



C-570-911
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 Circular Welded Carbon Quality Steel Pipe from the People's Republic of China

Summary

We are conducting an expedited sunset review of the countervailing duty (CVD) order covering circular welded carbon quality steel pipe (circular welded pipe) 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 5, 2008, the Department of Commerce (the Department) published its final determination in the CVD investigation of circular welded pipe from the PRC.² The Department determined that benefits which constituted subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), were provided by the Government of the PRC (GOC) to PRC manufacturers, producers, and exporters of this merchandise. The Department revised its calculations as part of an amended final determination and found the following net subsidies:³

¹ See *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) (*CVD Order*).

² See *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) (*Final Determination*).

³ See *CVD Order*, 73 FR at 42547.

Manufacturers/Producers/Exporters	Net Countervailable Subsidy (percent)
Weifang East Steel Pipe Co., Ltd (Weifang East)	29.62
Zhejiang Kingland Pipeline and Technologies Co., Ltd., and affiliated companies (Zhejiang Kingland)	44.93
Tianjin Shuangjie Steel Pipe Co., Ltd.; Tianjin Shuangjie Steel Pipe Group Co., Ltd.; Tianjin Wa Song Imp. & Exp. Co., Ltd.; and Tianjin Shuanglian Galvanizing Products Co., Ltd. (Tianjin Shuangjie)	616.83
All Others	37.28

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

- (1) Provision of Hot-Rolled Steel for Less than Adequate Remuneration
- (2) Export Assistance Grant – Super Star Enterprise Award
- (3) Policy Lending Under the Shandong Provincial Steel Plan
- (4) East Pipe Debt Forgiveness

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* because either none were requested or the reviews were rescinded after the requests were timely withdrawn.⁴

On August 21, 2012, the Department implemented a determination pursuant to section 129 of the Uruguay Round Agreements Act (URAA) to render the CVD investigation of circular welded carbon quality steel pipe from the PRC not inconsistent with dispute settlement findings of the World Trade Organization (WTO).⁵ As a result of the *Section 129 Determination*, the Department revised the rate for each company as follows:

Manufacturers/Producers/Exporters	Net Countervailable Subsidy (percent)
Weifang East	29.83
Zhejiang Kingland	48.18
Tianjin Shuangjie	620.08
All Others	39.01

⁴ See, e.g., *Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of Countervailing Duty Administrative Review*; 2011, 78 FR 9676 (February 11, 2013).

⁵ 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) (*Section 129 Determination*); see also *United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011).

The Department has issued several scope rulings with respect to this *CVD Order*.⁶ The Department has not issued anti-circumvention or changed-circumstances determinations. Accordingly, as a result of our findings in the investigation, as revised by the *Section 129 Determination*, the *CVD Order* remains in effect for all PRC producers and exporters of subject merchandise.

Background

On June 3, 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.⁷ Between June 12, and June 18, 2013, the Department received notices of intent to participate from Allied Tube and Conduit, EXLTUBE, JMC Steel Group, Maruichi American Corporation, TMK IPSCO, United States Steel Corporation, and Western Tube & Conduit Corporation (collectively, domestic interested parties),⁸ within the deadline specified in 19 CFR 351.218(d)(1)(i). On July 2, 2013, 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). Domestic 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).⁹ We did not receive substantive responses from any respondent interested parties or the GOC. According to 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 scope of this order covers certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (*e.g.*, plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, ASTM, proprietary, or other), generally

⁶ *See Notice of Scope Rulings*, 74 FR 49859 (September 29, 2009); *Notice of Scope Rulings*, 75 FR 14138 (March 24, 2010); *Notice of Scope Rulings*, 77 FR 52313 (August 29, 2012); and *Notice of Scope Rulings*, 78 FR 9370 (February 8, 2013).

⁷ *See Initiation of Five-Year (“Sunset”) Review*, 78 FR 33063 (June 3, 2013) (Initiation Notice).

⁸ *See* letter from JMC Steel Group to the Department, “Five-Year (“Sunset”) Review Of Countervailing Duty Order On Circular Welded Carbon-Quality Steel Pipe From The People’s Republic Of China: JMC Steel Group’s Notice Of Intent To Participate”(June 18,2013).

⁹ *See* letter from Domestic Interested Parties to the Department, “Five-Year (“Sunset”) Review Of Countervailing Duty Order On Circular Welded Carbon-Quality Steel Pipe From The People’s Republic Of China: Domestic Industry Substantive Response” (July 2, 2013) (Substantive Response).

known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term “carbon quality” includes products in which (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

- (i) 1.80 percent of manganese;
- (ii) 2.25 percent of silicon;
- (iii) 1.00 percent of copper;
- (iv) 0.50 percent of aluminum;
- (v) 1.25 percent of chromium;
- (vi) 0.30 percent of cobalt;
- (vii) 0.40 percent of lead;
- (viii) 1.25 percent of nickel;
- (ix) 0.30 percent of tungsten;
- (x) 0.15 percent of molybdenum;
- (xi) 0.10 percent of niobium;
- (xii) 0.41 percent of titanium;
- (xiii) 0.15 percent of vanadium; or
- (xiv) 0.15 percent of zirconium.

Standard pipe is made primarily to American Society for Testing and Materials (ASTM) specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A-53, A-135, and A-795. Structural pipe is made primarily to ASTM specifications A-252 and A-500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing.

Pipe multiple-stenciled to a standard and/or structural specification and to any other specification, such as the American Petroleum Institute (API) API-5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term “painted” does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The scope of this order does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications; and (g) line pipe produced to only API specifications.

The pipe products that are the subject of this order are currently classifiable in HTSUS statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10,

7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not the Harmonized Tariff Schedule of the United States (HTSUS) classification, is dispositive of whether merchandise imported into the United States falls within the scope of the order.

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 be 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 WTO Agreement on Subsidies and Countervailing Measures (ASCM).

Below we address the substantive response of the domestic interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

The domestic interested parties claim that, for the reasons explained below, the Department should determine that subsidies countervailed in the original investigation have continued and would be likely to continue or recur if the *CVD Order* were revoked:

- (1) the subsidies at issue have neither been terminated nor suspended;
- (2) the subsidy rates increased for each company in the *Section 129 Determination*;
- (3) the investigation rates remain in effect for all exporters because there have been no administrative reviews conducted of this *CVD Order*;
- (4) the “continued to receive subsidies” factor is satisfied because of continued entries of subject merchandise;¹⁰
- (5) the imposition of the *CVD Order* resulted in imports of subject merchandise declining precipitously (imports decreased from 680,311 tons in 2007 (shortly

¹⁰ See *Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, and Thailand: Final Results of Expedited Sunset Reviews*, 78 FR 16252 (March 14, 2013).

after the affirmative preliminary determination) to 12,081 tons in 2008 (after the imposition of the *CVD Order* to 3,778 tons in 2012));¹¹

- (6) the subsidy rates for each applicable program are above *de minimis*, as illustrated in the *Final Determination*;
- (7) and additional subsidies beyond those specifically found to be countervailable in the original investigation likely provide an additional countervailable benefit to circular welded pipe producers.

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

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. The Statement of Administration (SAA) further advises that the continuation of a program is “highly probative of the likelihood of continuation or recurrence of countervailable subsidies.”¹² 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 circular welded pipe.¹³ Finally, 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.¹⁴

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

¹¹ See *Circular Welded Carbon-Quality Steel Pipe from China*, U.S. International Trade Commission, Investigation Nos. 701-TA-447 and 731-TA-1116 (Final) (July 2008) at IV-7; see also Substantive Response at Exhibits 1 and 2.

¹² See *Statement of Administrative Action* (SAA) accompanying the URAA, H.R. Doc. No. 103-316, Vol. I (1994) at 888.

¹³ 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).

¹⁴ Although domestic interested parties cite to evidence of a decline in the volume of imports since the investigation, determinations concerning the likelihood of continuation or recurrence of countervailing subsidies—unlike determinations concerning the likelihood of continuation or recurrence of dumping—are primarily based upon the continued existence of countervailing duty programs and/or benefits. See *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18874-75 (April 16, 1998).

subsequent reviews” and “whether any change in the program which gave rise to the net countervailable subsidy” has occurred and is likely to affect the net countervailable subsidy rate.

Domestic interested parties argue 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 further that the Department should report to the ITC the net countervailable subsidy rates from the investigation as modified for each company in the *Section 129 Determination*.

Department’s Position

Consistent with the SAA and other legislative history, 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 it 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)(1)(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.¹⁶

In determining company-specific, net countervailable subsidy rates likely to prevail, the Department first considers 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 the net countervailable subsidy rate for each company as a result of the *Section 129 Determination*, we will provide the adjusted rates to the ITC rather than the original rates found in the investigation.¹⁷

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.”

¹⁵ See SAA at 890 and the House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

¹⁶ See *Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Sunset Review*, 75 FR 62101 (October 7, 2010) and accompanying Issues and Decision Memorandum at 4.

¹⁷ See, e.g., *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 (reporting a rate calculated in a section 129 determination).

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 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.

The following is an export subsidy as described in Article 3 of the ASCM:

Export Assistance Grants - Super Star Enterprise Award

Certain companies of Zhejiang Kingland reported receiving different city, district, and provincial grants related to export assistance, research and development, and other business activities in 2004, 2005, and 2006. Zhejiang Kingland only identified two of these programs, the “Electromechanical Products Technologies Renovation Project Fund” and “Superstar Enterprise” award, as public information.¹⁸ For certain of these export assistance grants received during the period of investigation, the Department determined that they are countervailable subsidies within the meaning of section 771(5) of the Act because (1) they are financial contributions, (2) they provide a benefit in the amount of the grant, and (3) they are contingent upon export performance.¹⁹

The following programs do not fall within the meaning of Article 3.1 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. There is insufficient information on the record of this review for the Department to make such a determination. However, we are providing the ITC with the following program descriptions:

(1) Provision of Hot-Rolled Steel for Less than Adequate Remuneration

The GOC provided hot-rolled steel through its state-owned producers (directly or through privately owned trading companies) at less than adequate remuneration. Hot-rolled steel was found to be provided to a limited number of industries, and, thus, this program was found to be specific in fact.²⁰

(2) Policy Lending Under the Shandong Provincial Steel Plan

Certain localities within the GOC, Shandong Province and Weifang City, have Five-Year Plans for Steel which provide for policy lending to circular welded pipe producers in Shandong Province. The loans provided by policy banks and state-owned commercial banks in the Shandong Province constitute government-provided loans pursuant to section 771(5)(D)(i) of the Act. Additionally, this loan program is specific in law because the Government of Shandong Province has a policy in place to encourage and support the growth and development of the

¹⁸ See *Final Determination* and accompanying Issues and Decision Memorandum at 12-13.

¹⁹ See *id.* at 13.

²⁰ See *id.* at 9-12.

circular welded pipe industry. Finally, the Department found that this program provides a benefit to the recipients, equal to the difference between what the recipient paid on the loan and the amount the recipient would have paid on a comparable commercial loan.²¹

(3) *East Pipe Debt Forgiveness*

In late 2000, Maite Pipe, a state-owned company, became insolvent and was later restructured in 2002 (by the Weifang People’s Government) to form Weifang East, which did not assume all the liabilities incurred by the former company. Accordingly, the Department found that liabilities left in Maite Pipe constitute debt forgiveness to Weifang East. Specifically, the Department determined that the GOC provided a financial contribution to Weifang East in the form of a direct transfer of funds and that Weifang East received a benefit in the amount of the debt forgiven. Finally, the Department determined that this subsidy is *de facto* specific because it is limited to Weifang East.²²

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/Producers/Exporters	Net Countervailable Subsidy (percent)
Weifang East Steel Pipe Co., Ltd (Weifang East)	29.83
Zhejiang Kingland Pipeline and Technologies Co., Ltd., and affiliated companies (Zhejiang Kingland)	48.18
Tianjin Shuangjie Steel Pipe Co., Ltd.; Tianjin Shuangjie Steel Pipe Group Co., Ltd.; Tianjin Wa Song Imp. & Exp. Co., Ltd.; and Tianjin Shuanglian Galvanizing Products Co., Ltd. (Tianjin Shuangjie)	620.08
All Others	39.01

²¹ See *id.* at 14-15.

²² See *id.* at 15-16.

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

25 SEPTEMBER 2013

Date