

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN CARBON AND ALLOY
STEEL PRODUCTS**

Inv. No. 337-TA-1002

**ORDER NO. 19: INITIAL DETERMINATION SUSPENDING INVESTIGATION
PURSUANT TO SECTION 337(b)(3) AND COMMISSION RULE
210.23**

(July 6, 2016)

Pursuant to Section 337(b)(3) of the Tariff Act of 1930 and Commission Rule 210.23, the Investigation is hereby suspended because of the pendency of proceedings before the Secretary of Commerce. 19 U.S.C. § 1337(b)(3); 19 C.F.R. § 210.23.

I. BACKGROUND

On May 26, 2016, the Commission issued a Notice of Investigation in this matter upon a complaint filed by United States Steel Corporation (“U.S. Steel”) alleging violations of section 337 of the Tariff Act of 1930, as amended, based on the importation into the United States, or in the sale of certain carbon and alloy steel products. Notice of Investigation (May 26, 2016). The Commission ordered that an investigation be instituted to determine:

whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain carbon and alloy steel products by reason of: (1) A conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; or (3) false designation of origin or

manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States;

Id. at 2. The Investigation was instituted upon publication of the Notice of Investigation in the *Federal Register* on Thursday, June 2, 2016. 81 Fed. Reg. 35381-82 (2016); *see* 19 C.F.R. § 210.10(b).

On June 30, 2016, several respondents filed timely responses to the Complaint and Notice of Investigation. *See* Order Nos. 4, 5, 6, 7, 8, 9, 10 (granting extensions of time). Seven separate responses were filed by: (1) Respondents Hebei Iron and Steel Group Co., Ltd., Hebei Iron & Steel Group Hengshui Strip Rolling Co., Ltd., and Hebei Iron & Steel (Hong Kong) International Trade Co., Ltd. (“Hesteel”); (2) Respondents Baosteel Group Corporation, Baoshan Iron & Steel Co., Ltd., Baosteel America Inc. (“Baosteel”); (3) Respondent Jiangsu Shagang Group and Jiangsu Shagang International Co., Ltd. (“Shagang”); (4) Respondents Anshan Iron and Steel Group, Angang Group International Trade Corporation, and Angang Group Hong Kong Co. Ltd. (“Ansteel”); (5) Respondents Wuhan Iron and Steel Group Corp., Wuhan Iron and Steel Co., Ltd., and WISCO America Co., Ltd. (“WISCO”); (6) Respondent China Shougang International Trade & Engineering Corporation (“Shougang Trade”); and (7) Respondents Maanshan Iron and Steel Co. Ltd. and Magang (Group) Holding Co. Ltd. (“Masteel”).¹

The Complaint identifies four ongoing investigations at the Department of Commerce related to the steel products at issue in the present Investigation. Complaint ¶¶ 214-217

¹ Respondents Shandong Iron and Steel Group Co. Ltd., Shandong Iron and Steel Co., Ltd., Jigang Hong Kong Holdings Co., Ltd., and Jinan Steel International Trade Co., Ltd. (“Shandong”) and Respondents Hunan Valin Steel Co. Ltd. and Hunan Valin Xiangtan Iron and Steel Co. Ltd. (“Hunan Valin”) had also moved for and received extensions to June 30, 2016, to answer the Complaint and Notice of Investigation, but as of the date of this Order, they have not filed answers. *See* Order Nos. 11, 16.

(identifying International Trade Administration Case Nos. A-570-026, C-570-027, A-570-29, and C-570-030). The Commission instituted two Title VII investigations in relation to the Commerce Department investigations: *Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan*, Inv. Nos. 701-TA-534-538 and 731-TA-1274-1278, 80 Fed. Reg. 32606-07 (June 9, 2015) (“*Corrosion-Resistant Steel*”) and *Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom*, Inv. Nos. 701-TA-540-544 and 731-TA-1283-1290, 80 Fed. Reg. 46047-48 (Aug. 3, 2015) (“*Cold-Rolled Steel*”). The Commission held a hearing in *Cold-Rolled Steel* on May 24, 2016, and a hearing in *Corrosion-Resistant Steel* on May 26, 2016.²

II. LEGAL STANDARDS

Section 337(b)(3) of the Tariff Act of 1930 states: “Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part, may come within the purview of part II of subtitle IV of this chapter, it shall promptly notify the Secretary of Commerce so that such action may be taken as is otherwise authorized by such part II.” 19 U.S.C. § 1337(b)(3).³ The referenced part

² Representatives for U.S. Steel and representatives for Chinese steel manufacturers testified at these hearings. See *Cold-Rolled Steel*, Hr’g Tr. at 64-70, 233-236 (May 24, 2016); *Corrosion-Resistant Steel*, Hr’g Tr. at 39-43, 213-217 (May 26, 2016).

³ Section 337(b)(3) further states:

If the Commission has reason to believe that the matter before it (A) is based solely on alleged acts and effects which are within the purview of section 1671 or 1673 of this title, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, the Commission shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 1671 or 1673 of this title, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If

II of subtitle IV of the Tariff Act of 1930 is codified as 19 U.S.C. § 1673 and describes the imposition of antidumping duties.

Commission Rule 210.23 provides that “[a]ny party may move to suspend an investigation under this part, because of the pendency of proceedings before the Secretary of Commerce or the administering authority pursuant to section 337(b)(3) of the Tariff Act of 1930.” 19 C.F.R. § 210.23. The Rule further provides that “[t]he administrative law judge or the Commission also may raise the issue sua sponte.” *Id.*

III. DISCUSSION

When this Investigation was instituted, the Commission served the Notice of Investigation upon the Antitrust Division of the Department of Justice, U.S. Customs and Border Protection, the Federal Trade Commission, and the National Institutes of Health. *See* Notice of Investigation, Certificate of Service. There is no evidence in the record that the Department of Commerce has been notified of this Investigation pursuant to Section 337(b)(3).

Respondents have cited Section 337(b)(3) in their responses to the Complaint. In particular, Respondents contend that U.S. Steel’s claims of price fixing and false designation of origin are outside the scope of Section 337 pursuant to subsection (b)(3), which prohibits the Commission from instituting or continuing a Section 337 investigation based on “acts and effects” which are within the purview of the antidumping and countervailing duty laws. *See*

the Commission notifies the Secretary or the administering authority (as defined in section 1677(1) of this title) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. Any final decision by the administering authority under section 1671 or 1673 of this title with respect to the matter within such section 1671 or 1673 of this title of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

19 U.S.C. § 1337(b)(3).

Hesteel Answer at 32-33; Baosteel Answer at 53-54, 58; Shougang Answer at 47-48, 51; Ansteel Answer at 46; WISCO Answer at 43; Shougang Answer at 51-52, 56; Masteel Answer at 39-40, 43. Respondents' affirmative defenses rely on the second sentence of Section 337(b)(3), which requires termination of any investigation that "is based *solely* on alleged acts and effects which are within the purview of" certain antidumping and countervailing duty laws. 19 U.S.C. § 1337(b)(3) (emphasis added). Whether such termination is appropriate is a question that may be addressed by the Commission or the Administrative Law Judge,⁴ but it is apparent that the present matter falls within the notice provision of the first sentence of Section 337(b)(3), which is triggered whenever a matter "in whole or in part, may come within the purview of" antidumping laws. 19 U.S.C. § 1337(b)(3).

⁴ This Order makes no determination with respect to Respondents' affirmative defenses, but the Administrative Law Judge has reviewed certain arguments in the record regarding the application of these provisions of Section 337(b)(3). In particular, Baosteel raised this issue in a letter to the Commission dated May 11, 2016, and U.S. Steel filed a response on May 18, 2016. *See* Baosteel America Inc.'s Response to the Commission's Solicitation of Comments Relating to the Public Interest (May 11, 2016); U.S. Steel Noninstitution Response to Comments (May 18, 2016). These letter briefs discussed two investigations from the late 1970s and early 1980s that addressed similar issues. In *Certain Welded Stainless Steel Pipe and Tube*, the Commission proceeded with a Section 337 investigation despite the pendency of an antidumping investigation, and found a violation of Section 337. Inv. No. 337-TA-29, Pub. No. 863 (Feb. 1978). This determination was disapproved during Presidential Review, with the President noting the "overlapping investigations and determinations," and stating that "[u]nnecessary duplications and conflicts in the administration of those laws result in confusion and the inefficient use of both private and governmental resources." 43 Fed. Reg. 17789 (Apr. 26, 1978). Section 337(b)(3) was subsequently amended to include the present termination and suspension provisions. *See* Trade Agreement Act of 1979, Pub. L. No. 96-39, § 1105, 93 Stat. 144 (1979). In *Syntex Agribusiness, Inc. v. U.S. International Trade Commission*, the Commission relied upon the amended Section 337(b)(3) to decline institution of a 337 investigation based on antitrust claims related to an antidumping investigation. 659 F.2d 1038 (C.C.P.A. 1981) (*en banc*). The Commission referred the matter to the Treasury Department, and after receiving a response from Treasury, declined to institute a 337 investigation, voting instead to institute a preliminary investigation under section 603 of the Trade Act of 1974. *Id.* at 1040-41. Before lifting the suspension of this Investigation, the Commission may consider whether it is appropriate to wait for a response from the Department of Commerce or to further investigate U.S. Steel's claims before remanding to the Administrative Law Judge for further proceedings.

U.S. Steel’s antitrust claims explicitly rely upon determinations by the Commission and the Commerce Department that the Chinese government subsidizes the Chinese steel industry, and that Chinese steel manufacturers sell their products at less than fair value. *See* Complaint ¶ 89 (citing *Hot-Rolled Steel Products from China, India, Indonesia, Taiwan, Thailand, and Ukraine*, Inv. Nos. 701-TA-405, 406, 408 and 731-TA-899-901, 908, USITC Pub. No. 4445 (Jan. 2014) (“*Hot-Rolled Steel*”); *Oil Country Tubular Goods from China*, Inv. Nos. 710-TA-463 and 731-TA-1159, USITC Pub. No. 4532 (May 2015); 66 Fed. Reg. 59561 (Nov. 29, 2001); 79 Fed. Reg. 7425 (Feb. 7, 2014); 75 Fed. Reg. 28551 (May 21, 2010); 80 Fed. Reg. 28224 (May 18, 2015); 81 Fed. Reg. 75 (Jan. 4, 2016); 81 Fed. Reg. 11751 (Mar. 7, 2016)). U.S. Steel’s false designation of origin claims are based explicitly upon Respondents’ alleged evasion of antidumping and countervailing duty orders issued by the Commerce Department. *See* Complaint ¶¶ 126-132. As discussed above, the Complaint identifies several ongoing Commerce Department investigations, Complaint ¶¶ 214-217, and the Commerce Department recently issued final determinations in these investigations finding countervailing duties and sales at less than fair value. *See* 81 Fed. Reg. 32725-33 (May 24, 2016); 81 Fed. Reg. 35308-10, 35316-19 (June 2, 2016).⁵ In addition, the Commission has issued preliminary findings in both *Corrosion-Resistant Steel* and *Cold-Rolled Steel* determining that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain steel products from China.⁶ 80 Fed. Reg. 44151 (July 24, 2015); 80 Fed. Reg. 55872 (Sept. 17,

⁵ Section 337(b)(3) requires that final decisions by the Commerce Department “with respect to the issue of less-than-fair value sales or subsidization and the matters necessary for such decision” be conclusive upon the Commission. 19 U.S.C. § 1337(b)(3).

⁶ The legal standard for injury under the antidumping and countervailing duty statutes is similar to the requirements of Section 337(a)(1)(A). *Compare* 19 U.S.C. § 1337(a)(1)(A)(i) (“the threat or effect of which is – to destroy or substantially injure an industry in the United States”) *with* 19 U.S.C. § 1671(a)(2)(A) (“an industry in the United States (i) is materially injured, or (ii) is

2015); *see also Hot-Rolled Steel*, 79 Fed. Reg. 3622-23 (Jan. 22, 2014) (in a five-year review, finding that revocation of countervailing duty and antidumping duty orders would be likely to lead to continuation or recurrence of material injury to an industry in the United States); *Oil Country Tubular Goods from China*, 80 Fed. Reg. 27189 (May 12, 2015) (similar five-year review). The record thus shows that the present matter comes at least “in part” within the purview of the antidumping and countervailing duty laws, and Section 337(b)(3) therefore requires that the Commission notify the Secretary of Commerce.⁷ Any response from the Commerce Department or other relevant agencies will aid the Administrative Law Judge in developing a complete record in this Investigation. *See Scenic Hudson Preservation Conference v. Federal Power Comm’n*, 354 F.2d 608, 620 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966) (an administrative agency “has an affirmative duty to inquire into and consider all relevant facts.”).

Commission Rule 210.23 authorizes the Administrative Law Judge to suspend an investigation pursuant to Section 337(b)(3), and accordingly, the Investigation is hereby suspended to allow the Commission to provide the statutorily required notice to the Secretary of Commerce.

IV. CONCLUSION

For the reasons discussed above, the Investigation is hereby suspended pursuant to Commission Rule 210.23. In light of the suspension of the Investigation, all discovery and

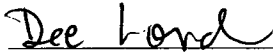
threatened with material injury”), 19 U.S.C. § 1673(a)(2)(A) (“an industry in the United States (i) is materially injured, or (ii) is threatened with material injury”).

⁷ The Complaint further references a criminal trade secret prosecution in relation to the trade secret cause of action, and although not required by statute, the Commission may also find it appropriate to notify the Criminal Division of the Department of Justice pursuant to Section 337(b)(2). *See* Complaint ¶ 116 (citing *USA v. Dong et al.*, No. 2:14-cr-00118 (W.D. Pa. May 1, 2014)).

motion practice is hereby stayed. To comply with the requirements of Commission Rule 210.51(a) and Section 337(b)(1), the target date for this Investigation is hereby set for Monday, October 2, 2017, which is sixteen months after the institution of this Investigation. 19 C.F.R. § 210.51(a); 19 U.S.C. § 1337(b)(1).⁸

This Initial Determination, along with supporting documentation, is hereby certified to the Commission. This Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to Commission Rule 210.43(a), or the Commission, pursuant to Commission Rule 210.44, orders, on its own motion, a review of the Initial Determination or certain issues contained herein. 19 C.F.R. § 210.42(d).

SO ORDERED.



Dee Lord
Administrative Law Judge

⁸ There is a pending motion (Motion Docket No. 1002-017) seeking a twenty-month target date. Motion Docket Nos. 1002-021 and 1002-023 are also pending, and the deadlines for responses thereto are stayed during the pendency of the suspension.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Lisa M. Kattan, Esq., and the following parties as indicated, on **July 6, 2016**.



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