

A-570-910
Remand: Section 129 Determination
POI: 10/1/2006 – 03/31/2007
Public Document
E&C/OIV: CL

FINAL REDETERMINATION PURSUANT TO COURT REMAND
Wheatland Tube Co. v. United States
Court No. 12-00296

Summary

On August 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 circular welded carbon quality steel pipe (CWP) from the People's Republic of China (PRC) for the period October 1, 2006, through March 31, 2007.²

The CIT granted the Department's request for a voluntary remand "in light of Commerce's remand redetermination in *Wheatland Tube Co. v. United States*, Consol. Court No. 12-00298, Redetermination Pursuant to Court Remand, April 27, 2015, ECF No. 70" (CVD Remand Redetermination), which dealt with the companion CWP countervailing duty (CVD)

¹ See *Wheatland Tube Co. v. United States*, Court No. 12-00296 (August 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 Circular Welded Carbon Quality Steel Pipe from the People's Republic of China," (July 31, 2012) (Final Determination Memorandum); see also *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008) (*Final Determination*).

proceeding.³ In the CVD Remand Redetermination, the Department found “that there is no basis for making an adjustment to the companion AD rates under” 19 U.S.C. § 1677f-1(f), because no party in the companion CVD proceeding responded to the Department’s request for information concerning the issue of “double remedies.”

In light of the CVD Remand Redetermination, we have reconsidered our finding regarding the double remedies adjustment afforded to respondents in the underlying AD proceeding, and found that there is no basis for making an adjustment to the AD rates under 19 U.S.C. § 1677f-1(f). As such, in the draft redetermination, we denied the adjustment that we granted the respondents in the Final Determination Memorandum.

The Department offered interested parties an opportunity to comment on the Draft Remand.⁴ On September 23, 2015, Plaintiff Wheatland Tube Company (Wheatland) and Consolidated Plaintiff United States Steel Corporation (U.S. Steel Corporation) submitted comments on the Draft Remand.⁵ In their letter, they stated the following:

We support the Department’s determination to “deny{} the adjustment that we granted respondents in the CWP AD Section 129 determination.” We have no other comments.⁶ (footnote omitted)

No other interested party submitted comments.

For the reasons discussed below, our Draft Remand remains unchanged, and we continue to deny the adjustment that we granted the respondents in the Final Determination Memorandum.

³ See *Remand Order*.

⁴ See “Draft Remand Redetermination, Wheatland Tube Co. v. United States, Consol. Court No. 12-00296,” (September 18, 2015) (Draft Remand).

⁵ See Letter from the Domestic Interested Parties to the Department, “Comments On The Draft Remand Redetermination, Wheatland Tube Co. v. United States, Court No. 12-00296” (September 23, 2015).

⁶ *Id.* at 1.

Background

Section 129 Proceeding

On July 22, 2008, upon final affirmative determinations by the Department and the U.S. International Trade Commission, the Department published AD and CVD orders on CWP from the PRC.⁷ The Government of the People's Republic of China (GOC) challenged the CWP 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.⁸

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.⁹ In the CVD proceeding, the GOC did not provide CWP-specific industry information for cost recovery and specific cost categories in the proceeding, but rather provided manufacturing-level data.

Based upon its preliminary findings in the companion CVD proceeding using the non-CWP specific information mentioned above, the Department issued a preliminary determination memorandum on May 31, 2012, granting a double remedies adjustment to all respondents.¹⁰

⁷ See *Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 42547 (July 22, 2008).

⁸ See *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, 611, WT/DS379/AB/R (Mar. 11, 2011) (WTO AB Report).

⁹ See *Implementation Notice*, 77 FR at 52684 (citing 19 U.S.C. § 3538(b)(2)).

¹⁰ 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 Circular Welded Carbon Quality Steel Pipe (CWP) 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 7-8 and Attachment 1.

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.¹¹ 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 CWP 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.¹²

As a result, the Department issued amended AD cash deposit rates, which reduced the weighted-average dumping margin for separate rate companies from 69.2 percent to 45.35 percent.¹³ The PRC-wide entity dumping margin also was reduced from 85.55 percent to 68.24 percent.¹⁴

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.

Wheatland, U.S. Steel Corporation, and Plaintiff-Intervenors Allied Tube and Conduit and TMK IPSCO Tubulars (collectively, the Domestic Interested Parties) challenged the Department’s AD and CVD Section 129 CWP determinations. In the litigation concerning the CVD determination (CVD Litigation), the Domestic Interested Parties challenged the Department’s decision that an adjustment to the AD duty on U.S. CWP imports from the PRC is warranted to account for remedies that overlap those imposed by the CVD order.

¹¹ See Final Determination Memorandum.

¹² See Preliminary Determination Memorandum at 3; unchanged in the Final Determination Memorandum.

¹³ See *Implementation Notice*, 77 FR at 52687.

¹⁴ *Id.*

CVD Litigation

In November 2014, the CIT issued an opinion and order in the CVD Litigation remanding the CWP CVD 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 companion AD rates.¹⁵ In April 2015, the Department filed its remand redetermination in the CVD case.¹⁶

In the CVD Remand Redetermination, the Department found “that there is no basis for making an adjustment to the companion AD rates under” 19 U.S.C. § 1677f-1(f)(1)(b).¹⁷ In the CVD remand proceeding, the Department sent questionnaires to the original CVD respondents to obtain industry and respondent specific information necessary for its “double remedies” analysis.¹⁸ The Department also issued copies of the questionnaire to the GOC.¹⁹ Neither the CVD mandatory respondents nor the GOC, however, filed a questionnaire response, comments, or an extension request by the due date. Without the requested information from the respondents, the Department found that an adjustment under 19 U.S.C. § 1677f-1(f) was not warranted.²⁰

In May 2015, the CIT sustained the Department’s CVD Remand Redetermination and entered a final judgment in the CVD case.²¹ No party appealed the CIT’s final judgment in the CVD case.

¹⁵ See *Wheatland Tube Co. v. United States*, 26 F. Supp. 3d 1372 (Ct. Int’l Trade 2014).

¹⁶ See CVD Remand Redetermination.

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ *Id.* at 8-9.

²¹ *Wheatland Tube Co. v. United States*, Consol. Court No. 12-00298, slip op. 15-44 (Ct. Int’l Trade May 7, 2015).

AD Litigation

On January 2, 2013, the CIT issued an order staying the litigation concerning the CWP AD Section 129 determination (AD Litigation), “pending the final disposition of *Wheatland Tube Co. v. United States*, Consol. Court No. 12-00298, including all appeals.”²² Following the final disposition of the CVD Litigation, the CIT’s stay of the AD Litigation lifted on July 8, 2015. On August 3, 2015, the CIT granted the Department’s request for voluntary remand.²³

Final Redetermination

In light of the CVD Remand Redetermination, we have reconsidered our finding regarding the double remedies adjustment granted to respondents in the CWP AD Section 129 determination. In the CVD Remand Redetermination, we found that an adjustment under 19 U.S.C. § 1677f-1(f) 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 respondents’ costs.

Without the requested information from respondents in the CVD Remand Redetermination, the Department determined that such a demonstration has not been made at the CWP industry-specific level and there is no basis for making an adjustment to the AD rates under 19 U.S.C. § 1677f-1(f). As such, for this final redetermination, we are denying the adjustment that we granted respondents in the CWP AD Section 129 determination.


²² *Wheatland Tube Co. v. United States*, Court No. 12-00296, Order, January 2, 2013, ECF No. 32.

²³ *See Remand Order*.

Accordingly, we have revised the AD rates that we calculated in the CWP 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



Date

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

Exporter	Producer	Revised AD Cash Deposit Rate (%)
BEIJING SAI LIN KE HARDWARE CO., LTD.	XUZHOU GUANG HUAN STEEL TUBE PRODUCTS CO., LTD.	69.2
BENXI NORTHERN PIPES CO., LTD.	BENXI NORTHERN PIPES CO., LTD.	69.2
DALIAN BROLLO STEEL TUBES LTD.	DALIAN BROLLO STEEL TUBES LTD.	69.2
GUANGDONG WALSALL STEEL PIPE INDUSTRIAL CO. LTD.	GUANGDONG WALSALL STEEL PIPE INDUSTRIAL CO. LTD.	69.2
HENGSHUI JINGHUA STEEL PIPE CO., LTD.	HENGSHUI JINGHUA STEEL PIPE CO., LTD.	69.2
HULUDAO STEEL PIPE INDUSTRIAL CO.	HULUDAO STEEL PIPE INDUSTRIAL CO.	69.2
JIANGSU GUOQIANG ZINC-PLATING INDUSTRIAL CO., LTD.	JIANGSU GUOQIANG ZINC-PLATING INDUSTRIAL CO., LTD.	69.2
JIANGYIN JIANYE METAL PRODUCTS CO., LTD.	JIANGYIN JIANYE METAL PRODUCTS CO., LTD.	69.2
KUNSHAN HONGYUAN MACHINERY MANUFACTURE CO., LTD.	KUNSHAN HONGYUAN MACHINERY MANUFACTURE CO., LTD.	69.2
KUNSHAN LETS WIN STEEL MACHINERY CO., LTD.	KUNSHAN LETS WIN STEEL MACHINERY CO., LTD.	69.2
QINGDAO XIANGXING STEEL PIPE CO., LTD.	QINGDAO XIANGXING STEEL PIPE CO., LTD.	69.2
QINGDAO YONGJIE IMPORT & EXPORT CO., LTD.	SHANDONG XINYUANGROUP CO., LTD.	69.2
RIZHAO XINGYE IMPORT & EXPORT CO., LTD.	SHANDONG XINYUAN GROUP CO., LTD.	69.2

SHANGHAI METALS & MINERALS IMPORT & EXPORT CORP.	BENXI NORTHERN PIPES CO., LTD.	69.2
SHENYANG BOYU M/E CO., LTD.	BAZHOU DONG SHENG HOT-DIPPED GALVANIZED STEEL PIPE CO., LTD.	69.2
SHIJIAZHUANG ZHONGQING IMP & EXP CO., LTD.	BAZHOU ZHUOFA STEEL PIPE CO. LTD.	69.2
TIANJIN BAOLAI INT'L TRADE CO., LTD.	TIANJIN JINGHAI COUNTY BAOLAI BUSINESS AND INDUSTRY CO. LTD.	69.2
TIANJIN NO. 1 STEEL ROLLED CO., LTD.	TIANJIN HEXING STEEL CO., LTD.	69.2
TIANJIN NO. 1 STEEL ROLLED CO., LTD.	TIANJIN RUITONG STEEL CO., LTD.	69.2
TIANJIN NO. 1 STEEL ROLLED CO., LTD.	TIANJIN YAYI INDUSTRIAL CO.	69.2
TIANJIN XINGYUDA IMPORT & EXPORT CO., LTD.	TANGSHAN FENGNAN DISTRICT XINLIDA STEEL PIPE CO., LTD.	69.2
TIANJIN XINGYUDA IMPORT & EXPORT CO., LTD.	TIANJIN LIFENGYUANDA STEEL GROUP	69.2
TIANJIN XINGYUDA IMPORT & EXPORT CO., LTD.	TIANJIN LITUO STEEL PRODUCTS CO.	69.2
TIANJIN XINGYUDA IMPORT & EXPORT CO., LTD.	TIANJIN XINGYUNDA STEEL PIPE CO.	69.2
WAH CIT ENTERPRISES	GUANGDONG WALSALL STEEL PIPE INDUSTRIAL CO. LTD.	69.2
WAI MING (TIANJIN) INT'L TRADING CO., LTD.	BAZHOU DONG SHENG HOT-DIPPED GALVANIZED STEEL PIPE CO., LTD.	69.2
WEIFANG EAST STEEL PIPE CO., LTD.	WEIFANG EAST STEEL PIPE CO., LTD.	69.2
WUXI ERIC STEEL PIPE CO., LTD.	WUXI ERIC STEEL PIPE CO., LTD.	69.2
WUXI FASTUBE INDUSTRY CO., LTD.	WUXI FASTUBE INDUSTRY CO., LTD.	69.2

ZHANGJIAGANG ZHONGYUAN PIPE-MAKING CO., LTD.	ZHANGJIAGANG ZHONGYUAN PIPE-MAKING CO., LTD.	69.2
PRC-WIDE ENTITY		85.55