

January 16, 2007

DELIVERY BY HAND

Ms. Susan H. Kuhbach
Senior Office Director for Import Administration
U.S. Department of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Re: Application of the Countervailing Duty Law to Imports from the People's Republic of China

Dear Ms. Kuhbach:

On behalf of the PC Strand Coalition and its individual members, American Spring Wire Corp., Insteel Wire Products, and Sumiden Wire Products Corp., we submit these comments in response to the agency's request regarding the application of the U.S. countervailing duty ("CVD") law to imports from China. 71 Fed. Reg. 75,507 (Dec. 15, 2006). The Coalition's members are domestic producers of prestressed concrete steel wire strand ("PC strand") that successfully pursued unfair trade cases against imports of PC strand from a number of countries in 2005, leading to the imposition of orders. See Notices of Orders on PC strand from Korea, India, Thailand, Brazil and Mexico, 69 Fed. Reg. 4109-4112 (Dep't Commerce Jan. 28, 2004). The Coalition believes that Commerce has both the legal authority and the obligation to apply the CVD law to imports from China.

Article 15(b) of the China Accession Protocol provides expressly for the application of CVD measures against China immediately upon China's accession to the World Trade Organization. WT/L/432 at 9. The Chinese government agreed to adhere to the subsidy disciplines of the SCM Agreement when it entered the World Trade Organization. Further, the application of the CVD law to China was agreed upon without any stipulation that doing so meant not treating China as a nonmarket economy country for antidumping purposes. Accordingly, application of the CVD law to China is consistent with U.S. rights under the Protocol as agreed to by China.

Further, application of the CVD law to China is both consistent with, and required by, U.S. law. The plain language of the countervailing duty statute requires the imposition of CVDs if the government of any country is providing a countervailable subsidy. 19 U.S.C. § 1677(a). There is no limitation on the applicability of the law to market economy countries. The definition of a subsidy in the statute merely requires that a government provide a financial contribution to a person and thereby confer a benefit. 19 U.S.C. § 1677(5)(b). So long as subsidies are provided that meet the definition set forth in the statute, as is true with respect to a multitude of programs and other funding provided by the Government of China, the CVD law must be applied.

The appellate court's decision in Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986), does not prevent the application of the CVD law to China. First, the court did not hold that the CVD law did not apply to China, but simply deferred to Commerce's decision not to apply the CVD law to nonmarket economy countries at that time. 801 F.2d at 1318. Second, the statute has changed since Commerce adopted the practice reviewed in Georgetown

Steel, so the statute the agency interpreted at that time is not the same as current law. Third, China has become a member of the WTO since the Georgetown Steel case was issued and as such is subject to the subsidies discipline of the international agreements, as further reflected in the Accession Protocol. All of these factors indicate that the past agency practice of not applying the CVD law to China, as sustained in Georgetown Steel, should be revised to reflect the current law and international agreements.

Finally, available information indicates that the steel industry in China has been the beneficiary of significant amounts of government assistance, giving it an unfair competitive advantage in exporting steel products to the U.S. market. These subsidies and other unfair practices have enabled Chinese steel producers, including PC strand producers, to significantly increase their exports to the United States in recent years. Failure to apply the CVD law to China simply permits Chinese producers an unfair competitive advantage in selling their products into the United States. As a matter of policy, therefore, and given the explicit agreement by China to be subject to the CVD law in the Accession Protocol, there is every justification for the Commerce Department to apply the CVD law to imports from China if they benefit from Chinese government subsidies.

Respectfully submitted,



KATHLEEN W. CANNON

Counsel to the PC Strand Producers Coalition