



DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-151]

Countervailing Duty Investigation of Tin Mill Products from the People's Republic of China: Preliminary Determination of Critical Circumstances, in Part

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that critical circumstances exist, in part, with respect to imports of tin mill products from one exporter/producer of tin mill products in the countervailing duty (CVD) investigation of tin mill products from the People's Republic of China (China).

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

FOR FURTHER INFORMATION CONTACT: Genevieve Coen at (202) 482-3251 or Melissa Porpotage at (202) 482- 1413; AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In response to a petition filed on January 18, 2023, Commerce initiated a CVD investigation concerning tin mill products from China.¹ On June 16, 2023, Cleveland-Cliffs Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners) filed a timely allegation, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR

¹ See *Tin Mill Products from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 88 FR 9476 (February 14, 2023) (*Initiation Notice*).

351.206, that critical circumstances exist with respect to tin mill products from China.²

Commerce published its preliminary CVD determination on June 26, 2023.³ In the *Preliminary Determination*, we examined two mandatory respondents and assigned the all-others rate based upon the rate assigned to the single participating mandatory respondent, Shougang Jingtang United Iron & Steel Co., Ltd. (Jingtang Iron). We applied adverse facts available (AFA) to the second mandatory respondent, Baoshan Iron & Steel Co., Ltd. (Baoshan Iron).⁴

In accordance with section 703(e)(1) of the Act and 19 CFR 351.206(c)(1) and (2)(ii), because the petitioners submitted the critical circumstances allegation more than 30 days before the scheduled date of the final determination, Commerce will make a preliminary finding as to whether there is a reasonable basis to believe or suspect that critical circumstances exist and will issue a preliminary critical circumstances determination within 30 days after the allegation is filed.

Critical Circumstances Allegation

The petitioners allege that there was a massive increase of imports of tin mill products from China and provided monthly import data comparing a base period of November 2022 through January 2023 to a comparison period of February through April 2023.⁵ This comparison shows an increase of 23.6 percent in imports from China, which is “massive” under 19 CFR 351.206(h)(2). The petitioners also allege that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement).⁶

Critical Circumstances Analysis

² See Petitioners’ Letter, “Petitioners’ Allegation of Critical Circumstances,” dated June 16, 2023 (Critical Circumstances Allegation).

³ See *Tin Mill Products from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 88 FR 41373 (June 26, 2023) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

⁴ See *Preliminary Determination* PDM at 9-10.

⁵ See Critical Circumstances Allegation at 4-6.

⁶ See section 771(8)(A) of the Act,

Section 703(e)(1) of the Act provides that Commerce will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement; and (B) there have been massive imports of the subject merchandise over a relatively short period.⁷ Pursuant to 19 CFR 351.206(h)(2), imports must increase by at least 15 percent during the “relatively short period” to be considered “massive,” and 19 CFR 351.206(i) defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.⁸ The regulations also provide, however, 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 that earlier time.⁹

Alleged Countervailable Subsidies Are Inconsistent with the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence currently on the record of this investigation. As determined in the *Preliminary Determination*, we found the Export Buyer’s Credit Program to be export-contingent, and we applied AFA to find that the non-cooperating mandatory respondent Baoshan Iron used the following programs which the record indicates are export-contingent, rendering them inconsistent with the SCM Agreement: Export Seller’s Credit; Export Buyer’s Credit; Foreign Trade Development Fund Grants; Export Assistance Grants; and Subsidies for the Development of Famous Brands and China World Top Brands.¹⁰

⁷ 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).

⁸ *See* 19 CFR 351.102 and 19 CFR 351.206.

⁹ *See* 19 CFR 351.206(i).

¹⁰ *See Preliminary Determination* PDM at 19 and Appendix I; *see also* Petitioners’ Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Tin Mill Products from Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey, and the United Kingdom,” dated January 18, 2023, at Volume X.

Therefore, Commerce preliminarily determines, for purposes of this critical circumstances determination, that there are subsidies in this investigation that are inconsistent with the SCM Agreement.

Massive Imports

In determining whether there have been “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act, 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”). In this case, Commerce compared the import volumes of subject merchandise, as provided by the cooperating mandatory respondent, Jingtang Iron,¹¹ for the four months immediately preceding and four months following the filing of the petition, ending with the month prior to the *Preliminary Determination*. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.¹²

Because the petition was filed on January 18, 2023, to determine whether there was a massive surge in imports for the cooperating mandatory respondent, Commerce compared the total volume of shipments during the period October 2022 through January 2023 with the volume of shipments during the following four-month period of February 2023 through May 2023. Based on this analysis, we preliminarily determine that there was no massive surge in imports for the cooperating mandatory respondent, Jingtang Iron.

For “all others,” we applied our normal practice and analyzed monthly shipment data for the same time period, using import data from Global Trade Atlas (GTA),¹³ adjusted to remove the cooperating mandatory respondent’s shipment data. Although the quantity of shipments

¹¹ See Jingtang Iron’s Letter, “Shipment Data for Critical Circumstances,” dated July 7, 2023.

¹² See 19 CFR 351.206(h)(2).

¹³ Commerce gathered GTA data under the following harmonized tariff schedule numbers: 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, 7212.50.0000, 7225.99.0090, 7226.99.0180.

reported by Jingtang Iron for one month each in the base and comparison periods was greater than the quantity of imports recorded in the GTA statistics for the U.S. Harmonized Tariff Schedule categories included in the petition for those months, we considered the data generally probative and analyzed the overall shipment data by comparing the base and comparison periods, respectively. Based on this analysis, we find that there were no massive imports for “all other” producers from China.

As explained in the *Preliminary Determination*, we preliminarily applied total AFA to Baoshan Iron because it failed to cooperate in this proceeding.¹⁴ For Baoshan Iron, we preliminarily determine, in accordance with section 776(b) of the Act, that there was a massive surge in imports between the base and comparison periods.

Conclusion

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of tin mill products from China produced or exported by Baoshan Iron. We preliminarily determine that critical circumstances do not exist with respect to imports of tin mill products from China with respect to Jingtang Iron or all other producers.

Final Critical Circumstances Determinations

We will make a final critical circumstances determination concerning critical circumstances in the final CVD determination, which is currently scheduled for October 30, 2023.

Public Comment

A schedule for case briefs or other written comments will be established 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.¹⁵ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties

¹⁴ See *Preliminary Determination* PDM at 9-16.

¹⁵ See 19 CFR 351.309(d)(1).

who submit case briefs or rebuttal 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.¹⁶

Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established.¹⁷

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for Baoshan Iron, we intend to direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse for consumption, on or after March 28, 2023, 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.

U.S. International Trade Commission (ITC) Notification

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

This determination is issued and published pursuant to section 703(f) and 777(i) of the Act and 19 CFR 351.206.

Dated: July 14, 2023.

Lisa W. Wang,
Assistant Secretary for Enforcement and Compliance.

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¹⁶ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁷ See 19 CFR 351.303(b)(1).