



C-570-978
Sunset Review
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August 29, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results of the
Expedited Sunset Review: High Pressure Steel Cylinders from the
People's Republic of China

SUMMARY

We have analyzed the responses of interested parties in the expedited sunset review of the *CVD Order* on high pressure steel cylinders (Steel Cylinders) 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 that we address in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

Background

On June 21, 2012, the Department of Commerce (the Department) published the *CVD Order* on Steel Cylinders from the PRC.² On May 1, 2017, the Department initiated the first sunset review of the *CVD Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c).³ Norris Cylinder Company (Norris, or the petitioner) filed a timely notice of intent to participate in this review on May 8, 2017, in accordance with 19 CFR

¹ See *High Pressure Steel Cylinders from the People's Republic of China: Countervailing Duty Order*, 77 FR 37384 (June 21, 2012) (*CVD Order*).

² *Id.*

³ See *Initiation of Five-Year "Sunset" Review*, 82 FR 20314 (May 1, 2017).

351.218(d)(1).⁴ Norris claimed interested party status under section 771(9)(C) of the Act, as the petitioner in the underlying antidumping duty investigation and the sole domestic producer of the domestic like product. On May 25, 2017, the Department received a substantive response from the petitioner, in accordance with 19 CFR 351.218(d)(3)(i).⁵ The Department did not receive a substantive response from the Government of the PRC (GOC) or from any PRC producer or exporter of Steel Cylinders.

In accordance with 19 CFR 351.218(e)(1)(ii)(B)(2) and(C)(2), when there are inadequate responses from respondent interested parties, we “{n}ormally 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)).” Consistent with the Department’s regulations and practice, we determined that in the absence of substantive responses from the GOC and other respondent interested parties (*i.e.*, producers and exporters), the Department would conduct an expedited (120-day) sunset review of the *CVD Order*.

History of the *Order*

On June 21, 2012, the Department published in the *Federal Register* the *CVD Order* on Steel Cylinders from the PRC.⁶ In the subject CVD investigation,⁷ for the period of investigation covering calendar year 2010, the Department determined a net countervailable subsidy rate of 15.81 percent *ad valorem* for Beijing Tianhai Industry Co., Ltd.; Tianjin Tianhai High Pressure Container Co., Ltd.; Langfang Tianhai High Pressure Container Co., Ltd.; and a rate of 15.81 percent *ad valorem* for “All-Others,” for the programs described in the “Nature of the Subsidy” section of this memorandum.⁸

We found the following programs countervailable in the original investigation:

1. Preferential Loans for SOEs
2. “Two Free, Three Half” Program for Foreign-Invested Enterprises (FIEs)
3. Enterprise Income Tax Rate Reduction in the Tianjin Port Free Trade Zone
4. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
5. Provision of Hot-Rolled Steel for Less Than Adequate Remuneration (LTAR)
6. Provision of Seamless Tube Steel for LTAR

⁴ See Letters to the Department, “High Pressure Steel Cylinders from the People’s Republic of China; Notice of Appearance and of Intent to Participate on Behalf of Petitioner Norris Cylinder Company in Sunset Review of Countervailing Duty Order,” dated May 8, 2017, (Petitioner’s Intent to Participate).

⁵ See Letter to the Department, “High Pressure Steel Cylinders from the People’s Republic of China; Substantive Response to Notice of Initiation of Norris Cylinder Company,” dated May 25, 2017, (Petitioner’s Substantive Response).

⁶ See *CVD Order*.

⁷ See *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 77 FR 26738 (May 7, 2012), and accompanying Issues and Decision Memorandum.

⁸ *Id.*

7. Provision of Standard Commodity Steel Billets and Blooms, and High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms for LTAR
8. Provision of Electricity for LTAR
9. Pension Fund Grants⁹

Since the issuance of the *CVD Order*, no administrative reviews, new shipper reviews or changed circumstance reviews of this *CVD Order* have been conducted.¹⁰ A final scope ruling was made on September 12, 2014.¹¹ This is the first sunset review of the *CVD Order*.

On June 9, 2016, the Department implemented the final determinations for compliance proceedings pursuant to section 129 of the Uruguay Round Agreements Act to bring certain CVD determinations, including the *Order* on Steel Cylinders from the PRC, into compliance with the rulings of the World Trade Organization (WTO) Dispute Settlement Body (DSB) in *United States - Countervailing Duty Measures on Certain Products from China* (DS437).¹² The net subsidy rates for the Steel Cylinders were unchanged in the DS437 proceedings.

Scope of the Order

The merchandise covered by the scope of the *Order* is seamless steel cylinders designed for storage or transport of compressed or liquefied gas (Steel Cylinders). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (DOT)-approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT-E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by the *Order* have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings.

Excluded from the scope of the *Order* are high pressure steel cylinders manufactured to UN-ISO- 9809-1 and 2 specifications and permanently impressed with ISO or UN symbols. Also

⁹ *Id.*

¹⁰ The Department initiated three administrative reviews for the periods, October 18, 2011, through December 31, 2012; January 1, 2013, through, December 31, 2013; and January 1, 2015, through December 31, 2015; but later rescinded all three reviews in their entirety. See *High Pressure Steel Cylinders from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2011-2012*, 78 FR 55059 (September 9, 2013); *High Pressure Steel Cylinders from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2013*, 79 FR 59220 (October 1, 2014); *High Pressure Steel Cylinders from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2015*, 81 FR 70388 (October 12, 2016).

¹¹ See *High Pressure Steel Cylinders from the People's Republic of China: Lenz Sales & Dist., Inc. Final Scope Ruling* (September 12, 2014).

¹² See *Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act*, 81 FR 37180 (June 9, 2016).

excluded from the *Order* are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

Merchandise covered by the *Order* is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7311.00.00.30. Subject merchandise may also enter under HTSUS subheadings 7311.00.00.60 or 7311.00.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the *CVD Order* would be likely to 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 any 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 International Trade Commission (ITC) the net countervailable subsidy likely to prevail if the *CVD Order* were 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 World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

The Petitioner's Comments

The petitioner argues that revocation of the *CVD Order* would likely lead to the continuation or recurrence of countervailable subsidies at the rate found in the investigation. In the absence of administrative reviews, petitioner argues, there is no basis for the Department to find that any programs examined in the investigation were terminated or otherwise no longer benefit producers of Steel Cylinders.¹³

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. According to the Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant

¹³ See Petitioner's Substantive Response at 4.

subsidy programs have been continued, modified, or eliminated.¹⁴ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹⁵ Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.¹⁶ Where a subsidy program is found to exist, the Department will normally determine that revocation of the *CVD Order* is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.¹⁷

As the Department has stated in other sunset determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: 1) the program must be terminated; and 2) any benefit stream must be fully allocated.¹⁸ The Department has further stated that, in order to determine whether a program has been terminated, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program.¹⁹ The Department normally expects a program to be terminated by means of the same legal mechanism used to institute it.²⁰ Where a subsidy is not bestowed pursuant to a statute, regulation or decree, the Department may find no likelihood of continued or recurring subsidization if the subsidy in question was a one-time, company-specific occurrence that was not part of a broader government program.²¹

As indicated above, there have been no administrative reviews nor other intervening segments of this proceeding since issuance of the *CVD Order*. Moreover, neither the GOC nor other respondent interested parties participated in this sunset review. There is no information indicating any changes in the programs found countervailable during the investigation. Absent argument or evidence to the contrary, we find that countervailable programs continue to exist and be used. Based on the facts on the record, the Department determines that there is a likelihood of continuation or recurrence of countervailable subsidies.

¹⁴ See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

¹⁵ *Id.*

¹⁶ See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁷ *Id.*

¹⁸ See, e.g., *Corrosion-Resistant Carbon Steel Flat Products from France: Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006) and accompanying Issues and Decision Memorandum at “1. Likelihood of Continuation or Recurrence of Countervailable Subsidy.”

¹⁹ See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Full Third Sunset Review of Countervailing Duty Order*, 76 FR 70411 (November 14, 2011) and accompanying Issues and Decision Memorandum at 1.” Likelihood of Continuation or Recurrence of a Countervailable Subsidy.”

²⁰ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 7.

²¹ See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011) and accompanying Issues and Decision Memorandum at Comment 1.

2. Net Countervailable Subsidy Likely to Prevail

The Petitioner's Comments

The petitioner argues that in the absence of any completed administrative review, the net countervailable subsidy likely to prevail is 15.81 percent *ad valorem*. This is the rate the Department found in the final determination.²²

Department's Position:

Consistent with the SAA and 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 were 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.²³

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.²⁴

In this proceeding, the Department has not conducted any administrative reviews of the *CVD Order*, and the Department has not adjusted the rates from the investigation to account for additional subsidies, program-wide changes or terminated programs.

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 "Final Results of Review" below.

3. Nature of the Subsidy

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 the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO SCM Agreement. We note that Article 6.1 of the SCM Agreement expired effective January 1, 2000.

²² See The petitioner's Substantive Response at 4.

²³ See SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

²⁴ See, e.g., *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010) and accompanying Issues and Decision Memorandum at 2. "Net Countervailable Subsidy."

The following programs do not fall within the meaning of Article 3.1 of the SCM Agreement, but may be subsidies described in Article 6.1 of the SCM Agreement if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM Agreement. The subsidies may also fall within the meaning of Article 6.1 if they constitute debt forgiveness, a grant to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record to make such a determination. We are, in any case, providing the ITC with the following program descriptions:

1. Preferential Loans for SOEs:

The GOC, through its policy banks, provides preferential loans to State-Owned Enterprises.

2. “Two Free, Three Half” Program for Foreign-Invested Enterprises (FIEs):

Under Article 8 of the FIE Tax Law, an FIE that is “productive” and scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years. According to the GOC, the “Two Free, Three Half” program was terminated effective January 1, 2008, by the Enterprise Income Tax Law but companies already enjoying the preference were permitted to continue paying taxes at reduced rates.

3. Enterprise Income Tax Rate Reduction in the Tianjin Port Free Trade Zone:

Under Article 4 of the “Official Reply of the State Council Concerning the Establishment of the Tianjin Port Free Trade Zone,” FIEs located in the Tianjin Port Free Trade Zone were permitted to pay a reduced income tax at a rate of 15 percent. According to the GOC, this program terminated on January 1, 2008, but companies that enjoyed the reduced tax rate are gradually transitioning to the national tax rate of 25 percent.

4. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries:

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA No. 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission or its provincial branch provides a certificate to enterprises that receive the exemption. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.

5. Provision of Hot-Rolled Steel for Less Than Adequate Remuneration (LTAR):

The provision of hot-rolled steel for less than adequate remuneration from state-owned steel producers to manufacturers of high pressure steel cylinders constitutes a benefit to the extent that

such government provided goods or services are provided for less than adequate remuneration pursuant to section 771(5)(E)(iv) of the Act.

6. Provision of Seamless Tube Steel for LTAR:

The provision of seamless tube steel for less than adequate remuneration from state-owned steel producers to manufacturers of high pressure steel cylinders constitutes a benefit to the extent that such government provided goods or services are provided for less than adequate remuneration pursuant to section 771(5)(E)(iv) of the Act.

7. Provision of Standard Commodity Steel Billets and Blooms, and High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms for LTAR:

The provision of standard commodity steel billets and blooms, and high-quality chromium molybdenum alloy steel billets and blooms for less than adequate remuneration from state-owned producers of these products to manufacturers of high pressure steel cylinders constitutes a benefit to the extent that such government provided goods or services are provided for less than adequate remuneration pursuant to section 771(5)(E)(iv) of the Act.

8. Provision of Electricity for LTAR:

The provision of electricity confers a financial contribution, under section 771(5)(D)(iii) of the Act, is specific, under section 771(5A) of the Act, and constitutes a benefit to the extent that such government provided goods or services are provided for less than adequate remuneration pursuant to section 771(5)(E)(iv) of the Act.

9. Pension Fund Grants:

The GOC provides assistance in the form of grants to pay a company's pension obligations.

FINAL RESULTS OF REVIEW

The Department finds that revocation of the *CVD Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Manufacturers/Exporters	Net countervailable subsidy rate (percent)
Beijing Tianhai Industry Co., Ltd.; Tianjin Tianhai High Pressure Container Co., Ltd.; Langfang Tianhai High Pressure Container Co., Ltd	15.81
All Others	15.81

RECOMMENDATION:

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review in the *Federal Register*, and notify the ITC of our findings.

Agree

Disagree

8/29/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance