(5)(A)(i) of the Act, this rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. However, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all companies individually examined are zero or *de minimis* rates, or are determined entirely under section 776 of the Act, then Commerce may use “any reasonable method” to establish an all-others rate, “including averaging the weighted-average countervailable subsidy rates determined for the exporters and producers individually investigated.”

⁷ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

The sole calculated countervailable subsidy rate for this final determination is based on facts otherwise available. As explained above, the sole cooperative mandatory respondent in this investigation, Best Nail, is receiving a rate based entirely on the facts available. In the specific circumstances of this case, because we were unable to verify Best Nail, we find that a reasonable method to determine the all-others rate under section 705(c)(5)(A)(ii) of the Act here is to apply Best Nail's individual estimated subsidy rate as the all-others rate for companies not individually examined.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we made certain changes to Best Nail's subsidy rate calculations set forth in the *Preliminary Determination*. For a discussion of these changes, *see* the Issues and Decision Memorandum. In light of our method in this investigation for determining the all-others rate for companies not individually examined, we have also modified the all-others rate.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy Rate (percent)
Zhejiang Best Nail Industrial Co., Ltd.	12.32
Hai Sheng Xin Group Co., Ltd.	192.64
Ningbo Deli Stationery	192.64
All Others	12.32

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise entered, or withdrawn from warehouse, for consumption on August 14, 2019, which is 90 days before the date of publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 11, 2020, but to continue the suspension of liquidation of all entries from August 14, 2019 through March 10, 2020. As discussed above in the “Scope Comments” section, for the final determination we have excluded hog rings from the scope of the investigation. Accordingly, with respect to hog rings, we will instruct CBP to discontinue suspension of liquidation of such merchandise effective the date of publication of this determination. In addition, we will direct CBP to liquidate any suspended entries of this merchandise without regard to countervailing duties and to refund any cash deposits with respect to these entries.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material

injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited, or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. Because the final determination in this proceeding is affirmative, in accordance with section 705(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of subject merchandise from China no later than 45 days after our final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: May 22, 2020.

Jeffrey I. Kessler,

Assistant Secretary

for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the scope of this investigation is certain collated steel staples. Certain collated steel staples subject to these investigations are made from steel wire having a nominal diameter from 0.0355 inch to 0.0830 inch, inclusive, and have a nominal leg length from 0.25 inch to 3.0 inches, inclusive, and a nominal crown width from 0.187 inch to 1.125 inch, inclusive. Certain collated steel staples may be manufactured from any type of steel, and are included in the scope of this investigation regardless of whether they are uncoated or coated, and regardless of the type or number of coatings, including but not limited to coatings to inhibit corrosion.

Certain collated steel staples may be collated using any material or combination of materials, including but not limited to adhesive, glue, and adhesive film or adhesive or paper tape.

Certain collated steel staples are generally made to American Society for Testing and Materials (ASTM) specification ASTM F1667–18a, but can also be made to other specifications.

Excluded from the scope of this investigation are any carton-closing staples covered by the scope of the existing antidumping duty order on Carton-Closing Staples from the People's Republic of China. *See Carton-Closing Staples from the People's Republic of China: Antidumping Duty Order*, 83 FR 20792 (May 8, 2018).

Also excluded are collated fasteners commonly referred to as “C-ring hog rings” and “D-ring hog rings” produced from stainless or carbon steel wire having a nominal diameter of 0.050 to 0.081 inches, inclusive. C-ring hog rings are fasteners whose legs are not perpendicular to the crown, but are curved inward resulting in the fastener forming the shape of the letter “C”. D-ring hog rings are fasteners whose legs are straight but not perpendicular to the crown, instead intersecting with the crown at an angle ranging from 30 degrees to 75 degrees. The hog rings subject to the exclusion are collated using glue, adhesive, or tape. The hog rings subject to this exclusion have either a 90 degree blunt point or 15-75 degree divergent point.

Certain collated steel staples subject to this investigation are currently classifiable under subheading 8305.20.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Final Determination of Critical Circumstances
- IV. Use of Facts Otherwise Available and Adverse Inferences
- V. Subsidies Valuation
- VI. Analysis of Programs
- VII. Analysis of Comments
 - Comment 1: Whether It Is Appropriate to Apply AFA to the EBC Program
 - Comment 2: Whether It Is Appropriate to Apply AFA to Reported “Other Subsidies”
 - Comment 3: Whether to Make an Affirmative Final Critical Circumstances Determination
 - Comment 4: Whether to Apply AFA to the Provision of Electricity for LTAR
 - Comment 5: Whether to Correct the Electricity Benchmark Rates
 - Comment 6: Whether the Land Benchmark Is Flawed
 - Comment 7: Whether to Include the Upstream Subsidy Benefit in the Final Determination
 - 7a. Whether the Deferral of the Upstream Subsidy Allegation Is Improper
 - 7b. Whether All Facts Are on the Record to Calculate Upstream Subsidy Benefit
 - Comment 8: Whether to Apply Benefit AFA for the Provision of Galvanized Steel Wire for LTAR
- VIII. Recommendation

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