



C-570-948  
Sunset Review  
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September 28, 2015

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**RE:** Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Steel Grating from the People's Republic of China

## SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the *CVD Order* on certain steel grating (steel grating) from the People's Republic of China (PRC).<sup>1</sup> We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues that we address in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

### *Background*

On July 23, 2010, the Department of Commerce (the Department) published the CVD order on steel grating from the PRC.<sup>2</sup> On, June 1, 2015, the Department initiated the first sunset review of the *CVD Order* pursuant to section 751(c)(2) of the Tariff Act of 1930, as amended, (the Act)

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<sup>1</sup> See *Certain Steel Grating from the People's Republic of China: Countervailing Duty Order*, 75 FR 43144 (July 23, 2010) (*CVD Order*).

<sup>2</sup> See *CVD Order*.



and 19 CFR 351.218(c).<sup>3</sup> Metal Grating Coalition and its individual members, Alabama Metal Industries Corporation, Fisher & Ludlow, Inc., Harsco Industrial IKG, Interstate Gratings, LLC, and Ohio Gratings, Inc. (collectively, MGC), timely filed a notice of intent to participate on June 15, 2015, in accordance with 19 CFR 351.218(d)(1). Metal Grating Corporation claimed interested party status pursuant to section 771(9)(F) of the Act as an association of domestic interested parties; the constituent members of the Metal Grating Corporation claimed interested party status pursuant to section 771(9)(C) of the Act. On July 20, 2015, the Department received a substantive response from MGC, in accordance with 19 CFR 351.218(d)(3)(i).<sup>4</sup> The Department did not receive a response from the Government of the PRC (GOC) or any PRC producers or exporters.

In accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), when there are inadequate responses from respondent interested parties, we “{n}ormally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the *Federal Register* of the notice of initiation, issue final results of review based on the facts available in accordance with 19 CFR 351.308(f) (*see* section 751(c)(3)(B) of the Act and 19 CFR 351.221(c)(5)(ii)).” Consistent with Department regulations and practice, we determine that in the absence of responses from the GOC and other respondent interested parties (*i.e.*, producers and exporters), the Department is conducting an expedited (120-day) sunset review of the *CVD Order*.

#### *History of the Order*

On July 23, 2010 the Department of Commerce (the Department) published, in the *Federal Register*, the *CVD Order* on steel grating from the PRC.<sup>5</sup> In the *Final Determination* of the subject CVD investigation,<sup>6</sup> covering the calendar year 2008, the Department found a net countervailable subsidy rate of 62.46 percent *ad valorem* for Ningbo Jiulong Machinery Manufacturing Co., Ltd. (Ningbo Jiulong) and 62.46 percent *ad valorem* for “All-Others.”

We found the following programs countervailable in the original investigation:

1. Export Grant 2006, 2007, 2008
2. Foreign Trade Grant 2008
3. Water Fund Refund/Exemption 2008
4. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
5. Famous Brand Grant 2008
6. Government Provision of Hot-Rolled Steel for Less than Adequate Remuneration (LTAR)
7. Government Provision of Wire Rod for LTAR

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<sup>3</sup> *See Initiation of Five-Year “Sunset” Reviews*, 80 FR 31012 (June 1, 2015).

<sup>4</sup> *See* Letter to the Department, “Certain Steel Grating from the People’s Republic of China: Notice of Intent to Participate in Sunset Review, Entry of Appearance, and APO Application,” (June 15, 2015), (MGC’s Substantive Response).

<sup>5</sup> *See CVD Order*, 75 FR at 43144.

<sup>6</sup> *See Certain Steel Grating from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010) (*Final Determination*) and accompanying Issues and Decision Memorandum (IDM).

8. Government Provision of Electricity for LTAR
9. Jiulong Lake Town Grant 2008
10. Energy Saving Grant 2008
11. Innovative Small- and Medium-Sized Enterprise Grant 2008
12. Product Quality Grant

Since the issuance of the *CVD Order*, no administrative reviews, new shipper reviews, changed circumstance reviews, or scope determinations of this *CVD Order* have been conducted. This is the first sunset review of the *CVD Order*.

### *Scope of the Order*

The products covered by this order are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as “bar grating,” although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod.

The scope of this order excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of this order also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

### **DISCUSSION OF THE ISSUES**

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the *CVD Order* would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that in making this determination the Department shall consider: 1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and 2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (ITC) the net countervailable subsidy likely to prevail if the *CVD Order* were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy

described in Article 3 or Article 6.1 of the 1994 World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (ASCM).

## **1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy**

### *Domestic Interested Parties' Comments*

MGC argues that revocation of the *CVD Order* would likely lead to the recurrence of countervailable subsidies at the rate of 62.46 percent *ad valorem* for Ningbo Jiulong and 62.46 percent *ad valorem* for all-others.<sup>7</sup> MGC also states that there is no indication that any of the subsidy programs countervailed during the investigation have ceased to exist.<sup>8</sup> Furthermore, Chinese producers and exporters of steel grating likely also benefit from new countervailable subsidies that were not the subject of the Department's original determination in the investigation. MGC also argues that the Department's findings in recent CVD investigations of various steel products from China indicate that it is likely that Chinese producers and exporters of steel grating also benefit from new, substantial countervailable subsidies in addition to those already countervailed by the Department in this proceeding.<sup>9</sup> In addition, MGC notes that following the imposition of this *CVD Order* no administrative reviews or new shipper reviews of the countervailing duty order have been requested or conducted.<sup>10</sup>

### **Department's Position:**

Section 752(b)(1) of the Act directs the Department in determining the likelihood of continuation or recurrence of a countervailable subsidy to consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. According to the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.<sup>11</sup> The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.<sup>12</sup> Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.<sup>13</sup> Where a subsidy program is found to exist, the Department will normally determine that revocation of the *CVD Order* is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.<sup>14</sup>

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<sup>7</sup> See MGC's Substantive Response at 5.

<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.* at 11.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010) and accompanying IDM at Comment 1.

<sup>14</sup> See *id.*

As the Department has stated in other sunset determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated.<sup>15</sup> The Department has further stated that, in order to determine whether a program has been terminated, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.<sup>16</sup> The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.<sup>17</sup> Where a subsidy is not bestowed pursuant to a statute, regulation or decree, the Department may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.<sup>18</sup>

As indicated above, there have been no administrative reviews nor other intervening segments of this proceeding since issuance of the *CVD Order*. Moreover, neither the GOC nor other respondent interested parties participated in this sunset review. There is no information indicating any changes in the programs found countervailable during the investigation. Based on the facts on the record, the Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies.

## **2. Net Countervailable Subsidy Likely to Prevail**

### *Domestic Interested Parties' Comments*

MGC states that the Department should use the rates from the original investigation and that no adjustment to those rates is needed because there has not been an administrative review of the *CVD Order*.

### **Department's Position:**

Consistent with the SAA and legislative history, the Department normally will provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.<sup>19</sup> Section 752(b)(1)(B) of the Act provides, however, that the Department will consider whether any change in the program which gave rise to the net countervailable

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<sup>15</sup> See, e.g., *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006) and accompanying IDM at 5-7, unchanged in *Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006).

<sup>16</sup> See, e.g., *Fresh and Chilled Atlantic Salmon From Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011) and accompanying IDM at Comment 1.

<sup>17</sup> See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) and accompanying IDM at Comment 7.

<sup>18</sup> See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011) and accompanying IDM at Comment 1.

<sup>19</sup> See SAA at 890, and H.R. Rep. No. 103-826 (1994) (House Report) at 64.

subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy.

Therefore, although the SAA and House Report provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.<sup>20</sup>

In determining company-specific, net countervailable subsidy rates likely to prevail, the Department has started with the rates found in the original investigation. Because the Department has not conducted any administrative reviews of the *CVD Order*, and there is no information suggesting changes in the programs found countervailable during the investigation, we do not need to adjust the rates from the investigation to account for additional subsidies, program-wide changes or terminated programs.

Consistent with section 752(b)(3) of the Act, the Department will report to the ITC the net countervailable subsidy rates from the original investigation as indicated in the section entitled “Final Results of Review.”

### **3. Nature of the Subsidy**

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidies and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

#### *Export Subsidies*

As indicated in the *Final Determination*, the following programs fall within the definition of an export subsidy under Article 3.1 of the ASCM, as receipt of benefits under these programs may be contingent upon export activity.

*Export Grant 2006, 2007, 2008:* The State Tax Authority Ningbo City provides a monthly grant at a rate of 0.03 RMB to companies for each U.S. dollar of exports it makes.

*Foreign Trade Grant 2008:* The local Ningbo City government provides an award amount to eligible firms that have reached a minimum value of exports.

*Water Fund Refund/Exemption 2008:* Ningbo Jiulong reported that it was exempted from paying into the water fund for part of the investigation period as part of a Ningbo City government program, and receipt of benefits was contingent on it being an exporting company.

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<sup>20</sup> See, e.g., *Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010) and accompanying IDM at Comment 2.

### *Other Subsidies*

The following programs do not fall within the meaning of Article 3.1 of the ASCM, but could be subsidies as described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. The subsidies could also could fall within the meaning of Article 6.1 if they constitute debt forgiveness, grants to cover debt repayment, or subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for the Department to make such a determination. We are, in any case, providing the ITC with the following program descriptions:

*Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment:* The GOC offers preferential income tax policies to domestic enterprises that upgrade their manufacturing operations with Chinese-made equipment. Domestic enterprises that upgrade technology consistent with the GOC industrial policies may deduct 40 percent of the cost of equipment from their next year's income tax obligation.

*Famous Brand Grant 2008:* The GOC operates a program to support the development of "famous brands" for companies located in the Zhenhai district.

*Government Provision of Hot-Rolled Steel for LTAR:* The GOC provides hot-rolled steel to steel grate manufacturers at less than adequate remuneration.

*Government Provision of Wire Rod for LTAR:* The GOC provides wire rod to steel grate manufacturers at less than adequate remuneration.

*Government Provision of Electricity for LTAR:* The GOC provides electricity to steel grate manufacturers at less than adequate remuneration.

*Jiulong Lake Town Grant 2008:* The Ningbo Zhenhai Jiulong Lake Town Government provides a grant which is a conglomeration of four separate awards (the Technical Reform Input Award, the Advancement in Sales Award, the District Model Enterprise for Environmental Protection award, and the Advanced Enterprise in Energy-Saving award).

*Energy Saving Grant 2008:* The Ningbo Zhenhai Development and Reform Bureau awards grants to companies for investment in energy-saving projects. The amount of the grant is calculated as a percentage of the total investment made in the energy-saving projects.

*Innovative Small- and Medium-Sized Enterprise Grant 2008:* The Ningbo Zhenhai Development and Reform Bureau awards grants to enterprises that have certain minimum sales and sales growth levels, as well as ownership of certain brands and technologies.

*Product Quality Grant:* Ningbo Jiulong received a Product Quality Grant during the investigation period.

**FINAL RESULTS OF REVIEW**

The Department finds that revocation of the *CVD Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Manufacturers/Exporters	Net countervailable subsidy rate (percent)
Ningbo Jiulong Machinery Manufacturing Co., Ltd.	62.46
All-Others	62.46

**RECOMMENDATION**

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review in the *Federal Register*, and notify the ITC of our findings.

AGREE ✓

DISAGREE \_\_\_\_\_

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

28 SEPTEMBER 2015  
Date