



UNITED STATES DEPARTMENT OF COMMERCE  
International Trade Administration  
Washington, D.C. 20230

C-570-948  
Sunset Review  
**Public Document**  
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January 29, 2021

MEMORANDUM TO: Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Second  
Sunset Review of the Countervailing Duty Order on Steel Grating  
from the People's Republic of China

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## I. SUMMARY

We have analyzed the substantive response of the domestic interested parties<sup>1</sup> in the second sunset review of the countervailing duty (CVD) order covering steel grating from the People's Republic of China (China).<sup>2</sup> We did not receive a response from the Government of China or from any other interested party. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2).<sup>3</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 in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

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<sup>1</sup> The domestic interested parties are Nucor Grating; IKG USA, LLC; Ohio Gratings, Inc.; Interstate Gratings, LLC; and Lichtgitter USA Inc (collectively, the Metal Grating Coalition).

<sup>2</sup> See *Certain Steel Grating from the People's Republic of China: Countervailing Duty Order*, 75 FR 43144 (July 23, 2010) (*Order*).

<sup>3</sup> Commerce normally will conduct an expedited sunset review where respondent interested parties did not provide an adequate response. See *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005).



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## II. BACKGROUND

On October 1, 2020, Commerce published the notice of initiation of the second sunset review of the CVD order on steel grating from China,<sup>4</sup> pursuant to section 751(c) of the Act.<sup>5</sup> Commerce received a notice of intent to participate from the Metal Grating Coalition, within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>6</sup> The Metal Grating Coalition claimed interested party status under section 771(9)(F) of the Act, as each member is a manufacturer of the domestic like product in the United States and, accordingly, are domestic interested parties under section 771(9)(C) of the Act.

Commerce received a substantive response from the domestic interested parties<sup>7</sup> within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On November 20, 2020, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.<sup>8</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this CVD order.

## III. HISTORY OF THE ORDER

On June 8, 2010, Commerce published its final determination that countervailable subsidies are being provided to producers and exporters of steel grating from China.<sup>9</sup> We applied 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.<sup>10</sup>

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)

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<sup>4</sup> See *Order*.

<sup>5</sup> See *Initiation of Five-Year (Sunset) Review*, 85 FR 61928 (October 1, 2020).

<sup>6</sup> See Metal Grating Coalition's Letter, "Steel Grating from the People's Republic of China: Notice of Intent to Participate in Sunset Review," dated October 16, 2020.

<sup>7</sup> See Metal Grating Coalition's Letter, "Steel Grating from the People's Republic of China: Substantive Response to the Notice of Initiation of Sunset Review," dated November 2, 2020 (Domestic Interested Parties' Substantive Response).

<sup>8</sup> See Commerce's Letter, "Sunset Reviews Initiated on October 1, 2020," dated November 20, 2020.

<sup>9</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).

<sup>10</sup> See *Final Determination and Order*, 75 FR at 43145.

7. Government Provision of Wire Rod for LTAR
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 *Order*, Commerce has not conducted any administrative reviews, new shipper reviews, scope rulings, circumvention determinations, or changed circumstances determinations. This is the second sunset review of the CVD *Order*.

#### **IV. SCOPE OF THE *ORDER***

The merchandise covered by this *Order* is 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.

#### **V. LEGAL FRAMEWORK**

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, Commerce 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, Commerce shall provide the ITC with the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with 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 Agreement on Subsidies and Countervailing Measures (SCM).

## VI. DISCUSSION OF THE ISSUES

Below we address the comments of the domestic interested parties.

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

#### Interested Party Comments<sup>11</sup>

Citing section 752(b)(1) of the Act, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA),<sup>12</sup> and the *Policy Bulletin*,<sup>13</sup> the domestic interested parties assert that an affirmative determination of continuation or recurrence is warranted because the subsidies at issue in the original investigation remain in existence and have not been terminated or suspended. Further, they note that the investigation rates remain in place for all exporters, because no administrative reviews or new shipper reviews of the *Order* have been completed. Additionally, the domestic interested parties note the significant decline in imports since the imposition of the *Order*, is a direct result of the efficacy of the *Order* and absent the *Order*, subsidized imports from China would likely increase significantly in volume.

#### Commerce's Position:

As stated above, in determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce 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 SAA, Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.<sup>14</sup> The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.<sup>15</sup> The presence of programs that have not been used, but 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>16</sup> Where a subsidy program is found to exist, Commerce will normally determine that revocation of the relevant order would likely to lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.<sup>17</sup>

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<sup>11</sup> See Domestic Interested Parties' Substantive Response at 7-12 and Exhibit 1.

<sup>12</sup> See Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 888.

<sup>13</sup> See *Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Policy Bulletin*).

<sup>14</sup> See SAA at 888.

<sup>15</sup> *Id.*

<sup>16</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>17</sup> *Id.*

In the investigation, Commerce found that countervailable subsidies were being provided to Chinese exporters and producers of steel grating under the programs listed above. As indicated above, there have been no administrative reviews since issuance of the *Order*. No party submitted evidence to demonstrate that these countervailable programs have expired or been terminated, and there is no information on the record of this proceeding indicating any changes to the programs found countervailable during the investigation. Absent argument or evidence to the contrary, we find that these countervailable programs continue to exist and be used. Therefore, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies because the record indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

## 2. Net Countervailable Subsidy Rates Likely to Prevail

### **Interested Party Comments**<sup>18</sup>

The domestic interested parties assert that, consistent with the SAA and the *Policy Bulletin*, Commerce will normally select the rate determined in the original investigation, as that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. Accordingly, the domestic interested parties argue that pursuant to the principles set forth in the SAA, as it did in the first sunset review of this *Order* Commerce should report the following CVD rates to the ITC: (1) 62.46 percent for Ningbo Jiulong Machinery Manufacturing Co., Ltd.; and (2) 62.46 percent for all others.

### **Commerce's Position:**

Consistent with the SAA and legislative history, Commerce will normally 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, as noted by the domestic interested parties, 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> While section 752(b)(1)(B) of the Act provides that Commerce will consider whether any change in the programs which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy, Commerce has not completed an administrative review of this *Order*. Additionally, no evidence has been provided that would warrant making a change to the net countervailable subsidy rate found in the investigation. Therefore, in this sunset review, we determine the company-specific countervailable subsidy rates likely to prevail are the rates assigned in the *Order*. The countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the order, are provided in the "Final Results of Review" section of this memorandum.

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<sup>18</sup> See Domestic Interested Parties' Substantive Response at 12-13.

<sup>19</sup> See SAA at 890.

### 3. Nature of the Subsidies

In accordance with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of these subsidy programs and whether these programs constitute subsidies that fall within Article 3 or Article 6.1 of the SCM Agreement. We note that Article 6.1 of the SCM Agreement expired, effective January 1, 2000.

#### *Article 3 Subsidies*

The following programs fall within the definition of an export subsidy under Article 3.1 of the SCM, which states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact whether solely or as one of several other conditions, upon export performance, and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

#### **Grant Programs**

1. Export Grant 2006, 2007, 2008
2. Foreign Trade Grant 2008
3. Water Fund Refund/Exemption 2008

#### **Tax Programs**

4. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

#### *Article 6.1 Subsidies*

The following programs do not fall within the meaning of Article 3.1 of the SCM. However, they could be subsidies described in Article 6.1 of the SCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM. The subsidies could also 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.

#### **Grant Programs**

5. Famous Brand Grant 2008
6. Jiulong Lake Town Grant 2008
7. Energy Saving Grant 2008
8. Innovative Small- and Medium-Sized Enterprise Grant 2008
9. Product Quality Grant

#### **Provision of Goods/Services for LTAR**

10. Government Provision of Hot-Rolled Steel for LTAR
11. Government Provision of Wire Rod for LTAR

12. Government Provision of Electricity for LTAR

**VII. FINAL RESULTS OF SUNSET REVIEW**

Commerce determines that revocation of the CVD order on steel grating from China would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below:

<u>Producer/Exporter</u>	<u>Ad Valorem Subsidy Rate</u>
Ningbo Jiulong Machinery Manufacturing Co., Ltd.	62.46 percent
All other producers and exporters	62.46 percent

**VIII. RECOMMENDATION**

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

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

1/29/2021

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Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance