

**REDETERMINATION PURSUANT TO COURT REMAND
Laminated Woven Sacks Comm. v. United States
Court No. 12-00301**

Summary

On December 3, 2015, the U.S. Court of International Trade (CIT or Court) granted the request of the Department of Commerce (Department) for a voluntary remand in the above-referenced proceeding.¹ The *Remand Order* involves a challenge to the Department’s final determination in a proceeding conducted under Section 129 of the Uruguay Round Agreements Act (Section 129) related to the Department’s final affirmative antidumping duty (AD) determination on laminated woven sacks (LWS or sacks) from the People’s Republic of China (PRC) for the period October 1, 2006, through March 31, 2007.²

Following the CIT’s issuance of the *Remand Order*, the Department issued a questionnaire to the original respondents in the LWS AD investigation to obtain information necessary for its analysis under the *Remand Order*.³ Neither mandatory respondent, however, filed a questionnaire response, comments, or an extension request by the due date.

¹ See *Laminated Woven Sacks Comm. v. United States*, Court No. 12-00301 (December 3, 2015) (*Remand Order*).

² 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) (*Implementation Notice*); See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Determination: Section 129 Proceeding Pursuant to the WTO Appellate Body’s Findings in WTO DS379 Regarding the Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the People’s Republic of China,” (July 31, 2012) (Final Determination Memorandum); see also *Laminated Woven Sacks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 35647 (June 24, 2008) (*Final Determination*).

³ See Letters from the Department to Shandong Shouguang Jianyuanchun Co., Ltd. and Zibo Aifudi Plastic Packaging Co., Ltd., Re: Section 129 Redetermination of Laminated Woven Sacks from the People’s Republic of China – Domestic Subsidies Questionnaire, dated December 21, 2015 (“Domestic Subsidies Questionnaires”).

On February 19, 2016, the Department released the draft results of redetermination to interested parties for comment. On February 29, 2016, the Laminated Woven Sacks Committee (“LWSC”) submitted comments.⁴

In accordance with the *Remand Order*, we have reconsidered our finding regarding the adjustments granted to respondents under section 777A(f)(1) of the Tariff Act of 1930, as amended (the Act). As such, on remand, we have denied the adjustment that we granted the respondents in the Final Determination Memorandum.

Background

On August 7, 2008, upon final affirmative determinations by the Department and the U.S. International Trade Commission, the Department published AD and countervailing duty (CVD) orders on LWS from the PRC.⁵ The Government of the People’s Republic of China (GOC) challenged the LWS orders and three other sets of simultaneously imposed AD and CVD orders before the Dispute Settlement Body of the World Trade Organization (WTO). The WTO Appellate Body, in March 2011, found that the United States had acted inconsistently with its international obligations in several respects, including the potential imposition of overlapping remedies.⁶

The U.S. Trade Representative then announced the United States’ intention to comply with the WTO’s rulings and recommendations, and requested that the Department make a determination “not inconsistent with” the WTO AB Report.⁷ Based upon its preliminary findings in the companion CVD proceeding, the Department issued a preliminary Section 129

⁴ See Letter to the Department, from LWSC, Re: Comments on the Draft Redetermination Pursuant to Court Remand, dated February 29, 2016 (“LWSC Draft Comments”).

⁵ See *Notice of Antidumping Duty Order: Laminated Woven Sacks from the People’s Republic of China*, 73 FR 45941 (August 7, 2008). See also *Laminated Woven Sacks from the People’s Republic of China*, 73 FR 45955 (August 7, 2008).

⁶ See *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, 611, WT/DS379/AB/R (March 11, 2011) (WTO AB Report).

⁷ See *Implementation Notice*, 77 FR at 52684 (citing 19 U.S.C. § 3538(b)(2)).

determination memorandum on May 31, 2012, granting a double remedies adjustment to all respondents pursuant to section 777A(f)(1) of the Act.⁸

After allowing parties to the proceeding an opportunity to submit factual information and comment on the Preliminary Determination Memorandum, the Department, on July 31, 2012, issued its Final Determination Memorandum in the Section 129 proceeding on, *inter alia*, the double remedies issue.⁹ Based on its analysis, the Department found that there was a demonstration of:

{A} subsidy-(variable) cost-price link in the case of input price subsidies (*i.e.*, subsidized inputs) for the Sacks industry during the period of investigation (POI), from which we preliminarily estimated that 63.07 percent of the value of the subsidies that have impacted variable costs were “passed through” to export prices for the CWP industry during the POI.¹⁰

As a result, the Department issued amended AD cash deposit rates, which reduced the weighted-average dumping margin for separate rate companies from 64.28 percent to 20.19 percent.¹¹ The PRC-wide entity dumping margin also was reduced from 91.73 percent to 47.64 percent.¹²

Following consultations prescribed by Section 129, the Department, at the direction of the U.S. Trade Representative, published the *Implementation Notice* on August 30, 2012.

The Laminated Woven Sacks Committee, Coating Excellence International, LLC, and Polytex Fibers Corporation (collectively, the Domestic Interested Parties) challenged the Department’s AD Section 129 LWS determination granting the adjustment under section

⁸ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, “Section 129 Proceeding Pursuant to the WTO Appellate Body’s Findings in WTO DS379 Regarding the Antidumping Duty Investigation of Laminated Woven Sacks (Sacks) from the People’s Republic of China: Preliminary Determination of Adjustments to the Antidumping Duty Cash Deposit Rates” (May 31, 2012) (Preliminary Determination Memorandum), at 6-7 and Attachment 1.

⁹ See Final Determination Memorandum.

¹⁰ See Preliminary Determination Memorandum at 3; unchanged in the Final Determination Memorandum.

¹¹ See *Implementation Notice*, 77 FR at 52687-88.

¹² *Id.*

777A(f)(1) of the Act. In January 2013, by agreement of the parties, the Court stayed proceedings in this litigation pending the final disposition of parallel actions challenging Commerce’s final Section determination regarding the AD and CVD investigations of circular welded carbon quality steel pipe (CWP) from the PRC.¹³

In November 2014, the CIT issued an opinion and order in the CWP litigation remanding that Section 129 determination to the Department for further consideration of its finding that certain countervailable subsidies reduced the average price of U.S. CWP imports, such that the reduction warranted a “double remedies” adjustment to the AD rates.¹⁴ In May and October 2015, the Court sustained the Department’s remand redeterminations, in which the Department reexamined its methodology for determining whether countervailable subsidies reduce the average price of U.S. imports of subject merchandise and thereby warrant a “double remedies” adjustment to antidumping duty rates under section 777A(f)(1) of the Act.¹⁵

Discussion

Guided by the Court’s decisions in *Wheatland Tube*, the Department has reconsidered its approach in determining whether an adjustment for “double remedies” is warranted under section 777A(f)(1) of the Act for purposes of this remand redetermination. In applying section 777A(f)(1) of the Act for the first time in the LWS and CWP Section 129 proceedings, the Department relied on broad manufacturing sector data to make an inference that the correlation between changes in input costs and changes in domestic Chinese output prices would have a corresponding reduction to some degree on Chinese export prices / U.S. import prices.¹⁶ In

¹³ See *Wheatland Tube Co. v. United States*, Consol. Court No. 12-00298; *Wheatland Tube Co. v. United States*, Consol. Court No. 12-00296.

¹⁴ See *Wheatland Tube Co. v. United States*, 26 F. Supp. 3d 1372 (Ct. Int’l Trade 2014).

¹⁵ See *Wheatland Tube Co. v. United States*, 71 F. Supp. 3d 1375 (Ct. Int’l Trade 2015); *Wheatland Tube Co. v. United States*, 102 F. Supp. 3d 1380 (Ct. Int’l Trade 2015).

¹⁶ See Final Decision Memorandum at 19-20.

making this inference, we nonetheless acknowledged that the Domestic Interested Parties had placed evidence on the record demonstrating possibly opposite trends in Chinese domestic and export prices, and agreed with Domestic Interested Parties “that PRC export prices/U.S. import prices of subject merchandise may be the more appropriate price measure.”¹⁷

Because the Department was able to only obtain cost data at the manufacturing level during the Section 129 proceedings, we relied on domestic price data at the manufacturing level rather than CWP-industry specific price data in order to ensure a true “apples-to-apples” cost and price comparison.¹⁸ We also explained that “data constraints precluded the Department from disaggregating U.S. import data to ensure a one-to-one mapping.”¹⁹

Since the Section 129 proceeding, the Department has updated its approach for developing a record to determine whether countervailable subsidies reduce the average price of U.S. imports of subject merchandise, such that the reduction warrants a “double remedies” adjustment to the AD rates under section 777A(f) of the Act. In particular, the Department has determined that it could obtain specific data for purposes of an analysis under section 777A(f)(1) of the Act by requesting information from the respondents to the proceeding selected for individual examination.²⁰ The Department has determined that direct evidence from individual respondents regarding subsidies and costs is preferable for meeting the statutory requirements under section 777A(f)(1)(A) and (C) of the Act. Such data also contribute to the Department’s analysis of the statutory requirements of Section 777A(f)(1)(B).

¹⁷ *Id.* at 29.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See, e.g., *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) (*CSPV Products from the PRC*), and accompanying Issues and Decision Memorandum at Comment 18.

For purposes of this remand redetermination, the Department has determined that whether the statutory requirements for a double remedies adjustment are met is best assessed on the basis of direct evidence and information from the respondent, including information on subsidies and the cost and export/import prices of the subject merchandise. As such, for this remand proceeding, the Department requested company-specific information from Shandong Shouguang Jianyuanchun Co., Ltd. (“SSJ”) and Zibo Aifudi Plastic Plastic Packaging Co., Ltd. (“Zibo Aifudi”).²¹ Among the information requested was firm-specific information that the Department could use to determine whether and how countervailable subsidies may have *reduced* the price of subject merchandise during the relevant period. That specific request for information was worded as follows:

Please describe your company’s policy or practice with regard to price reductions, and provide the most recent example during the relevant period when you lowered the price of subject merchandise in response to a decrease in an input cost or the cost of manufacturing.

However, SSJ and Zibo Aifudi did not provide such information or data.

Consistent with *Wheatland*, the Department has determined for purposes of this remand proceeding that the more appropriate method for determining whether the statutory requirements for a double remedies adjustment are met is through direct evidence from the respondents. As such, the Department finds that, based on the lack of evidence on the record, the statutory requirements for permitting an adjustment for a potential overlapping remedy between the AD and CVD orders on LWS imports have not been met.

²¹ See Domestic Subsidies Questionnaires.

Separate Rate Companies and the PRC-Wide Entity

To calculate the extent of the domestic subsidy pass-through for the non-selected separate rate respondents and the PRC-wide entity, the Department in the Final Determination Memorandum adjusted those margins using the domestic subsidy pass-through calculated during this proceeding, subject to section 777A(f)(2) of the Act.²² However, in this case and as previously stated, SSJ and Zibo Aifudi did not meet the statutory requirements for making an adjustment for potential overlapping remedies under section 777A(f) of the Act. Therefore, on remand, the Department finds no basis for an adjustment to the separate rate respondent or the PRC-wide entity margins under section 777A(f) of the Act.

Comments from Interested Parties

The LWSC filed comments on February 29, 2016, supporting the Department's conclusion that there is no basis for making an adjustment to the AD rates under Section 777(A)(f)(1)(b) of the Act.

No other party filed comments on the draft remand.

Results of Redetermination

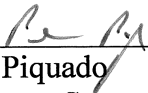
Pursuant to the *Remand Order*, we have reconsidered our determination as described above. To grant an adjustment under section 777(A)(f)(1) of the Act, the statute requires a demonstration of a reduction in the average price of imports, for which the Department, in part, examines the links between the countervailed subsidy programs and the impact on the respondent's costs.²³

In this remand redetermination, without the requested information from the respondents, the Department has determined that such a demonstration has not been made at the LWS

²² See Preliminary Determination Memorandum at 7-8; unchanged in the Final Determination Memorandum.

²³ See Final Determination Memorandum at 25.

industry-specific level. Additionally, the Department received no comments from interested parties that provide cause to reconsider this determination. As a result, we find that there is no basis for making an adjustment to the AD rates under Section 777(A)(f)(1)(b) of the Act, and we are denying the basis for the adjustment that we granted the respondents in the Final Determination Memorandum. Accordingly, we have revised the AD rates that we calculated in the LWS AD Section 129 determination. The revised AD rates are listed in the attached Appendix, "Revised Antidumping Duty Cash Deposit Rates Pursuant to Remand Redetermination."



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

21 MARCH 2016
Date

**Appendix: Revised Antidumping Duty Cash Deposit
Rates Pursuant to Remand Redetermination**

Exporter	Producer	Revised AD Cash Deposit Rate (%)
ZIBO AIFUDI PLASTIC PACKAGING CO., LTD.	ZIBO AIFUDI PLASTIC PACKAGING CO., LTD.	64.28%
POLYWELL INDUSTRIAL CO., a.k.a. FIRST WAY (H.K.) LIMITED	POLYWELL PLASTIC PRODUCT FACTORY	64.28%
ZIBO LINZI WORUN PACKING PRODUCT CO., LTD.	ZIBO LINZI WORUN PACKING PRODUCT CO., LTD.	64.28%
SHANDONG QIKAI PLASTICS PRODUCT CO., LTD.	SHANDONG QIKAI PLASTICS PRODUCT CO., LTD.	64.28%
CHANGLE BAODU PLASTIC CO. LTD.	CHANGLE BAODU PLASTIC CO. LTD.	64.28%
ZIBO LINZI SHUAIQIANG PLASTICS CO. LTD.	ZIBO LINZI SHUAIQIANG PLASTICS CO. LTD.	64.28%
ZIBO LINZI QITIANLI PLASTIC FABRIC CO. LTD.	ZIBO LINZI QITIANLI PLASTIC FABRIC CO. LTD.	64.28%
SHANDONG YOULIAN CO. LTD	SHANDONG YOULIAN CO. LTD	64.28%
ZIBO LINZI LUITONG PLASTIC FABRIC CO. LTD.	ZIBO LINZI LUITONG PLASTIC FABRIC CO. LTD.	64.28%
WENZHOU HOTSON PLASTICS CO. LTD	WENZHOU HOTSON PLASTICS CO. LTD	64.28%
JIANGSU HOTSON PLASTICS CO. LTD.	JIANGSU HOTSON PLASTICS CO. LTD.	64.28%
CANGNAN COLOR MAKE THE BAG	CANGNAN COLOR MAKE THE BAG	64.28%

ZIBO QIGAO PLASTIC CEMENT CO. LTD	ZIBO QIGAO PLASTIC CEMENT CO. LTD	64.28%
PRC-WIDE RATE		91.73%