



C-570-936
Sunset Review 2019
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July 24, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order on Circular Welded Carbon Steel Line Pipe from the People's Republic of China

I. SUMMARY

We analyzed the substantive response of the domestic interested parties¹ in this second sunset review of the countervailing duty (CVD) order² covering circular welded carbon quality steel line pipe (welded line pipe) from the People's Republic of China (China),³ and recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. No respondent interested party submitted a substantive response. Accordingly, we conducted an expedited (120-day) sunset review of the *Order*.⁴ The following is a 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 Rates Likely to Prevail
3. Nature of the Subsidy

¹ The domestic interested parties are: California Steel Industries, Inc.; TMK IPSCO; Welspun Tubular LLC; and Zekelman Industries.

² See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 74 FR 4136 (January 23, 2009) (*Amended Final Determination* or the *Order*).

³ See Domestic Interested Parties' Letter, "Second Five-Year Review of the Countervailing Duty Order on Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Substantive Response to Notice of Initiation," dated April 30, 2019 (Substantive Response).

⁴ See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response.).



II. BACKGROUND

On January 23, 2009, the Department of Commerce (Commerce) published the.⁵ On April 1, 2019, Commerce initiated the second sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c).⁶ On April 17, 2019, we received a notice of intent to participate in the sunset review from the domestic interested parties.⁷ The domestic interested parties are manufacturers of the domestic like product in the United States and claimed interested party status under section 771(9)(C) of the Act.⁸ On April 30, 2019, we 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 a substantive response from the Government of China (GOC) or any Chinese producer or exporter of subject merchandise.

In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), because Commerce did not receive any substantive response from the GOC, pursuant to 19 CFR 351.218(e)(1)(ii)(B), or from a respondent party, pursuant to 19 CFR 351.218(e)(1)(ii)(C), we deem that the respondent interested parties did not provide an adequate response to the notice of initiation. Therefore, consistent with 19 CFR 351.218(e)(1)(ii)(B)(2) and 19 CFR 351.218(e)(1)(ii)(C)(2), we conducted an expedited sunset review of the *Order* and are issuing the final results of review no later than 120 days after the date of publication of the notice of initiation.

III. SCOPE OF THE ORDER

The merchandise covered by this order is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (welded line pipe), not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term “carbon quality steel” includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for non-alloy steels imposed in the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, the term “carbon quality” includes products in which (1) iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

- (i) 2.00 percent of manganese,
- (ii) 2.25 percent of silicon,
- (iii) 1.00 percent of copper,

⁵ See *Order*, 74 FR at 4136.

⁶ See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 12227 (April 1, 2019).

⁷ See Domestic Interested Parties’ Letter, “Notice of Intent to Participate in Second Five-Year Review of the Antidumping and Countervailing Duty Orders on Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China – Request for Extension of Deadline and Acceptance of Submission,” dated April 17, 2019 (Notice to Participate); see also Commerce’s Letter, “Acceptance of Notice of Intent to Participate,” dated April 18, 2019.

⁸ See Notice to Participate at 2.

⁹ See Substantive Response.

- (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) 0.012 percent of boron,
- (xi) 0.50 percent of molybdenum,
- (xii) 0.15 percent of niobium,
- (xiii) 0.41 percent of titanium,
- (xiv) 0.15 percent of vanadium, or
- (xv) 0.15 percent of zirconium.

Welded line pipe is normally produced to specifications published by the American Petroleum Institute (API) (or comparable foreign specifications) including API A-25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non-graded material. Nevertheless, all pipe meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple-stenciled pipe with an API welded line pipe stencil is covered by the scope of this order.

Excluded from this scope are pipes of a kind used for oil and gas pipelines that are multiple-stenciled to a standard and/or structural specification and have 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 welded line pipe products that are the subject of this order are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. HISTORY OF THE ORDER

On November 24, 2008, Commerce published its *Final Determination* in the CVD investigation of welded line pipe from China.¹⁰ Commerce calculated a rate of 35.63 percent for Huludao Seven-Star Steel Pipe Group Co., Ltd., Huludao Steel Pipe Industrial Co., Ltd., and Huludao Bohai Oil Pipe Industrial Co., Ltd. (collectively, the Huludao Companies), 40.05 percent for Liaoning Northern Steel Pipe Co., Ltd. (Liaoning), and 37.84 percent for all others.¹¹

¹⁰ See *Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

¹¹ See *Final Determination*, 73 FR at 70963.

On January 23, 2009, Commerce published in the *Federal Register* its *Amended Final Determination* on welded line pipe from China.¹² After correcting for ministerial errors, Commerce calculated an amended subsidy rate for the Huludao Companies of 31.29 percent.¹³ The rate for Liaoning remained unchanged at 40.05 percent, and the all-others rate was amended to 35.67 percent.¹⁴

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

1. Two Free, Three Half Program
2. Provision of Land for Less Than Adequate Remuneration (LTAR)
3. Provision of Hot-Rolled Steel for LTAR
4. Foreign Trade Development Fund Program – Grants
5. Foreign Trade Development Fund Program – Value Added Tax (VAT) Refunds
6. Export Interest Subsidies
7. Export Loans
8. Liaoning Province Grants - Five Points One Line Program
9. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically-Owned Companies
10. Preferential Lending of Policy Loans to State-Owned Enterprises and the Steel Industry by State-Owned and Controlled Banks

In 2009, United States Steel Corporation and Maverick Tube Corporation, the petitioners, challenged the *Amended Final Determination* before the Court of International Trade (CIT). On September 10, 2009, the CIT granted Commerce's request for a voluntary remand.¹⁵ On remand, we calculated a revised subsidy rate of 33.43 percent for the Huludao Companies and a revised all-others rate of 36.74 percent.¹⁶ The CIT subsequently sustained the *Final Redetermination*.¹⁷

In 2016, pursuant to a directive from the U.S. Trade Representative, Commerce implemented its determination in the underlying investigation under section 129 of the Uruguay Round Agreements Act (URAA) to render it not inconsistent with the World Trade Organization in *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437 (December 18, 2014). On June 9, 2016, Commerce published in the *Federal Register* its final determination in the section 129 proceeding.¹⁸ In that final determination, Commerce found that the Provision of Land for LTAR program, which was used by the Huludao Companies, was not

¹² See *Amended Final Determination*, 74 FR at 4136.

¹³ *Id.*, 74 FR at 4137-38.

¹⁴ *Id.*, 74 FR at 4138.

¹⁵ See *United States Steel Corp. v. United States*, Consol. Court No. 09–00086 (CIT Sept. 10, 2009).

¹⁶ See *United States Steel Corp. v. United States*, Consol. Court No. 09–00086, Final Redetermination Pursuant to Remand (CIT Oct. 20, 2009) (*Final Redetermination*).

¹⁷ See *United States Steel Corp. v. United States*, Slip Op. 09-137, 33 C.I.T. 1755 (Dec. 11, 2009); see also *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Determination Pursuant to Final Court Decision*, 75 FR 16071 (March 31, 2010).

¹⁸ See *Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act*, 81 FR 37180 (June 9, 2016) (*Section 129 Implementation of Determinations Notice*); see also Memorandum, “*Section 129 Proceeding: United States – Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS 437): Final Determination for Pressure Pipe, Line Pipe, OCTG, Wire Strand, and Solar Panels*,” dated May 19, 2016 (*Section 129 Final Determination Memorandum*).

countervailable.¹⁹ Commerce determined revised subsidy rates of 32.65 percent for the Huludao Companies, and a revised all others rate of 36.35 percent.²⁰ The subsidy rate for Liaoning was unchanged at 40.05 percent.²¹

There have been no administrative reviews, new shipper reviews, or changed circumstances reviews of the *Order*, pursuant to sections 751(a) and (c) of the Act.

Sunset Review

Commerce has conducted one sunset review of the *Order* on welded line pipe from China, pursuant to section 751(c) of the Act.²² In that review, we found that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidy at the same rate found in the original investigation for Liaoning, and the same rate found in the *Final Redetermination* for the Huludao Companies and all others.²³

In the previous sunset review, the U.S. International Trade Commission (ITC) likewise determined, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²⁴ Following the publication of the ITC's determination, Commerce published a notice of continuation of the *Order*.²⁵

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the 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, Commerce 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, Commerce shall provide to the ITC the net countervailable subsidy rate likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce 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 (ASCM).

¹⁹ See Section 129 Final Determination Memorandum at 2-3.

²⁰ See Section 129 Implementation of Determinations Notice, 81 FR at 37181-82.

²¹ *Id.*, 81 FR at 37181.

²² See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Results of Expedited Sunset Review of the Countervailing Duty Order*, 79 FR 15313 (March 19, 2014), and accompanying IDM.

²³ *Id.*, 79 FR 15313.

²⁴ See *Circular Welded Carbon Quality Steel Line Pipe from China; Determination*, 79 FR 26454 (May 8, 2014).

²⁵ See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders*, 79 FR 28894 (May 20, 2014).

Below we address the comments submitted by the domestic interested parties.

VI. DISCUSSION OF THE ISSUES

A. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic Interested Parties' Comments: The domestic interested parties argue that subsidization of welded line pipe from China would likely continue or recur if Commerce revoked the *Order*, because the subsidy programs continue.²⁶ They note that, where no administrative review of a CVD order has been conducted, Commerce will normally determine that there have been no changes to a subsidy program.²⁷

With regard to this *Order*, they state that no evidence has been presented that any change in the programs giving rise to the net countervailable subsidy determined in the investigation has occurred and is likely to affect the net countervailable subsidy rates determined. Further, they note that no administrative reviews or new shipper reviews have been requested or conducted. Accordingly, they assert that the subsidy programs identified in the investigation continue.

Commerce's Position: According to the Statement of Administrative Action (SAA), Commerce will consider the net countervailable subsidies in effect after the issuance of the *Order* and whether the relevant subsidy programs have been continued, modified, or eliminated.²⁸ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.²⁹ 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.³⁰ Where a subsidy program is found to exist, Commerce 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.³¹

As indicated above, Commerce has not completed any administrative reviews or new shipper reviews of the *Order* since it went into effect, and no party has submitted evidence to demonstrate that the countervailable programs have expired or been terminated. Commerce, however, completed the section 129 proceeding in which it determined that the Provision of

²⁶ See Substantive Response at 9-10.

²⁷ *Id.* (citing *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy; Final Results of Full Sunset Review of Countervailing Duty Order*, 66 FR 13909 (March 8, 2001), and accompanying IDM at Comment 3; see also *Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, and Thailand: Final Results of Expedited Sunset Reviews*, 78 FR 16252 (March 14, 2013), and accompanying IDM at Comment 1 (Thailand)).

²⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, 888 (1994).

²⁹ *Id.*

³⁰ 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 IDM at Comment 1.

³¹ *Id.*

Land for LTAR program with regard to the Huludao Companies was not countervailable.³² Therefore, Commerce determines that there is a likelihood of recurrence of countervailable subsidies, because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist and be used, with the exception of the Provision of Land for LTAR.

B. Net Countervailable Subsidy Rates Likely to Prevail

Domestic Interested Parties' Comments: The domestic interested parties state that the investigation subsidy rates represent the best evidence of subsidization of Chinese producers and exporters without the discipline of an order in place. They assert that Commerce should find that the following subsidy rates, calculated in the *Final Redetermination*, are likely to prevail in the event of revocation of the *Order*: 33.43 percent for the Huludao Companies; 40.05 percent for Liaoning; and 36.74 percent for all others.

Commerce's Position: Commerce will normally provide to the ITC the net countervailable subsidy rate that was determined in the investigation as the subsidy rate likely to prevail if the *Order* were revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.³³ Section 752(b)(1)(B) of the Act provides, however, that Commerce 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 Commerce 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.³⁴

In this instance, Commerce has completed no administrative reviews or new shipper reviews, and no evidence has been provided by any interested party regarding program changes. However, in 2016, Commerce implemented its determination in the underlying investigation under section 129 of the URAA.³⁵ In that determination, Commerce found the Provision of Land for LTAR program with regard to the Huludao Companies not countervailable.³⁶ We find that the section 129 determination warrants making a change to the net countervailable subsidy rate likely to prevail if the *Order* were revoked for Chinese producers and exporters of welded line pipe in the investigation. As such, Commerce determines that the following net countervailable subsidy rates calculated in the section 129 final determination are the net countervailable subsidy rates likely to prevail were the *Order* to be revoked: 32.65 percent for the Huludao Companies; 40.05 percent for Liaoning; and 36.35 percent for all others.³⁷

³² See Section 129 Final Determination Memorandum at 2-3.

³³ See SAA at 890; and House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

³⁴ See, e.g., *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62103 (October 7, 2010), and accompanying IDM at Comment 2.

³⁵ See *Section 129 Implementation of Determinations Notice*, 81 FR at 37180.

³⁶ See Section 129 Final Determination Memorandum at 2-3.

³⁷ See *Section 129 Implementation of Determinations Notice*, 81 FR at 37181-82.

C. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of the subsidies and whether the subsidies are prohibited subsidies as described in Article 3, or subsidies described in Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The domestic interested parties did not address this issue in their substantive response.

The following programs are prohibited subsidies as described in Article 3.1 of the ASCM:

1. Foreign Trade Development Fund Program – Grants: The Foreign Trade Development Fund supports projects undertaken by exporting enterprises to improve the competitiveness of their exported products, to develop an export processing base, to support the registration of trademarks in foreign countries, to support the training of foreign trade professionals, and to explore international markets.³⁸
2. Export Interest Subsidies: Export interest subsidies are provided for under the “Provisional Administrative Measures on High-Tech Products and Equipment Manufacturing Products Export Financial Interest Assistance of Liaoning Province” (No. 671), established on December 16, 2004. This provisional measure provides assistance to companies to expand the exportation of high-tech products and equipment manufacturing products, and supports the development of enterprises located in Liaoning Province.³⁹
3. Export Loans: Certain loans provided by state-owned commercial banks in China are contingent upon export activity.⁴⁰
4. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically-Owned Companies: Established on July 1, 1999, pursuant to “Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically-Produced Equipment for Technology Renovation Projects,” this program provides that a domestically-invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. The tax incentive is contingent upon the use of domestic over imported goods.⁴¹

The following programs do not fall within the meaning of Article 3 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. Because there is

³⁸ See *Final Determination* IDM at 20-21.

³⁹ *Id.* at 22-23.

⁴⁰ *Id.* at 23-24.

⁴¹ *Id.* at 25-26.

insufficient information on the record to conclusively make this determination, Commerce is providing to the ITC the following list of programs:

1. Two Free, Three Half Program: Article 8 of the Foreign Enterprise Income Tax Law states that foreign-invested enterprises which are “productive” and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years.⁴²
2. Provision of Hot-Rolled Steel for LTAR: Commerce determined that the GOC provided hot-rolled steel to producers of welded line pipe for LTAR.⁴³
3. Foreign Trade Development Fund Program – VAT Refunds: The VAT program, established on September 14, 2004, by the “Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with Respect to Expansion of VAT Deduction Scope in the Northeast Areas” is administered by the Huludao State Tax Administration. Under the program, VAT payers that are members of the equipment manufacturing, petrochemical, metallurgical, ship building, automobile, and agricultural products industries may deduct VAT for purchases of fixed assets from the VAT for sales of finished goods.⁴⁴
4. Liaoning Province Grants - Five Points One Line Program: The Liaoning Development and Reform Commission and the Liaoning Finance Bureau provide interest subsidies that were established pursuant to the “Opinion of Liaoning Province Encouraging the Expansion of Opening-Up in Coastal Key Developing Areas,” in January 2006. The Huludao Beigang Industrial Park, Industry, and Commerce Authority administers fee exemptions provided under the program.⁴⁵
5. Preferential Lending of Policy Loans to State-Owned Enterprises and the Steel Industry by State-Owned and Controlled Banks: Commerce found that the “Development Policies for the Iron and Steel Industry Plan” provides for assistance (such as loans) and support to members of the steel industry (including welded line pipe producers) for the use of domestically-produced equipment.⁴⁶

⁴² *Id.* at 12-13.

⁴³ *Id.* at 18-20.

⁴⁴ *Id.* at 21-22.

⁴⁵ *Id.* at 24-25.

⁴⁶ *Id.* at 26-27.

VII. FINAL RESULTS OF SUNSET REVIEW

We determine that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Producers/Exporters	Net Countervailable Subsidy <i>Ad Valorem</i> Rate
Huludao Seven–Star Steel Pipe Group Co., Ltd., Huludao Steel Pipe Industrial Co., Ltd., and Huludao Bohai Oil Pipe Industrial Co., Ltd. (collectively, the Huludao Companies)	32.65 percent
Liaoning Northern Steel Pipe Co., Ltd.	40.05 percent
All Others	36.35 percent

VIII. RECOMMENDATION

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

Agree

Disagree

7/30/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance