C-570-915
2013 Sunset Review
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Light-Walled Rectangular Pipe and Tube from the People's Republic of China

Summary

We are conducting an expedited sunset review of the countervailing duty ("CVD") order covering light-walled rectangular pipe and tube from the People's Republic of China ("PRC").[1] 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 raised in the substantive responses:

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

History of the Order

On June 24, 2008, the Department of Commerce ("the Department") published its final determination in the CVD investigation of light-walled rectangular pipe and tube from the PRC.[2] The Department determined that benefits that constituted subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the "Act"), were being provided by the Government of the PRC ("GOC") to PRC manufacturers, producers, and exporters of this merchandise. The Department found the following net subsidies:

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[1] *See Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Countervailing Duty Order*, 73 FR 45405 (August 5, 2008) ("*CVD Order*").
[2] *See Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008).

Manufacturers/Producers/Exporters	Net Countervailable Subsidy (percent)
Kunshan Lets Win Steel Machinery Co., Ltd. ("Lets Win")	2.17%
Zhangjiagang Zhongyuan Pipe-making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd. ("ZZPC")	15.28%
Qingdao Xiangxing Steel Pipe Co., Ltd.	200.58%
All Others	15.28%

The following three programs were found to confer countervailable subsidies in the investigation:

(1) Hot-rolled Steel for Less than Adequate Remuneration
(2) Land for Less than Adequate Remuneration (ZZPC Land Discount)
(3) Income Tax Subsidies for Foreign Invested Enterprises ("FIEs") – Reduced Income Tax Rates for FIEs Based on Location

Following notification of an affirmative injury determination by the International Trade Commission ("ITC"), the Department published the *CVD Order*.

The Department has not conducted any administrative reviews of the *CVD Order* either because none was requested or the requests were timely withdrawn and the review was rescinded.[3] The Department implemented a Section 129 finding pursuant to DS379 and revised the rate for Lets Win from 2.17% to 2.20%.[4]

There have been no changed circumstance reviews or scope rulings. As a result of our findings in the investigation, the *CVD Order* remains in effect for all PRC producers and exporters of subject merchandise.

Background

On April 2, 2013, the Department published the notice of initiation of the first sunset review of the *CVD Order*, pursuant to section 751(c) of the Act.[5] On April 12, 2013, the Department received a notice of intent to participate from Bull Moose Tube Company; California Steel & Tube; Hannibal Industries; JMC Steel Group; Maruichi American Corporation; Searing Industries; Southland Tube; Vest, Inc.; and Western Tube & Conduit (collectively, "domestic interested parties") within the deadline specified by 19 CFR 351.218(d)(1)(i). Domestic

[3] *See Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Rescission of Countervailing Duty Administrative Review,* 75 FR 68767 (November 9, 2010).
[4] *See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China,* 77 FR 52683 (August 30, 2012); and *United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China,* WT/DS379/AB/R (March 11, 2011) ("DS379").
[5] *See Initiation of Five-Year ("Sunset") Review,* 78 FR 19647 (April 2, 2013) ("Initiation Notice"). In the Initiation Notice, the Department advanced the initiation date with respect to this sunset review so that all sunset reviews of Light-Walled Rectangular Pipe and Tube were initiated on the same date in order to promote administrative efficiency.

interested parties claimed interested party status under section 771(9)(C) of the Act as manufacturers of a domestic like product in the United States.

The Department received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We did not receive substantive responses from any respondent interested parties or the GOC. According to the Department's regulations at 19 CFR 351.218(e)(1)(ii)(C)(2), when there are inadequate responses from respondent interested parties, we "normally 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))." Therefore, we are conducting an expedited (120-day) sunset review of the *CVD Order*.

Scope of the Order

The merchandise subject to the order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to the order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the *CVD Order* would likely 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 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 ITC the net countervailable subsidy likely to prevail if the *CVD Order* was 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 Agreement on Subsidies and Countervailing Measures ("ASCM").

Below we address the substantive responses of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic interested parties argue in their substantive response that the Department should determine that revocation of the *CVD Order* would lead to a continuation or recurrence of countervailable subsidies. Domestic interested parties contend that the record demonstrates that subsidization has continued since the issuance of the *CVD Order*. Domestic interested parties claim that where there have been no administrative reviews of a CVD order, the Department normally will find there have been no changes to a subsidy program. Domestic interested parties argue that despite the fact there have been no administrative reviews, there has been a Section 129 determination as a result of DS379, which in fact raised the subsidy margin for one of the respondents in the investigation. As a result, the domestic interested parties conclude that revocation of the *CVD Order* is likely to lead to a continuation or recurrence of countervailable subsidies.

Department's Position

According to the SAA, the continuation of a program is "highly probative of the likelihood of continuation or recurrence of countervailable subsidies."[6] As explained above, there have been no administrative reviews of the *CVD Order*. Moreover, there is no information indicating any changes in the programs. Therefore, consistent with our practice, we find that countervailable programs continue to exist and be used by PRC producers and exporters of light-walled rectangular pipe and tube.[7] Given the continued existence of programs found to provide countervailable benefits, the Department finds that a countervailable subsidy is likely to continue or recur if the *CVD Order* was revoked.

2. Net Countervailable Subsidy Likely to Prevail

In determining the net countervailable subsidy likely to prevail in the event of revocation, the domestic interested parties rely on section 752(b)(1) of the Act which specifies that the Department shall consider "the net countervailable subsidy determined in the investigation and subsequent reviews" and "whether any change in the program which gave rise to the net countervailable subsidy" has occurred that is likely to affect the net countervailable subsidy rate. Domestic interested parties note that since there have been no administrative reviews of the *CVD Order*, the only subsidy rates available are those determined in the original investigation. Domestic interested parties argue that the Department should report to the ITC the following net countervailable subsidy rates from the investigation as modified for Lets Win in the Section 129 determination:

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[6] *See Statement of Administrative Action* ("SAA") accompanying the URAA, H.R. Doc. No. 103-316, Vol. I (1994) at 888.

[7] *See Sulfanilic Acid From India: Final Results of Expedited Sunset Review of Countervailing Duty Order,* 76 FR 33243 (June 8, 2011); *see also Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010).

Manufacturers/Exporters	Net Countervailable Subsidy (%)
Zhangjiagang Zhongyuan Pipe Making Co., Ltd. [8]	15.28
Qingdao Xiangxing Steel Pipe Co., Ltd.	200.58
Kunshan Lets Win Steel Machinery Co., Ltd.	2.20
All Others	15.28

Department's Position

The Department normally will provide to the ITC the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.[10] Section 752(b)(l)(B) of the Act provides, however, that the Department will consider whether any change in the program 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. 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.[11]

In determining company-specific, net countervailable subsidy rates likely to prevail, the Department has started with the rates found in the original investigation. Since the Department has not conducted any administrative reviews of the *CVD Order*, we do not need to adjust the rates from the investigation to account for additional subsidies or terminated programs. However, because the Department adjusted its net countervailable subsidy rate for Lets Win as a result of a Section 129 determination, we will provide to the ITC this rate rather than the rate found for this company in the investigation.[12]

As a result, the Department has found that net subsidy levels for PRC producers and exporters of light-walled rectangular pipe and tube are above *de minimis*. Consistent with section 752(b)(3) of the Act, the Department will provide to the ITC the net countervailable subsidy rates shown in the section entitled "Final Results of Review."

Nature of the Subsidies

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 any of the subsidies

[8] While the domestic interested parties identify this company as Zhangjiagang Zhongyuan Pipe Making Co., Ltd., it is listed in the CVD Order as Zhangjiagang Zhongyuan Pipe-making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd.
[10] *See* SAA at 890 and the House Report, H.R. Rep. No. 103-826 (1994) ("House Report") at 64.
[11] *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 6210 l (October 7, 2010) and accompanying Issues and Decision Memorandum at 4.
[12] The Department has previously reported a rate calculated in a Section 129 determination. *See Stainless Steel Wire Rod From Italy, Japan, the Republic of Korea, Spain, and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 74 FR 56179 (October 30, 2009) and accompanying Issues and Decision Memorandum.

are 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.

There are no programs that fall within the meaning of Article 3.1 of the ASCM. However, the following programs could be subsidies 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), if they constitute debt forgiveness, or if they are subsidies to cover operating losses sustained by an industry or enterprise. There is insufficient information on the record of this review for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions:

1.) Provision of Inputs for Less than Adequate Remuneration - Hot–Rolled Steel

The GOC provided hot-rolled steel through its state-owned producers (directly or through privately-owned trading companies) for less than adequate remuneration. Hot-rolled steel was provided to a limited number of industries and, thus, this program was found to be specific in fact.

2.) Land for Less than Adequate Remuneration (ZZPC Land Discount)

ZZPC purchased land-use rights from the GOC in 1998, 2001, 2004 and 2006. In the investigation, we did not examine the 1998 or 2001 transactions because they occurred before the PRC's accession to the World Trade Organization on December 11, 2001. We also did not analyze the 2007 transaction because it occurred after our period of investigation. We did determine that the GOC's failure to collect the full amount owed by ZZPC for the land-use rights purchased in 2004 constituted a financial contribution in the form of revenue foregone, with the benefit equal to the amount not collected. The GOC effectively charged less on this transaction than it should have charged under its normal procedures. The actual recipients of the subsidy were limited in number so the subsidy was found to be specific in fact.

3.) Income Tax Subsidies for Foreign Invested Enterprises - Reduced Income Tax Rates for FIEs Based on Location

FIEs are encouraged to locate in designated coastal economic zones, special economic zones, and economic and technical development zones in the PRC through preferential tax rates. This program was originally created in 1988 under the *Provisional Regulations of the Ministry of Finance of the People's Republic of China Concerning the Reduction and Exemption from Enterprise Income Tax and Consolidated Industrial and Commercial Tax for the Encouragement of Foreign Investment in Coastal Open Economic Zones* and administered under the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* ("FIE Tax Law"). Under Article 7 of the FIE Tax Law, "productive" FIEs located in the designated economic zones pay corporate income tax at a reduced rate of either 15 or 24 percent, depending on the zone. The FIE Tax Law was repealed effective January 1, 2008, and there are no provisions regarding this program in the superseding *Enterprise Income Tax Law of the People's Republic of China* that was adopted on March 16, 2007.

Final Results of Review

As a result of this review, the Department finds that revocation of the *CVD Order* would likely lead to continuation or recurrence of net countervailable subsidies at the rates listed below:

Manufacturers/Producer/Exporter	Net Countervailable Subsidy (%)
Zhangjiagang Zhongyuan Pipe-making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd.	15.28
Qingdao Xiangxing Steel Pipe Co., Ltd.	200.58
Kunshan Lets Win Steel Machinery Co., Ltd.	2.20
All Others	15.28

Recommendation

We recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register* and notify the ITC of our findings.

AGREE ✓ DISAGREE________

Paul Piquado
Assistant Secretary
for Import Administration

30 July 2013
Date