



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-126; C-570-127]

Non-Refillable Steel Cylinders from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that non-refillable steel cylinders with water capacities between 100 and 299 cubic inches produced in the People's Republic of China (China) and exported to the United States, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain non-refillable steel cylinders (non-refillable cylinders) from China.

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

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4956.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 2021, Commerce published in the *Federal Register* the AD and CVD orders on non-refillable cylinders from China.¹ On June 1, 2023, in response to a request from

¹ See *Certain Non-Refillable Steel Cylinders from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty and Countervailing Duty Orders*, 86 FR 25839 (May 11, 2021) (*Orders*).

Worthington Industries (the petitioner),² Commerce initiated a circumvention inquiry to determine whether imports of non-refillable cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 with a water capacity between 100 cubic inches (1.6 liters) and 299 cubic inches (4.9 liters) produced in China and exported to the United States are “later-developed merchandise,” and/or are “altered in form or appearance in minor respects” from in-scope merchandise such that they should be considered subject to the *Orders*.³ For a complete description of the events that followed initiation of this inquiry, *see* the Preliminary Decision Memorandum.⁴

Scope of the *Orders*

The products covered by the *Orders* are certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118. A full description of the scope of the *Orders* is provided in the Preliminary Decision Memorandum.

Scope of the Circumvention Inquiry

This circumvention inquiry covers non-refillable cylinders meeting the requirements of, or produced to meet the requirements of, USDOT Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 with a water capacity between 100 cubic inches (1.6 liters) and 299 cubic inches (4.9 liters) produced in China and exported to the United States.

² *See* Petitioner’s Letter, “Request for Circumvention Ruling Pursuant to Sections 781(c) and 781(d) of the Tariff Act of 1930,” dated April 12, 2023.

³ *See Non-Refillable Steel Cylinders from the People’s Republic of China: Initiation of Circumvention Inquiry of the Antidumping and Countervailing Duty Orders; Water Capacity Between 100 and 299 Cubic Inches*, 88 FR 35839 (June 1, 2023) (*Initiation Notice*). Although Commerce initiated a circumvention inquiry for merchandise “altered in form or appearance in minor respects,” pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.226(j) and as “later-developed merchandise,” pursuant to section 781(d) of the Act and 19 CFR 351.226(k), we are rescinding the portion of the circumvention inquiry relating to “later-developed merchandise” because of the affirmative preliminary determination with respect to circumvention under section 781(c) of the Act.

⁴ *See* Memorandum, “Preliminary Decision Memorandum for Circumvention Inquiry; 100 – 299 Cubic Inches NRSCs,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Statutory and Regulatory Framework

Section 781(c) of the Act, provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind as subject merchandise has been “altered in form or appearance in minor respects... whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.”

While the Act is silent as to what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon “such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.”⁵ Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.226(j), Commerce examines such factors as: (1) overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.⁶ Each inquiry is highly dependent on the facts on the record and must be analyzed in light of those specific facts.⁷ Thus, along with the five factors enumerated above, Commerce may also consider the circumstances under which the products enter the United States, including, but not limited to, the timing of the entries and the quantity of

⁵ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*, 83 FR 5405 (February 7, 2018) (citing S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)).

⁶ *Id.*; see also *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332 (Fed. Cir. 2016).

⁷ See, e.g., *Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 82 FR 26778 (June 9, 2017), and accompanying Preliminary Decision Memorandum at “IV. Statutory and Regulatory Framework.”

merchandise entered during the circumvention review period.⁸

Preliminary Determination

We preliminarily determine that non-refillable cylinders with water capacities between 100 and 299 cubic inches and non-refillable cylinders with water capacities between 300 and 1,526 cubic inches are not dissimilar in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, channels of marketing, and the timing and circumstances under which Jinhua Sinoblue Machinery Manufacturing Co., Ltd. (Jinhua Sinoblue) and Ningbo Eagle Machinery & Technology Co., Ltd. (Ningbo Eagle) exported the non-refillable cylinders with water capacities between 100 and 299 cubic inches. Because we find that the merchandise subject to this inquiry is not dissimilar to subject merchandise, we preliminarily determine that the non-refillable cylinders at issue constitute merchandise “altered in form or appearance in minor respects” from in-scope merchandise, within the meaning of section 781(c)(1) of the Act. Also, we preliminarily determine that the affirmative circumvention finding should be applied on a country-wide basis.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

⁸ *Id.*; *see also, e.g., Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People’s Republic of China*, 74 FR 33991, 33992-93 (July 14, 2009); *Brass Sheet and Strip from West Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655 (August 10, 1990), unchanged in *Brass Sheet and Strip from Germany; Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991); and *Small Diameter Graphite Electrodes from the People’s Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873 (June 25, 2012).

Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2), we will direct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of previously suspended entries and to suspend liquidation of non-refillable cylinders with water capacities between 100 and 299 cubic inches produced in China and exported to the United States that are entered, or withdrawn from warehouse, for consumption on or after June 1, 2023 (*i.e.*, the date of the initiation of this inquiry).⁹ Pursuant to 19 CFR 351.225(l)(2), we will also instruct CBP to require cash deposits of estimated duties equal to the AD and CVD rates in effect for non-refillable cylinders for each unliquidated entry of non-refillable cylinders with water capacities between 100 and 299 cubic inches produced in China and exported to the United States that are entered, or withdrawn from warehouse, for consumption on or after June 1, 2023. The suspension of liquidation instructions will remain in effect until further notice.

Public Comment

Interested parties are invited to comment on this preliminary determination of circumvention and may submit case briefs and/or written comments within 14 days of the publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date on which case briefs are due.¹⁰ Pursuant to 19 CFR 351.226(f)(4), rebuttal briefs must be limited to issues raised in the case briefs.¹¹ Parties who submit case briefs or rebuttal briefs in this proceeding 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.¹² Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹³

⁹ See *Initiation Notice*.

¹⁰ See 19 CFR 351.226(f)(4).

¹¹ See also 19 CFR 351.303 (for general filing requirements).

¹² See 19 CFR 351.309(c)(2) and (d)(2); see also 19 CFR 351.303 (for general filing requirements).

¹³ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the publication of this notice. Requests should contain the party's name, address, telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended, Commerce intends to issue the final determination of this inquiry, including the results of its analysis of the issues raised in any written briefs, no later than 300 days from the date of initiation of the inquiry, pursuant to 19 CFR 351.226(e)(2). As such, the deadline to issue the final determination is currently March 27, 2024.

Notification to Interested Parties

Commerce is issuing and publishing this affirmative preliminary determination of circumvention in accordance with sections 781(c) of the Act, 19 CFR 351.226(j), and 19 CFR 351.226(g)(1).

Dated: November 14, 2023.

Abdelali Elouaradia,
Deputy Assistant Secretary
for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Statutory and Regulatory Framework
- VI. Circumvention Analysis
- VII. Preliminary Affirmative Determination of Circumvention
- VIII. Recommendation

[FR Doc. 2023-25689 Filed: 11/20/2023 8:45 am; Publication Date: 11/21/2023]