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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A-831-804, A-351-856, A-523-815, A-821-828, A-489-844]**

**Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations**

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

**DATES:** Applicable October 19, 2020.

**FOR FURTHER INFORMATION CONTACT:** Margaret Collins at (202) 482-6250 (the Republic of Armenia (Armenia)); George McMahon at (202) 482-1167 (Brazil); Benjamin Smith at (202) 482-2181 (the Sultanate of Oman (Oman)); Mike Heaney at (202) 482-4475 (the Russian Federation (Russia)); Christopher Williams at (202) 482-5166 (the Republic of Turkey (Turkey)); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**The Petitions**

On September 29, 2020, the Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of certain aluminum foil (aluminum foil) from Armenia, Brazil, Oman, Russia, and Turkey filed in proper form on behalf of the

petitioners,<sup>1</sup> domestic producers of aluminum foil.<sup>2</sup> The Petitions were accompanied by countervailing duty (CVD) petitions concerning imports of aluminum foil from Oman and Turkey.<sup>3</sup>

On October 2, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.<sup>4</sup> The petitioners filed responses to the supplemental questionnaires on October 6, 2020.<sup>5</sup>

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of aluminum foil from Armenia, Brazil, Oman, Russia, and Turkey are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the aluminum foil industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (E) of the Act.

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<sup>1</sup> The Aluminum Association Trade Enforcement Working Group and its individual members, Granges Americas Inc., JW Aluminum Company, and Novelis Corporation (collectively, the petitioners). The petitioners indicated that Novelis Corporation acquired Aleris Corporation (including all of Aleris' aluminum foil-related operations), effective April 14, 2020. *See* Volume I of the Petitions at 1, footnote 1.

<sup>2</sup> *See* Petitioners' Letter, "Certain Aluminum Foil from Armenia, Brazil, Oman, Russia, and Turkey - Petition for the Imposition of Antidumping and Countervailing Duties," dated September 29, 2020 (the Petitions).

<sup>3</sup> *Id.*

<sup>4</sup> *See* Commerce's Letters, "Petition for the Imposition of Antidumping Duties on Imports of Certain Aluminum Foil from Armenia, Brazil, Oman, Russia, and Turkey: Supplemental Questions," dated October 2, 2020 (General Issues Supplemental); and Country-Specific Supplemental Questionnaires: Armenia Supplemental, Brazil Supplemental, Oman Supplemental, Russia Supplemental, and Turkey Supplemental, dated October 2, 2020.

<sup>5</sup> *See* Petitioners' Country-Specific Supplemental Responses, dated October 6, 2020; *see also* Petitioners' Letter, "Certain Aluminum Foil from Armenia, Brazil, Oman, Russia, and Turkey - Petitioners' Amendments to Volume I Relating to General Issues," dated October 6, 2020 (General Issues Supplement).

Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested AD investigations.<sup>6</sup>

#### Periods of Investigation

Because the Petitions were filed on September 29, 2020, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Brazil, Oman, Russia, and Turkey AD investigations is July 1, 2019 through June 30, 2020. Because Armenia is a non-market economy (NME) country, pursuant to 351.204(b)(1), the POI for the Armenia investigation is January 1, 2020 through June 30, 2020.

#### Scope of the Investigations

The product covered by these investigations is aluminum foil from Armenia, Brazil, Oman, Russia, and Turkey. For a full description of the scope of these investigations, *see* the appendix to this notice.

#### Comments on the Scope of the Investigations

On October 2 and 16, 2020, Commerce requested information from the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>7</sup> On October 16, 2020, the petitioners revised the scope.<sup>8</sup> The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

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<sup>6</sup> *See infra*, section on “Determination of Industry Support for the Petitions.”

<sup>7</sup> *See* General Issues Supplemental at 3-4; *see also* Memorandum, “Phone Call with Counsel to the Petitioners,” dated October 16, 2020 (Scope Call Memorandum) at 1-2.

<sup>8</sup> *See* Scope Call Memorandum at 1-2.

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).<sup>9</sup> Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,<sup>10</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on November 9, 2020, which is the next business day after 20 calendar days from the signature date of this notice.<sup>11</sup> Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 19, 2020, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

### Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance’s Antidumping Duty and Countervailing Duty Centralized Electronic Service

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<sup>9</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>10</sup> See 19 CFR 351.102(b)(21) (defining “factual information”).

<sup>11</sup> The 20-day deadline falls on November 8, 2020, which is a Sunday. Therefore, in accordance with the *Next Business Day Rule*, the deadline moves to the next business day, November 9, 2020. See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended*, 70 FR 24533 (May 10, 2008) (*Next Business Day Rule*).

System (ACCESS), unless an exception applies.<sup>12</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due.

#### Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of aluminum foil to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe aluminum foil, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

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<sup>12</sup> 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 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\\_on\\_Electronic\\_Filing\\_Procedures.pdf](https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf).

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on November 9, 2020, which is the next business day after 20 calendar days from the signature date of this notice.<sup>13</sup> Any rebuttal comments must be filed by 5:00 p.m. ET on November 19, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

#### Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(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 732(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 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

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<sup>13</sup> See 19 CFR 351.303(b)(1). The 20-day deadline falls on November 8, 2020, which is a Sunday. Therefore, in accordance with the *Next Business Day Rule*, the deadline moves to the next business day, November 9, 2020. See *id.* *Next Business Day Rule*.

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,<sup>14</sup> 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.<sup>15</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 petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.<sup>16</sup> Based on our analysis of the 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>17</sup>

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<sup>14</sup> See section 771(10) of the Act.

<sup>15</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)).

<sup>16</sup> See Volume I of the Petitions at 12-13 and Exhibit GEN-9 (containing *Aluminum Foil from China*, Inv. Nos. 701-TA-570 and 731-TA-1346 (Final), USITC Pub. 4771 (April 2018) (*ITC Aluminum Foil Final*) at 10-16).

<sup>17</sup> For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see country-specific AD Initiation Checklists at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Aluminum Foil from Armenia, Brazil, Oman, Russia, and Turkey (Attachment II). These checklists are dated concurrently with this notice and on file electronically via ACCESS.

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in the appendix to this notice. To establish industry support, the petitioners provided the 2019 production of the domestic like product by U.S. producers that support the Petitions.<sup>18</sup> The petitioners estimated the production of the domestic like product for the remaining U.S. producers of aluminum foil based on the Aluminum Association’s knowledge of the industry.<sup>19</sup> We relied on data provided by the petitioners for purposes of measuring industry support.<sup>20</sup>

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.<sup>21</sup> First, the Petitions 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 support (*e.g.*, polling).<sup>22</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.<sup>23</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50

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<sup>18</sup> See Volume I of the Petitions at 4-5 and Exhibit GEN-1; *see also* General Issues Supplement at 4-5.

<sup>19</sup> *Id.* at 4-5 and Exhibits GEN-1, GEN-2, and GEN-3; *see also* General Issues Supplement at 4-5.

<sup>20</sup> *Id.* at 4-5 and Exhibits GEN-1 and GEN-3.

<sup>21</sup> *Id.* at 2-5 and Exhibits GEN-1, GEN-2, and GEN-3; *see also* General Issues Supplement at 4-5.

<sup>22</sup> *Id.*; *see also* section 732(c)(4)(D) of the Act.

<sup>23</sup> See Volume I of the Petitions at 4-5 and Exhibits GEN-1, GEN-2, and GEN-3 *see also* General Issues Supplement at 4-5. For further discussion, *see* Attachment II of the country-specific AD Initiation Checklists.



percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.<sup>24</sup> Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.<sup>25</sup>

#### Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>26</sup>

The petitioners contend 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; declining domestic production, shipments, and capacity utilization; negative effects on domestic industry employment; and a decline in financial performance and profitability.<sup>27</sup> 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.<sup>28</sup>

#### Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Volume I of the Petitions at 14-15 and Exhibit GEN-10.

<sup>27</sup> See Volume I of the Petitions at 18-32 and Exhibits GEN-7 and GEN-10 through GEN-15.

<sup>28</sup> See country-specific AD Initiation Checklists 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 Armenia, Brazil, Oman, Russia, and Turkey (Attachment III).

based its decision to initiate AD investigations of imports of aluminum foil from Armenia, Brazil, Oman, Russia, and Turkey. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the country-specific AD Initiation Checklists.

#### U.S. Price

For Armenia, Brazil, Oman, Russia, and Turkey, the petitioners based export price (EP) or constructed export price (CEP), as applicable, on pricing information for sales of, or sales offers for, aluminum foil produced in and exported from each country. The petitioners made certain adjustments to U.S. price to calculate a net ex-factory U.S. price.<sup>29</sup>

#### Normal Value<sup>30</sup>

For Brazil, Oman, Russia, and Turkey, the petitioners based NV on home market price quotes obtained through market research for aluminum foil produced in and sold, or offered for sale, in each country within the applicable time period.<sup>31</sup>

Commerce considers Armenia to be a non-market economy (NME) country.<sup>32</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat Armenia as an NME country for purposes of the initiation of this investigation. Accordingly,

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<sup>29</sup> See country-specific AD Initiation Checklists.

<sup>30</sup> In accordance with section 773(b)(2) of the Act, for the Brazil, Oman, Russia, and Turkey investigations, Commerce will request information necessary to calculate the constructed value and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

<sup>31</sup> See country-specific AD Initiation Checklists.

<sup>32</sup> Armenia, formerly part of the Union of Soviet Socialist Republics (USSR), assumed the NME status of the USSR upon the dissolution of the USSR, and, at that time, Commerce explained that such status would remain in effect until revoked. See *Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Belarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23383 (June 3, 1992). To date, Commerce has not revoked the NME status of Armenia.

NV in Armenia is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act.

The petitioners claim that South Africa is an appropriate surrogate country for Armenia because South Africa is a market economy country that is at a level of economic development comparable to that of Armenia and is a significant producer of identical merchandise. The petitioners provided publicly available information from South Africa to value all FOPs. Based on the information provided by the petitioners, we determine that it is appropriate to use South Africa as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

#### Factors of Production

Because information regarding the volume of inputs consumed by Armenian producers/exporters was not reasonably available, the petitioners used their own product-specific consumption rates as a surrogate to value Armenian manufacturers' FOPs.<sup>33</sup> Additionally, the petitioners calculated factory overhead; selling, general and administrative expenses; and profit based on the experience of a South African producer of identical merchandise.<sup>34</sup>

#### Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of aluminum foil from Armenia, Brazil, Oman, Russia, and Turkey are being, or are likely to be,

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<sup>33</sup> See Volume II of the Petitions at 3-4, Exhibit AD-AM-3.

<sup>34</sup> *Id.* at 4-5, Exhibit AD-AM-3.

sold in the United States at LTFV. Based on comparisons of EP or CEP, as applicable, to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for aluminum foil for each of the countries covered by this initiation are as follows: (1) Armenia – 45.65 percent; (2) Brazil – 63.05 percent; (3) Oman – 57.74 percent; (4) Russia – 62.18 percent; and (5) Turkey – 34.27 percent.<sup>35</sup>

#### Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of aluminum foil from Armenia, Brazil, Oman, Russia, and Turkey are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### Respondent Selection

##### *Brazil, Russia, and Turkey*

In the Petitions, the petitioners named seven companies in Brazil, three companies in Russia, and ten companies in Turkey<sup>36</sup> as producers/exporters of aluminum foil. Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of exporters or producers in any individual case is large such that Commerce cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents in that case based on U.S.

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<sup>35</sup> See country-specific Initiation Checklists for details of calculations.

<sup>36</sup> See Volume I of the Petition at 10 and Exhibit GEN-6.

Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the “Scope of the Investigations,” in the appendix.

On October 15, 2020, Commerce released CBP data on imports of aluminum foil from Brazil, Russia, and Turkey 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 these investigations.<sup>37</sup> Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

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 Commerce’s website at <http://enforcement.trade.gov/apo>.

### *Oman*

In the Petition, the petitioners named only one company as a producer/exporter of aluminum foil in Oman, Oman Aluminum Rolling Company.<sup>38</sup> Furthermore, we placed CBP import data onto the record of this proceeding, which corroborates the identification of Oman Aluminum Rolling Company as the sole producer/exporter in the foreign market,<sup>39</sup> and we currently know of no additional producers/exporters of subject merchandise from

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<sup>37</sup> See country-specific Memoranda, “Antidumping Duty Investigation of Certain Aluminum Foil: Release of Customs Data from U.S. Customs and Border Protection,” dated October 15, 2020.

<sup>38</sup> See Volume IV of the Petition at 2 and Exhibit GEN-6.

<sup>39</sup> See Memorandum, “Release of Customs Data from U.S. Customs and Border Protection,” dated October 15, 2020 (Oman CBP Import Data Release Memo).

Oman. Accordingly, Commerce intends to examine all known producers/exporters in this investigation (*i.e.*, the company cited above). As noted in the Oman CBP Import Data Release Memo, we invite interested parties to comment on this issue within three days of the publication of this notice in the *Federal Register*. Commerce will not accept rebuttal comments regarding the CBP data or this issue. Because we intend to examine all known producers, if no comments are received or if comments received further support the existence of this sole producer/exporter in Oman, we do not intend to conduct respondent selection and will proceed to issuing the initial antidumping questionnaire to the company identified. However, if comments are received which create a need for a respondent selection process, we intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

#### *Armenia*

In the Petition, the petitioners named only one company as a producer/exporter of aluminum foil in Armenia, Rusal Armenal.<sup>40</sup> On October 15, 2020, Commerce released CBP data on imports of aluminum foil from Armenia under APO to all parties with access to information protected by APO. These data did not confirm the existence of only one producer/exporter of aluminum foil in Armenia.<sup>41</sup> Commerce 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 these investigations. Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

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<sup>40</sup> See Volume II of the Petition at 3 and Exhibit GEN-6.

<sup>41</sup> See Memorandum, "Release of Customs Data from U.S. Customs and Border Protection," dated October 15, 2020 (Armenia CBP Import Data Release Memo).

In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of Armenian producers and exporters identified in the Petitions and the CBP import data, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Commerce has determined that it will issue a Q&V questionnaire to the potential respondent for which the petitioners have provided a complete address.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on Enforcement and Compliance's website at <https://www.trade.gov/ec-advd-case-announcements>. Producers/exporters of aluminum foil from Armenia that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement and Compliance's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Armenian producers/exporters no later than 5:00 PM ET on November 2, 2020. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

## Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.<sup>42</sup> The specific requirements for submitting a separate-rate application in an Armenia investigation are outlined in detail in the application itself, which is available on Commerce's website at <http://enforcement.trade.gov/nme/nme-sep-rate.html>. The separate-rate application will be due 30 days after publication of this initiation notice.<sup>43</sup> Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from Armenia submit a response both to the Q&V questionnaire and to the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

## Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period

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<sup>42</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries (April 5, 2005), available at <http://enforcement.trade.gov/policy/bull05-1.pdf> (Policy Bulletin 05.1).

<sup>43</sup> Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.



of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.<sup>44</sup>

#### Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of Armenia, Brazil, Oman, Russia, and Turkey via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

#### ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

#### Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of aluminum foil from Armenia, Brazil, Oman, Russia, and Turkey are materially injuring, or threatening material injury to, a U.S. industry.<sup>45</sup> A negative ITC determination for any country will result in the investigation being terminated with respect to that country.<sup>46</sup> Otherwise, these AD investigations will proceed according to statutory and regulatory time limits.

#### Submission of Factual Information

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<sup>44</sup> See Policy Bulletin 05.1 at 6 (emphasis added).

<sup>45</sup> See section 733(a) of the Act.

<sup>46</sup> *Id.*

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). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>47</sup> 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.<sup>48</sup> 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. Interested parties should review the regulations prior to submitting factual information in these investigations.

#### Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation for purposes of CV, stating that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to

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<sup>47</sup> See 19 CFR 351.301(b).

<sup>48</sup> See 19 CFR 351.301(b)(2).

such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

#### 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. 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 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, stand-alone submission; under limited circumstances we 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 factual information in these investigations.

### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>49</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>50</sup> 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. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letter of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>51</sup>

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: October 19, 2020.

**Jeffrey I. Kessler,**

*Assistant Secretary*

*for Enforcement and Compliance.*

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<sup>49</sup> See section 782(b) of the Act.

<sup>50</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are 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).

<sup>51</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

## **Appendix**

### **Scope of the Investigations**

The merchandise covered by these investigations 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, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of these investigations is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides 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, 7607.11.6090, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000.

Further, merchandise that falls within the scope of these proceedings may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3091, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.