



BILLING CODE: 3510-DS-P

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: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist, in part, with respect to imports of certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from certain producers and exporters from the People's Republic of China (China).

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Ajay Menon or Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1993 or (202) 482-6172, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2020, Commerce received a countervailing duty (CVD) petition concerning imports of small vertical engines from China filed in proper form on behalf of the

petitioner, Briggs & Stratton Corporation.¹ On April 7, 2020, we initiated this investigation,² and on August 24, 2020, we published an affirmative *Preliminary Determination*.³

Commerce selected Chongqing Kohler Engines Ltd. (Chongqing Kohler) and Chongqing Zongshen General Power Machine Co. (Chongqing Zongshen) as the individually-examined respondents in this investigation.

On September 24, 2020, the petitioner alleged that critical circumstances exist with respect to imports of small vertical engines from China, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206.⁴

In accordance with section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), because the petitioner submitted its critical circumstance allegations more than 30 days before the scheduled date of the final determination,⁵ Commerce will make a preliminary finding as to whether there is a reasonable basis to believe or suspect that critical circumstances exist. Commerce will issue its preliminary finding of critical circumstances within 30 days after the petitioner submits the allegation.⁶

¹ See Petitioner'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," dated March 18, 2020 (the Petition).

² See *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*, 85 FR 20667 (April 14, 2020).

³ See *Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 52086 (August 24, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

⁴ See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Critical Circumstances Allegation," dated September 24, 2020 (Critical Circumstances Allegation).

⁵ The final determination for this CVD investigation is currently due no later than December 28, 2020.

⁶ See 19 CFR 351.206(c)(2)(ii). In this case, 30 days after the petitioner submitted the allegation would place the deadline on Saturday, October 24, 2020. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. 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, 2005).

Period of Investigation (POI)

The POI is January 1, 2019 through December 31, 2019.

Critical Circumstances Allegation

The petitioner alleges that there was a massive increase of imports of small vertical engines from China and provided monthly import data for the period January 2020 through June 2020.⁷ The petitioner states that a comparison of total imports, by quantity, for the base period January 2020 through March 2020 to the comparison period April 2020 through June 2020, shows that imports of small vertical engines from China increased by 37.01 percent,⁸ which is “massive” under 19 CFR 351.206(h)(2). The petitioner also alleges that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the Subsidies and Countervailing Measures Agreement of the World Trade Organization (SCM Agreement).⁹

Critical Circumstances Analysis

Section 703(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in a CVD investigation if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement;¹⁰ and (B) there have been massive imports of the subject merchandise over a relatively short period.

⁷ See Critical Circumstances Allegation at Exhibit 1.

⁸ *Id.*

⁹ *Id.* at 4-5.

¹⁰ Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). See, e.g., *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002).

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.¹¹ Imports must increase by at least 15 percent during the comparison period to be considered massive.¹²

Alleged Countervailable Subsidies Are Inconsistent with the SCM Agreement

Chongqing Kohler

In the *Preliminary Determination*, we found that Chongqing Kohler received countervailable subsidies under the “Export Buyer’s Credit Program” program, which was found to be export contingent in the *Preliminary Determination*.¹³ Thus, because we preliminarily found that the “Export Buyer’s Credit Program” program is export contingent, we preliminarily find that the criterion under section 703(e)(1)(A) of the Act has been met.¹⁴

Chongqing Zongshen

¹¹ See 19 CFR 351.206(i).

¹² See 19 CFR 351.206(h)(2).

¹³ See *Preliminary Determination* PDM at 29; see also Memorandum, “Countervailing Duty Investigation of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People’s Republic of China: Calculation Memorandum for Chongqing Kohler Engines Ltd. (Chongqing Kohler),” dated August 17, 2020 at Attachment 1.

¹⁴ See *Preliminary Determination* PDM at 25-37.

In the *Preliminary Determination*, we found that Chongqing Zongshen received countervailable subsidies under the “Export Sellers Credit Program” program, which was found to be export contingent in the *Preliminary Determination*.¹⁵ Thus, because we preliminarily found that the “Export Sellers Credit Program” program is export contingent, we preliminarily find that the criterion under section 703(e)(1)(A) of the Act has been met.

Massive Imports

Commerce compared the import volumes of subject merchandise, as provided by the mandatory respondents, for the five months immediately preceding and following the filing of the petition. Because the petition was filed on March 18, 2020, in order to determine whether there was a massive surge in imports for the mandatory respondents, Commerce compared the total volume of shipments during the period of November 2019 through March 2020 with the volume of shipments during the period from April 2020 through August 2020.¹⁶ With respect to Chongqing Kohler, we preliminarily determine that there was no massive surge in imports between the base and comparison periods.¹⁷ However, with respect to Chongqing Zongshen, we preliminarily determine that there was a massive surge in imports between the base and comparison periods.¹⁸

For all other exporters and producers, we examined monthly shipment data for the same time periods, using import data from Global Trade Atlas (GTA), adjusted to remove the

¹⁵ *Id.* at 28-29.

¹⁶ See Chongqing Kohler’s Letter, “Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from the People’s Republic of China: Chongqing Kohler’s Monthly Quantity and Value Data,” dated October 2, 2020; see also Chongqing Zongshen’s Letter, “Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Monthly Q&V Data,” dated October 2, 2020.

¹⁷ See Memorandum, “Critical Circumstances Shipment Data Analysis,” dated concurrently with this memorandum at Attachment 1 (Critical Circumstances Analysis Memo).

¹⁸ *Id.*

mandatory respondents' shipment data.¹⁹ However, the quantity of shipments reported by the mandatory respondents was greater than the quantity of imports recorded in the GTA data for U.S. harmonized tariff schedule number 8407.90.10.10. Therefore, we determine that the record does not support a determination that there is a massive surge in imports between the base and comparison periods for all other exporters and producers.²⁰

Accordingly, consistent with section 703(e)(1) of the Act, Commerce preliminarily determines that critical circumstances exist for imports of small vertical engines from China with respect to Chongqing Zongshen, but do not exist with respect to Chongqing Kohler and all other exporters or producers not individually examined. For the underlying data and results of Commerce's analysis, *see* the Critical Circumstances Analysis Memo.

Final Determination

We will make a final determination concerning critical circumstances in the final determination of this investigation, which is currently scheduled for December 28, 2020.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.²¹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal

¹⁹ *Id.*

²⁰ *See Prestressed Concrete Steel Wire from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination in Part*, 85 FR 59287 (September 21, 2020).

²¹ *See* 19 CFR 351.309(d)(1).

briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for Chongqing Zongshen, we intend to direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from the China entered, or withdrawn from warehouse for consumption, on or after May 26, 2020, which is 90 days prior to the date of publication of the *Preliminary Determination* in the *Federal Register*. For such entries, CBP shall require a cash deposit equal to the estimated preliminary subsidy rates established in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we intend to notify the ITC of this preliminary determination of critical circumstances.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: October 26, 2020.

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

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