

REDETERMINATION PURSUANT TO COURT REMAND
Wheatland Tube Company v. United States
Consol. Court No. 12-00298, Slip Op. 14-137 (CIT 2014)

Summary

The Department of Commerce (Department) has prepared this redetermination in accordance with the order of United States Court of International Trade (CIT) in *Wheatland Tube Company v. United States*, Consol. Court No. 12-00298, Slip Op. 14-137 (November 26, 2014) (*Remand Order*). The litigation involves the 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 countervailing duty (CVD) determination on circular welded carbon quality steel pipe (CWP) from the People's Republic of China (PRC) for the period January 1, 2006, through December 31, 2006.¹

In the *Remand Order*, the CIT remanded for further consideration the Department's 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 antidumping duty (AD) rates under Section 777A(f) of the Tariff Act of 1930, as amended (the Act).²

¹ 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 also *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008); see also *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 42545 (July 22, 2008) (*Amended Final Determination and CVD Order*).

² The manner in which the Department applied that adjustment in the companion AD proceeding is the subject of *Wheatland Tube Company v. United States*, Consol. Court No. 12-00296, which is stayed pending resolution of this litigation.

Following the CIT’s issuance of the *Remand Order*, the Department released a questionnaire to the original respondents in the CWP investigation to obtain information necessary for its analysis under the *Remand Order*.³ The Department also issued copies of the questionnaire to the Government of the People’s Republic of China (GOC) and its counsel in the Section 129 proceeding.⁴ Neither mandatory respondent nor the GOC, however, filed a questionnaire response, comments, or an extension request by the due date.

Pursuant to the *Remand Order*, we reconsidered our finding regarding the respondents’ eligibility for the double remedies adjustment. In the Draft Remand, we found no basis for making an adjustment to the companion AD rates under Section 777(A)(f)(1)(b) of the Act, and we denied the basis for the adjustment that we had granted the respondents in the final determination memorandum⁵ of the Section 129 proceeding.⁶

The Department offered interested parties an opportunity to comment on the Draft Remand.⁷ On April 3, 2015, Plaintiff Wheatland Tube Company (Wheatland), Consolidated Plaintiff-Intervenor United States Steel Corporation, and Consolidated Plaintiff-Intervenors Allied Tube and Conduit and TMK IPSCO (collectively, the Domestic Interested Parties), who

³ See Letter to Weifang East Steel Pipe Co., Ltd. (East Pipe) dated January 28, 2015, “Section 129 Remand Redetermination of Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China – Domestic Subsidies Questionnaire;” see also Letter to Zhejiang Kingland Pipeline and Technologies Co., Ltd.; Kingland Group Co., Ltd.; Beijing Kingland Century Technologies Co.; Zhejiang Kingland Pipeline Industry Co., Ltd.; and Shanxi Kingland Pipeline Co., Ltd. (collectively, Kingland), dated January 28, 2015, “Section 129 Remand Redetermination of Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China – Domestic Subsidies Questionnaire,” (collectively, Remand Redetermination Letters).

⁴ See Memorandum to the File from Shane Subler, International Trade Compliance Analyst, dated March 27, 2015, “Documentation for Release of Questionnaire for Section 129 Remand Redetermination.”

⁵ See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ‘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) (Section 129 Final Determination).

⁶ See “Draft Remand Redetermination, Wheatland Tube Company v. United States, Consol. Court No. 12-00298, Slip Op. 14-137,” (March 27, 2015) (Draft Remand).

⁷ *Id.* at 9.

were the petitioners in the original CWP investigation, submitted comments on the Draft Remand.⁸ In their letter, the Domestic Interested Parties stated the following:

We support the Department’s conclusion that ‘based on the evidence on the record, the statutory requirements for permitting an adjustment for a potential overlapping remedy between the AD and CVD orders on CWP imports have not been met.’ We have no other comments.⁹ (footnote omitted)

No other interested party submitted comments.

For the reasons discussed below, our Draft Remand remains unchanged.

Background

On July 22, 2008, upon final affirmative determinations by the Department and the ITC, the Department published AD and CVD orders on CWP from China.¹⁰ The GOC challenged the CWP orders and three other sets of simultaneously imposed AD and CVD orders before the WTO’s Dispute Settlement Body. 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.¹¹

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.¹² Citing the “expedited basis” of the Section 129 proceeding as well as its lack of experience in administering the new statutory requirements of Section 777A(f) of the Act, which was enacted in March 2012, the Department requested additional information regarding the potential imposition of overlapping remedies only

⁸ See Letter from the Domestic Interested Parties to the Department, dated April 3, 2015, “Comments On The Draft Remand Redetermination, Wheatland Tube Company v. United States, Consol. Court No. 12-00298, Slip Op. 14-137.”

⁹ *Id.* at 1.

¹⁰ 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); see also *Amended Final Determination and CVD Order*.

¹¹ 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).

¹² See *Implementation Notice*, 77 FR at 52684 (citing 19 U.S.C. § 3538(b)(2)).

from the GOC. The Department’s questionnaire “focused on the industry level in recognition of the possibility that there might be variations in accounting practices or other export market dynamics that are specific or unique to the CWP industry.”¹³ The GOC did not provide CWP-specific industry information for cost recovery and specific cost categories.¹⁴

The Department issued a preliminary analysis memorandum on May 31, 2012, with respect to the double remedies issue.¹⁵ Parties to the proceeding submitted factual information and comments on the preliminary analysis memorandum from June 11, 2012, through June 20, 2012. On July 31, 2012, the Department issued its final determination memorandum in the Section 129 proceeding on, *inter alia*, the double remedies issue.¹⁶ Based on its analysis, the Department concluded:

{A}pproximately 63.07 percent of the value of the subsidies that have impacted variable costs, as identified above, were “passed through” to export prices for the CWP industry during the {period of investigation}. Based upon this finding, we are able to identify the portion of each CVD rate determined in the proceeding estimated to have increased cash deposit rates in the companion AD proceeding.¹⁷

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 Domestic Interested Parties challenged the Department’s determination. Specifically, the Domestic Interested Parties challenged the Department’s decision that an adjustment is warranted to the antidumping duty on U.S. CWP imports from China to account for remedies that overlap those imposed by the CVD order.

¹³ See Memorandum from Christopher Mutz, Office of Policy, Import Administration, and Daniel Calhoun, Office of the Chief Counsel for Import Administration, to Paul Piquado, Assistant Secretary for Import Administration, “Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: ‘Double Remedies’ Analysis Pursuant to the WTO Appellate Body’s Findings in WTO DS379,” (May 31, 2012) (Section 129 Preliminary Analysis Memorandum), at 7.

¹⁴ *Id.* at 8.

¹⁵ *Id.*

¹⁶ See Section 129 Final Determination.

¹⁷ See Section 129 Preliminary Analysis Memorandum at 10; see also Section 129 Final Determination at 34-35.

CIT's Decision

The “central” issue before the CIT was whether there was substantial evidence to support the Department’s finding that the administrative record “demonstrate{d}” that the countervailed subsidies reduced the average price of CWP imports.¹⁸ The CIT questioned whether the Department had met this burden and remanded the matter to the Department to address certain record evidence appearing to show no correlation between domestic output prices and export prices.¹⁹ Specifically, the CIT “wonder{ed} whether Commerce’s decision to focus on manufacturing level data and ‘presume’ that broad-based Chinese domestic ex-factory prices covering millions of products can reasonably serve as a proxy for the average price of U.S. CWP imports when the statute requires a ‘demonstration’ of a reduction in prices at the industry/product level, and more specific CWP pricing data appears available on the record.”²⁰

While the Department was able to match price and cost data at the manufacturing level, the CIT stated that the Department “does not really explain in detail why this particular association disqualifies consideration of the more specific industry/product CWP pricing data on the record.”²¹ According to the CIT, the “implication is that there may be no way to demonstrate the behavior of the CWP pricing data in response to the countervailable subsidies.”²²

In the *Remand Order*, the CIT specifically discussed two issues that the Department failed to analyze in its final determination: (1) U.S. import price data placed on the record by domestic interested parties; and (2) an economist’s opinion, also placed on the record by domestic interested parties, stating that Chinese producers are “less likely to pass on price

¹⁸ See *Remand Order* at 23.

¹⁹ *Id.* at 27-28.

²⁰ *Id.* at 29.

²¹ *Id.*

²² *Id.*

decreases than increases to U.S. customers, particularly decreases that competing US producers would not experience, such as Chinese countervailable subsidies.”²³

Discussion

In the Section 129 proceeding, we explained that “{b}ecause section 777A(f) of the Act was enacted only in March 2012, the Department had little time or flexibility to develop and hone its practice in applying the new law for the first time in these proceedings.”²⁴ We 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.²⁵ In 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.”²⁶

Because the Department was able to obtain cost data only 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.²⁷ We also explained that “data constraints precluded the Department from disaggregating U.S. import data to ensure a one-to-one mapping.”²⁸

In making our original Section 129 determination, the Department made clear that the “administration of the new statutory provision may evolve with the benefit of time and

²³ *Id.* at 26.

²⁴ See Section 129 Preliminary Analysis Memorandum at 14.

²⁵ See Section 129 Final Determination at 16.

²⁶ *Id.* at 25.

²⁷ *Id.*

²⁸ *Id.*

experience.”²⁹ We also stated that the Department could “reassess” the analytical approach in future inquiries.

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. Specifically, the Department has determined that it could obtain industry-specific cost data by requesting information from the individual respondents to the proceeding.³⁰ Such information would then allow for an “apples-to-apples” comparison of price and cost data at the specific industry level.³¹

For purposes of this remand redetermination, the Department has determined that such direct evidence of the effect between subsidies and costs based on industry-specific data rather than indirect evidence based on broad manufacturing sector data was more preferable for meeting the statutory requirements of Section 777(A)(f)(1)(b) of the Act.³² Direct cost data at the industry level also allows the Department to compare industry-specific import price data. As such, for the remand proceeding, the Department requested industry-specific information from the respondents in the CWP Section 129 proceeding.³³

²⁹ See Section 129 Preliminary Analysis Memorandum at 7; see also Section 129 Final Determination at 16.

³⁰ 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.

³¹ For example, in *Stainless Steel Sinks from the PRC*, the Department issued questionnaires to the individual respondents in the proceeding to determine if their records demonstrated a linkage between subsidies and costs. In their responses, the respondents identified that subsidies for electricity and stainless steel coil (a primary input) impacted their cost of manufacturing, but that the other subsidy programs under investigation (e.g., grant programs, tax programs, policy lending, etc.) did not. The respondents further provided information that they adjusted prices only in response to significant changes in stainless steel coil cost, but not to changes in other factor costs that impacted their cost of manufacturing. See *Drawn Stainless Steel Sinks From the People’s Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (Oct. 4, 2012) (Stainless Steel Sinks from the PRC), and accompanying Issues and Decision Memorandum at 22.

³² See Draft Remand at 7.

³³ See Remand Redetermination Letters.

Specifically, in the Remand Redetermination Letters, the Department requested firm-specific information that it could use to determine whether and how countervailable subsidies may have *reduced* the price of subject merchandise during the relevant period. The request for information was 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.³⁴

Neither East Pipe nor Kingland responded to the Remand Redetermination Letters.

Consistent with the *Remand Order*, the Department has determined for purposes of this proceeding that the “simplest”³⁵ and more accurate method for determining whether the statutory requirements for a double remedies adjustment are met is through direct evidence from the respondents. Further, as stated in the Section 129 Final Determination, the Department agrees with the Domestic Interested Parties that export prices/U.S. CWP import prices is the more appropriate price measure.³⁶ In order to use export prices/U.S. CWP import prices, however, the Department requires CWP-specific cost data to ensure a proper “apples-to-apples” price-cost comparison. The respondents in this proceeding failed to provide CWP industry-specific cost data, and as we stated in the Section 129 Final Determination, the Department is unable to obtain such industry-specific cost data without the cooperation of the respondents.³⁷ Further, the Domestic Interested Parties have placed evidence on the record that they contend shows no linkage or correlation between reductions in Chinese domestic costs and reductions in U.S. CWP

³⁴ *Id.* at 2.

³⁵ See *Remand Order* at 23.

³⁶ See Section 129 Final Determination at 25.

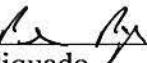
³⁷ *Id.*

import prices.³⁸ As such, the Department finds that, based on the evidence on the record, the statutory requirements for permitting an adjustment for a potential overlapping remedy between the AD and CVD orders on CWP imports have not been met.

³⁸ See Letter to the Department from Wheatland Tube Company, Re: Circular Welded Carbon Quality Steel Pipe From The People's Republic Of China: Factual Information Relating To The Department's Preliminary Double Remedy Analysis (June 11, 2012); see also Letter to the Department from Wheatland Tube Company, Re: Circular Welded Carbon Quality Steel Pipe From The People's Republic Of China/Comments on Preliminary Double Remedies Determination (June 15, 2012), at 7.

Redetermination Pursuant to Court Remand

Pursuant to the *Remand Order*, we have reconsidered our determination in the Section 129 Final Determination as described above. To grant an adjustment under Section 777(A)(f)(1)(b) 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.³⁹ For this remand redetermination, without the requested information from the respondents, the Department determines that such a demonstration has not been made at the CWP industry-specific level. As a result, we find that there is no basis for making an adjustment to the companion 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 Section 129 Final Determination.⁴⁰



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 April 2015
Date

³⁹ See, e.g., Section 129 Preliminary Analysis Memorandum at 9 ("Since direct raw materials constitute a variable cost of production, the record in this proceeding – which includes the Report and evidence from the original investigations – indicates a subsidy-(variable) cost-price link in the case of input price subsidies.").

⁴⁰ As the CIT stated, "Commerce acknowledges that Domestic Interested Parties' record data may demonstrate 'possibly opposite trends in domestic and export prices' over the relevant period. *See Remand Order* at 28. These data, however, are at a more general level than the firm-specific data that the Department now requests in AD proceedings and requested in the Remand Redetermination Letters. Therefore, we do not reach the issue of whether these data are more reliable than the data on which we relied in the Section 129 Final Determination.