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Sunset Review
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June 2, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China

SUMMARY

We analyzed the responses of interested parties in the expedited sunset review of the countervailing duty ("CVD") order on circular welded austenitic stainless pressure pipe ("CWASPP") from the People's Republic of China ("PRC"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

History of the Order

On January 28, 2009, the Department published its *Final Determination* in the CVD investigation on CWASPP from the PRC.[1] On March 19, 2009, the Department published in the *Federal Register* its CVD order on CWASPP from the PRC.[2] The Department calculated subsidy rates of 1.10 percent for Winner Stainless Steel Tube Co. Ltd. ("Winner")/ Winner Steel Products (Guangzhou) Co., Ltd. ("WSP")/ Winner Machinery Enterprises Company Limited ("Winner HK") (collectively, "the Winner Companies"), 299.16 percent for Froch Enterprise Co. Ltd. ("Froch") (also known as Zhangyuan Metal Industry Co. Ltd.), and 1.10 percent for all–others.[3]

[1] *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) ("*Final Determination*").
[2] *See Circular Welded Austenitic Stainless Pressure Pipe Carbon Quality Steel Line Pipe from the People's Republic of China: Countervailing Duty Order*, 74 FR 11712 (March 19, 2009) ("*Order*").
[3] *See Final Determination and id.*

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

1. Provision of Stainless Steel Coil for Less Than Adequate Remuneration,
2. Reduced Income Tax Rate for Foreign Investment Enterprises ("FIEs") Located in Economic and Technological Development Zones and Other Special Economic Zones, and
3. Import Duty and Value Added Tax Exemptions for Imported Equipment

In addition, the Department relied on adverse facts available and found the following additional programs to provide countervailable subsidies to Froch.

Loan Programs

1. Loans and Export Credits Pursuant to the Northeast Revitalization Program
2. Preferential Loans Pursuant to Liaoning Province's Five-Year Framework

Income Tax Programs

3. "Two Free, Three Half" Program
4. Income Tax Reductions for Export-oriented Foreign Investment Enterprises ("FIEs")
5. Reduced Income Tax Rate for FIEs Located in Economic and Technological Development Zones and Other Special Economic Zones
6. Provincial and Local Tax Exemptions and Reductions for Productive FIEs
7. Local Income Tax Reductions in Certain Development Zones
8. Preferential Tax Policies for Town and Village Enterprises ("TVEs")
9. Carry-forward of Tax Losses for FIEs

Tax Credit and VAT Programs

10. Income Tax Credit Refund for Reinvestment of FIE Profits
11. Preferential Tax Policies for Research and Development at FIEs
12. Tax Credits on Purchases of Domestically-produced Equipment by Domestically-owned Companies
13. VAT Refunds on Purchases of Domestically-produced Equipment by FIEs
14. Tax Exemption for Imported Equipment
15. Tax Reductions for Firms Located in Third Industrial Park at Xiabu Village –VAT Exemptions on Raw Materials
16. Tax Reductions for Firms Located in Third Industrial Park at Xiabu Village- Tax Incentives - Import Duty Exemptions on Imported Equipment
17. Tax Reductions for Firms Located in Third Industrial Park at Xiabu Village- Value Added Tax ("VAT") Exemptions on Imported Equipment

Grant Programs

18. Guangdong Province's "Outward Expansion" Program
19. Support for Registered High-Tech Projects
20. Waiver of Land-Use and District Level Fees
21. Exemption and Reduction of Security Fees in the Huadu District
22. Exemption and Reduction of Construction Fees in the Huadu District

LTAR and Land Programs

23. Provision of Stainless Steel Coil for Less than Adequate Remuneration
24. Provision of Land Use Rights for Less than Adequate Remuneration
25. Export Restraints on Flat-rolled Steel

There have been no administrative reviews, or changed circumstances reviews of the order, pursuant to sections 751(a) and (c) of the Tariff Act of 1930, as amended ("the Act").

Background

On February 3, 2014, the Department initiated a sunset review of the CVD order on CWASPP from the PRC pursuant to section 751(c) of the Act.[4] The Department received notices of intent to participate in the review on behalf of Bristol Metals, LLC; Felker Brothers Corporation; and Outokumpu Stainless Pipe Inc., (collectively, "the domestic industry") within the deadline specified in 19 CFR 351.218(d)(1)(i). Each of these companies claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of the domestic like product.

The Department received adequate substantive responses collectively from the domestic industry within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] The Department did not receive a substantive response from any government or respondent interested party to the proceeding. Because the Department received no response from the respondent interested parties, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review based on the facts available of this CVD order.

Scope of the Order

The merchandise covered by this countervailing duty order is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials ("ASTM") A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States ("HTSUS"). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

[4] *See Initiation of Five-Year ("Sunset") Review*, 79 FR 6163 (February 3, 2014).
[5] *See* Circular Welded Austenitic Stainless Pressure Pipe from China, First Sunset Review: Substantive Response to Notice of Initiation (March 4, 2014) ("Domestic Industry Substantive Response").

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 order would be likely to 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 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, the Department shall provide to the International Trade Commission ("ITC") the net countervailable subsidy likely to prevail if the order were 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 the subsidy described is in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures ("ASCM").

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

The domestic industry argues that subsidization of CWASPP from the PRC would likely continue or recur if the Department revoked the order because subsidies continued since the order was imposed. Specifically, the domestic industry argues that where there have been no administrative reviews, the Department will normally find that there have been no changes to a subsidy program.[6] Since there have be no administrative reviews conducted of this order, the domestic industry argues that the Department should conclude that subsidization would likely continue or recur if the CVD order on CWASPP from the PRC were revoked.[7]

Department's Position

Section 752(b)(1) of the Act directs the Department in determining the likelihood of continuation or recurrence of a countervailable subsidy 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 Statement of Administrative Action ("SAA"), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.[8] The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.[9] Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation

[6] *Id.*, at 3-5.
[7] *Id.*
[8] *See* SAA, H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.
[9] *Id.*

or recurrence of a countervailable subsidy.[10] Where a subsidy program is found to exist, the Department will normally determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.[11]

As indicated above, the Department has not conducted any administrative reviews of the order since it went into effect, and no party submitted evidence to demonstrate that the countervailable programs have expired or been terminated. Thus, based on the facts on the record, the Department determines that there is a likelihood of recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic industry asserts that subsidization is likely to continue at margins equivalent to or greater than those found in the original investigation.[12] The domestic industry states that section 752(b)(1) of the Act 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.[13] Further, the domestic industry asserts that because there have been no administrative reviews of the order and no Chinese producer has participated in the present review, the original net countervailable subsidy rates are the only subsidy rates available and should be reported to the ITC as the rates likely to prevail if the order were revoked.[14]

Department's Position

The Department normally will provide 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.[15] 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

[10] *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 Issues and Decision Memorandum at Comment 1.
[11] *Id.*
[12] *See* Domestic Industry Substantive Response at 5.
[13] *Id.*
[14] *Id.*
[15] *See* SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) ("House Report") at 64.

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.[16]

In this instance, however, the Department conducted no administrative reviews and no evidence has been provided that would warrant making a change to the net countervailable subsidy rate found for Chinese producers and exporters in the investigation. Therefore, the Department determines that the net countervailable subsidy rates found in the investigation, 1.10 percent for Winner, 299.16 percent for Froch, and 1.10 percent for all–others, are the net countervailable subsidy rates likely to prevail were the order to be revoked.

3. Nature of the Subsidy

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 the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs do not fall within the meaning of Article 3 of the ASCM. However, they 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. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or if they are subsidies to cover operating losses sustained by an industry or enterprise. Because there is insufficient information on the record to conclusively make this determination, the Department is providing to the ITC the following list of programs:

1. Provision of Stainless Steel Coil ("SSC") for LTAR

GOC authorities provided SSC to producers of CWASPP for LTAR, which, pursuant to section 776(b) of the Act, we found to be *de facto* specific.

2. Reduced Income Tax Rate for Foreign Investment Enterprises ("FIEs") Located in Economic and Technological Development Zones and Other Special Economic Zones

This program provides tax incentives for enterprises located in special zones and was first enacted on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Zones, as issued by the Ministry of Finance. The program was continued on July 1, 1991, pursuant to Article 30 of the FIE Tax Law. Specifically, pursuant to Article 7 of the FIE Tax Law for productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone, the applicable enterprise income tax rate is 15 or 24 percent, depending on the zones in which productive FIE are located, as opposed to the standard 30 percent income tax rate.

[16] *See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

3. Import Duty and Value Added Tax Exemptions for Imported Equipment

Enacted in 1997, the State Council's Circular on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular No. 37) exempts both foreign invested enterprises (FIEs) and certain domestic enterprises from the value-added tax (VAT) and tariffs on imported equipment used in their production.

The Department determined the following programs did not provide a benefit to, or were not used by, the Winner Companies, but found the programs to be countervailable on the basis of adverse facts available for non-cooperating companies.

1. Preferential Lending

   a. Loans and Export Credits Pursuant to the Northeast Revitalization Program Income Tax Programs

2. Tax Programs

   a. "Two Free, Three Half" Program
   b. Income Tax Reductions for Export-Oriented Foreign Investment Enterprises ("FIEs")
   c. Income Tax Credit or Refund for Reinvestment of FIE Profits
   d. Provincial and Local Tax Exemptions and Reductions for Productive FIEs
   e. Local Income Tax Reductions in Certain Development Zones
   f. Preferential Tax Policies for Research and Development at FIEs
   g. Carry-Forward of Tax Losses for FIEs

3. Indirect Tax Programs and Import Tariff Program

   a. VAT Refunds on Purchases of Domestically Produced Equipment by FIEs
   b. Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
   c. Tax Reductions for Firms Located in the Third Industrial Park at Xiabu Village - Tax Incentives - *Import Duty Exemptions on Imported Equipment*
   d. Tax Reductions for Firms Located in the Third Industrial Park at Xiabu Village - *Value Added Tax (VAT) Exemptions on Imported Equipment*
   e. Tax Reductions for Firms Located in Third Industrial Park at Xiabu Village – *Value-Added Tax (VAT) Exemptions on Raw Materials*

4. Provincial Subsidy Programs

   a. Guangdong Province's "Outward Expansion" Program
   b. Preferential Loans Pursuant to Liaoning Province's Five-Year Framework
   c. Preferential Tax Policies for Town and Village Enterprises ("TVEs")

5. Provision of Goods or Services for Less than Adequate Remuneration

    a. Provision of Stainless Steel Coil for Less than Adequate Remuneration
    b. Provision of Land Use Rights for Less than Adequate Remuneration

6. Government Restraints on Exports

    a. Export Restraints on Flat-rolled Steel

7. Grant Programs

    a. Waiver of Land-Use and District Level Fees
    b. Exemption and Reduction of Security Fees in the Huadu District
    c. Exemption and Reduction of Construction Fees in the Huadu District
    d. Support for Registered High-Tech Projects

FINAL RESULTS OF REVIEW

The Department finds that revocation of the order would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Exporter/Manufacturer	**Net Subsidy Rate**
Winner Stainless Steel Tube Co. Ltd. (Winner)/ Winner Steel Products (Guangzhou) Co., Ltd. (WSP)/ Winner Machinery Enterprises Company Limited (Winner HK) (Collectively the Winner Companies)	1.10 percent *ad valorem*
Froch Enterprise Co. Ltd. (Froch) (also known as Zhangyuan Metal Industry Co. Ltd.)	299.16 percent *ad valorem*
All Others	1.10 percent *ad valorem*

RECOMMENDATION

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

AGREE ✓ DISAGREE________

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 MAY 2014
Date