



C-570-966
Section 129 Proceeding
DS437
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March 31, 2016

MEMORANDUM FOR: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Section 129 Proceeding: United States – Countervailing Duty
(CVD) Measures on Certain Products from the People’s Republic
of China (WTO DS437)

SUBJECT: Final Determination for Countervailing Duty Investigation on Drill
Pipe from the People’s Republic of China (*Drill Pipe from the
PRC*)

Section 129 of the Uruguay Round Agreements Act (URAA)¹ governs the actions of the Department of Commerce (the Department) following adverse World Trade Organization (WTO) dispute settlement reports. No further action in relation to the determination in the *Drill Pipe from the PRC*² proceeding, which was found to be WTO-inconsistent in WTO DS437 and is the subject of a request from the United States Trade Representative (USTR) pursuant to Section 129, is necessary because the order which resulted from that determination has been revoked.

The CVD order on *Drill Pipe from the PRC* was revoked in December 29, 2014, following a negative injury determination by the U.S. International Trade Commission (ITC).³ As a result, the Department instructed U.S. Customs and Border Protection (CBP) to release any bond or other security, and refund any cash deposits, made pursuant to the order. However, because litigation regarding the ITC’s determination was not final and complete, the Department instructed CBP to continue to suspend liquidation of the relevant drill pipe entries at zero percent

¹ 19 USC 3538(b).

² See *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) and accompanying Issues and Decision Memorandum; *Drill Pipe from the People’s Republic of China: Countervailing Duty Order*, 76 FR 11758 (March 3, 2011).

³ See *Drill Pipe from the People’s Republic of China: Notice of Court Decision Not in Harmony With International Trade Commission’s Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review*, 79 FR 78037 (December 29, 2014).



during the pendency of all appeals.⁴

On January 4, 2016, and February 25, 2016, we issued the *Input Specificity* and *Public Bodies* preliminary determination memoranda which are relevant to this Section 129 proceeding for *Drill Pipe from the PRC*.⁵

On November 6, 2015, the U.S. Court of Appeals for the Federal Circuit affirmed the ITC's negative injury on appeal, and the Court's decision became final and conclusive on February 4, 2016.⁶ As a result, on February 22, 2016, litigation before the U.S. Court of International Trade concerning the *Drill Pipe from the PRC* CVD investigation, which had been stayed pending a final and conclusive decision regarding the ITC's injury determination, was dismissed.⁷ On March 2, 2016, the Department issued instructions to CBP to terminate suspension of liquidation of the relevant drill pipe entries and liquidate without regard to countervailing duties.⁸ These instructions (in addition to those issued following the revocation of the order), have the effect of refunding all outstanding cash deposits plus any interest accrued.⁹

On March 11, 2016, we announced to interested parties the schedule for the submission of case and rebuttal briefs in this Section 129 proceeding, which were due to the Department on March 25, 2016, and March 30, 2016, respectively.¹⁰ The Government of China filed a case brief commenting on the Department's preliminary determinations. No interested party to this proceeding filed a rebuttal brief.

On March 14, 2016, we placed the notice of revocation of the *Drill Pipe from the PRC* order, as well our March 2, 2016 liquidation instructions, on the record of this Section 129 proceeding.¹¹ Additionally, on March 28, 2016, we placed our January 21, 2015, revocation instructions on the record of this proceeding.¹²

The revocation of the CVD order on *Drill Pipe from the PRC*, and the Department's instructions to liquidate the relevant suspended drill pipe entries without regard to countervailing duties, has made a determination in this Section 129 proceeding unnecessary. Accordingly, for the final

⁴ See *id.*, 79 FR at 78038; see also Department Memorandum, regarding "Revocation Customs Instruction" (March 28, 2016) (Revocation Customs Instruction).

⁵ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Input Specificity: Preliminary Analysis of the Diversification of Economic Activities and Length of Time," (December 31, 2015) (Input Specificity Memorandum); Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Preliminary Determination of Public Bodies and Input Specificity," (February 25, 2016) (Public Bodies Memorandum).

⁶ *Downhole Pipe & Equipment, L.P. v. U.S. Intern. Trade Com'n*, 621 Fed. Appx. 667 (CAFC 2015) (affirmed without opinion pursuant to Fed. Cir. R. 36).

⁷ *Downhole Pipe & Equipment, L.P. v. United States*, Ct. No. 11-00082, CM/ECF No. 72 (Stipulation and Order of Dismissal).

⁸ See Department Memorandum, regarding "Revocation Documents for C-570-966" (March 14, 2016) (Revocation Documents for C-570-966).

⁹ See *id.*; Revocation Customs Instruction; see also section 778 of the Tariff Act of 1930, as amended (governing payment of interest).

¹⁰ See Department Memorandum, regarding "Schedule for rebuttal factual information, written argument, and a hearing," (March 11, 2016).

¹¹ See Revocation Documents for C-570-966.

¹² See Revocation Customs Instruction.

determination in this Section 129 proceeding, the Department has not adopted the findings in its preliminary determinations and is making no changes to the determination in *Drill Pipe from the PRC* which was found to be WTO-inconsistent in WTO DS437.

RECOMMENDATION

We recommend adopting the position described above. Because the CVD order on *Drill Pipe from the PRC* has been revoked, there is no longer a need for the Department to issue a determination in connection with this proceeding to render a determination in this proceeding not inconsistent with the findings in WTO DS437.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

31 MARCH 2016

(Date)