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DEPARTMENT OF COMMERCE

International Trade Administration

[C-552-813]

Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) has preliminarily determined that critical circumstances exist with respect to imports of steel wire garment hangers from the Socialist Republic of Vietnam (Vietnam) with the exception of imports from the Hamico Companies.¹

EFFECTIVE DATE: [Insert Date of Publication in the Federal Register.]

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SUPPLEMENTARY INFORMATION:

Case History

On December 29, 2011, the Department received a countervailing duty (CVD) petition concerning imports of garment hangers from Vietnam filed in proper form by M&B Metal Products Company, Inc., Innovative Fabrication LLC/Indy Hanger, and US Hanger Company,

¹ The Hamico Companies are the South East Asia Hamico Export Joint Stock Company, Nam A Hamico Export Joint Stock Company, and Linh Sa Hamico Company Limited.

LLC (collectively, Petitioners).² This investigation was initiated on January 18, 2012.³ The affirmative preliminary determination was published on June 4, 2012.⁴

On July 10, 2012, Petitioners alleged that critical circumstances exist with respect to imports of steel wire garment hangers from Vietnam and submitted U.S. Census Data in support of their allegation.⁵ On July 23, 2012, the Department requested from the two mandatory respondents - the Hamico Companies and the Infinite Companies⁶ - monthly shipment data of subject merchandise to the United States for the period August 2011 through May 2012.

On July 31, 2011, the Hamico Companies submitted to the Department their monthly shipment data of subject merchandise to the United States for the period August 2011 through May 2012.⁷ At verification, the Department officials confirmed the accuracy of the Hamico Companies' shipment data.⁸ The Infinite Companies did not submit their monthly shipment data of subject merchandise to the United States for the period August 2011 through May 2012. On August 3, 2012, the Infinite Companies withdrew from the investigation.⁹

² See Petition for the Imposition of Countervailing Duties (Petition). A public version of the Petition and all other public documents and public versions for this investigation are available on the public file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

³ See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation, 77 FR 3737 (January 25, 2011), and accompanying Initiation Checklist.

⁴ See Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 77 FR 32930 (June 4, 2012) (Preliminary Determination).

⁵ See Petitioners' Critical Circumstances Allegation (July 10, 2012), at Attachment 1.

⁶ The Infinite Companies are Infinite Industrial Hanger Limited and Supreme Hanger Company Limited.

⁷ See the Hamico Companies' critical circumstances questionnaire response (July 31, 2012).

⁸ See the Department's September 24, 2012, verification report titled "Verification of South East Asia Hamico Export Joint Stock Company (SEA Hamico), Nam A Hamico Export Joint Stock Company (Nam A Hamico) and Linh Sa Hamico Company Limited (Linh Sa Hamico) (collectively SEA Hamico)" at 5 (filed on IA ACCESS on September 26, 2012).

⁹ See the Infinite Companies' August 3, 2012 letter titled "Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Withdrawal from Investigation."

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (POI), is calendar year 2011.

Scope of Investigation

The merchandise subject to the investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the investigation are (a) wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome-plated steel wire garment hangers with a diameter of 3.4mm or greater.

The products subject to the investigation are currently classified under U.S. Harmonized Tariff Schedule (HTSUS) subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Comments of the Parties

In their critical circumstances allegation, 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 (Subsidies Agreement). Petitioners cite to the Preliminary Determination, in which the Department

preliminarily determined that Hamico Companies and the Infinite Companies have received subsidies which are contingent on export performance.¹⁰

Petitioners also claim in their critical circumstances allegation that there have been massive imports of hangers in the four months following the filing of the petition on December 29, 2011. Petitioners provided data from the U.S. Department of Commerce and U.S. International Trade Commission (ITC), which they contend demonstrate that imports of subject merchandise increased by more than 15 percent, which is required to be considered “massive” under 19 CFR 351.206(h)(2).

Critical Circumstances Analysis

Section 703(e) (1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period.

When determining whether an alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the Department limits its findings to those subsidies contingent on export performance or use of domestic over imported goods (i.e., those prohibited under Article 3 of the Subsidies Agreement).¹¹

In determining whether imports of the subject merchandise have been “massive,” 19 CFR 351.206(h)(1) provides that the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted

¹⁰ See Petitioners’ Critical Circumstances Allegation (July 10, 2012) at 2-4.

¹¹ See, e.g., Notice of Preliminary Negative Determination of Critical Circumstances: Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China, 73 FR 21588, 21589-90 (April 22, 2008), unchanged in Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55808, 55809 (August 30, 2002).

for by the imports. In addition, the Department will not consider imports to be massive unless imports during the “relatively short period” (comparison period) have increased by at least 15 percent compared to imports during an “immediately preceding period of comparable duration” (base period). See 19 CFR 351.206(h)(2).

Section 351.206(i) of the Department’s regulations defines “relatively short period” as normally being the period beginning on the date the proceeding commences (i.e., the date the petition is filed) and ending at least three months later. For consideration of this allegation, we have used a five-month base period (i.e., August 2011 through December 2011) and a five-month comparison period (i.e., January 2012 through May 2012).

Hamico Companies

In the Preliminary Determination, the Department found that, during the POI, the Hamico Companies received countervailable benefits under two programs that are contingent upon export performance: Import Duty Exemptions and Export Loans. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that these two programs are inconsistent with the Subsidies Agreement.

In determining whether there were massive imports from the Hamico Companies, we analyzed the Hamico Companies’ monthly shipment data for the period August 2011 through May 2012. These data indicate that there was not a massive increase in shipments of subject merchandise to the United States by the Hamico Companies during the five-month period immediately following the filing of the petition on December 29, 2011. Specifically, shipments

of subject merchandise to the United States from the Hamico Companies decreased, both in terms of volume and value.¹²

Infinite Companies

As noted in the case history, on August 3, 2012, the Infinite Companies withdrew from the investigation. Section 776(a)(2) of the Tariff Act of 1930, as amended (the Act) provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the Infinite Companies, in their August 3, 2012, letter to the Department, declined to further participate in the investigation. As a result, pursuant to section 776(a)(2)(D) of the Act, we find that the use of facts available is appropriate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. We find that, because the Infinite Companies provided information that could not be verified, it has failed to cooperate to the best of its ability. Therefore, the Department finds that an adverse inference is appropriate.

¹² See the Memorandum to the File from Robert Copyak, Senior Financial Analyst, AD/CVD Operations Office 3, titled "Critical Circumstances Shipment Data Analysis," dated concurrently with this notice (Critical Circumstances Memorandum), at Attachment I.

As adverse facts available (AFA), we preliminarily determine that the Infinite Companies received countervailable benefits under programs that are contingent upon export performance. Also, as AFA, we preliminarily determine that the Infinite Companies made massive imports of subject merchandise over a relatively short period of time.

All Other Exporters

With regard to whether imports of subject merchandise by the “all other” exporters of hangers from Vietnam were massive, we preliminarily determine that because there is evidence of the existence of countervailable subsidies that are inconsistent with the Subsidies Agreement, an analysis is warranted as to whether there was a massive increase in shipments by the “all other” companies, in accordance with 19 CFR 351.206(h)(1). Therefore, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period August 2011 through May 2012, using shipment data from the ITC’s Dataweb, adjusted to remove the shipments by the respondents participating in the investigation.¹³ For this analysis, we used only the data pertaining to the HTSUS numbers 7326.20.0020 and 7323.99.9080, which are the HTSUS categories under which a majority of the subject merchandise entered the United States. The data provided by the Hamico Companies and the data for shipments by other exporters from the ITC’s Dataweb indicate there was a massive increase in shipments, as defined by 19 CFR 351.206(h). See Critical Circumstances Memorandum at Attachment II.

¹³ See, e.g., Certain Oil Country Tubular Goods From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, 74 FR 47210,47212 (September 15, 2009), unchanged in Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009).

Conclusion

We preliminarily determine that critical circumstances do not exist for imports of steel wire garment hangers from Hamico Companies. Although the Preliminary Determination indicates that the Hamico Companies benefited from programs that are inconsistent with the Subsidies Agreement, the Hamico Companies' shipment data do not indicate a massive increase in shipments of subject merchandise to the United States. With regard to the Infinite Companies, as AFA, we preliminarily determine that the companies benefited from programs that are inconsistent with the Subsidies Agreement and that there was a massive increase in the companies' shipments of subject merchandise to the United States. Therefore, we preliminarily determine that critical circumstances do not exist with regard to shipments from one mandatory respondent, the Hamico Companies and, as AFA, preliminarily determine that critical circumstances exist with regard to shipments from the other mandatory respondent, the Infinite Companies.

We also preliminarily determine, based on our analysis of the shipment data provided by the Hamico Companies and the ITC Dataweb data, that critical circumstances exist for imports from "all other" exporters of steel wire garment hangers from Vietnam. The Department conducted its analysis of the shipment data for all other exporters of steel wire garment hangers by subtracting the total quantity and value of the Hamico Companies' reported quantity and value during the POI from the total quantity and value of all imports of steel wire garment hangers from Vietnam. The results of this analysis indicate that the imports attributed to all other imports exceeded the fifteen percent threshold. See Critical Circumstances Memorandum at Attachment 1. We will make a final determination concerning critical

circumstances for steel wire garment hangers from Vietnam when we make our final countervailable subsidy determination in this investigation.

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation, with regard all exporters except the Hamico Companies, of any unliquidated entries of subject merchandise from the Vietnam entered, or withdrawn from warehouse for consumption, on or after March 6, 2012, which is 90 days prior to the date of publication of the Preliminary Determination in the Federal Register.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

December 4, 2012 _____
Date