

IN THE UNITED STATES COURT OF INTERNATIONAL TRADE

<p>NUCOR FASTENER DIVISION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES,</p> <p style="text-align: center;">Defendant.</p>

Court No. 09- 00531

Before: _____

COMPLAINT

Plaintiff Nucor Fastener Division, by its attorneys, states the following claim against Defendant, the United States.

JURISDICTION

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c) (2000), as this action is commenced under Section 516A(a)(1)(C) of the Tariff Act of 1930, *as amended*, 19 U.S.C. § 1516a(a)(1)(C).

2. Plaintiff seeks judicial review of the negative preliminary determination by the U.S. International Trade Commission (“Commission”) in the antidumping and countervailing duty investigations concerning certain standard steel fasteners from China and Taiwan (“preliminary determination”). The preliminary determination was issued by the Commission on November 9, 2009, and was published in the *Federal Register* on November 16, 2009 in *Certain Standard Steel Fasteners from China and Taiwan*, 74 Fed. Reg. 58,978 (November 16, 2009). The determinations and views of the Commission are contained in *Certain Standard Steel Fasteners from China and Taiwan*, Investigation Nos. 701-TA-472 and 731-TA-1171-1172 (Preliminary), USITC Publication No. 4109 (November 2009).

STANDING

3. Plaintiff, Nucor Fastener Division, is a U.S. manufacturer of the domestic like product. As such, Plaintiff is an “interested party” within the meaning of 19 U.S.C. § 1516a(f)(3) and 19 U.S.C. § 1677(9)(C) (2000). In addition, Plaintiff participated in the Commission proceeding which led to the challenged preliminary determination, and accordingly has standing to commence this action pursuant to 28 U.S.C. § 2631(c) and 19 U.S.C. §1516a(d).

TIMELINESS OF ACTION

4. Plaintiff is filing this Complaint within thirty days after November 16, 2009, the date of publication in the Federal Register of the Commission determination being challenged herein. Plaintiff is also filing this Complaint concurrently with its Summons. Accordingly, the Summons and Complaint are timely filed pursuant to 19 U.S.C. § 1516a(a)(1) and pursuant to Rules 3(a)(3) and 6(a) of this Court.

CLAIM AND BASIS FOR RELIEF

5. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 4.

6. The Commission’s determination that the volume of cumulated subject imports or any increase in the that volume, either absolutely or relative to U.S. production or consumption, does not warrant an affirmative determination was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

7. The Commission’s determination that domestic prices were not depressed to a significant degree or there has been no significant price suppression by reason of the subject

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imports was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

8. The Commission's determination that subject imports had no significant adverse impact on the domestic industry was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

9. The Commission's determination that there is no reasonable indication that subject imports have materially injured or threaten to materially injure the domestic industry was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

10. The Commission's determination that there is no likelihood that contrary evidence of a lack of injury will arise in a final investigation was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

11. The Commission's determination that there is clear and convincing evidence of no reasonable indication of material injury or threat thereof by reason of subject imports was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.¹

¹ Plaintiff has also filed an appeal of the Department of Commerce's failure to initiate an investigation into subsidies alleged to arise from China's forced undervaluation of the renminbi. Plaintiff notes that the Commission is required by law in its preliminary determinations to determine whether there is a reasonable indication that a U.S. industry is threatened with material injury by reason of subject imports and, in so doing, to take into account all export subsidies being investigated by the Department. 19 U.S.C. §1677(7)(F)(i)(I). To the extent that the Department unlawfully or without substantial record evidence failed to initiate a subsidy investigation into the enforced undervaluation of the renminbi, its decision may have affected the Commission's negative preliminary determination. Thus, Plaintiff believes that its appeal of the Department of Commerce's failure to initiate an investigation into subsidies alleged to arise from China's forced undervaluation of the renminbi should take precedence over Plaintiff's appeal of the Commission's negative preliminary determination.

REQUEST FOR JUDGMENT AND RELIEF

For the reasons stated in this Complaint, Plaintiff respectfully requests that this Court find that the Commission's negative preliminary determination was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

Plaintiff requests that this Court:

- 1) declare the Commission's determination to be unlawful;
- 2) remand the determination to the Commission for disposition consistent with the Court's final opinion; and
- 3) grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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Dated: December 15, 2009