



C-570-915
Sunset Review
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August 23, 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 Expedited Second
Sunset Review of the Countervailing Duty Order on Light-Walled
Rectangular Pipe and Tube from the People's Republic of China

I. SUMMARY

We have analyzed the substantive response of domestic interested parties in the second sunset review of the countervailing duty order covering light-walled rectangular pipe and tube from the People's Republic of China (China).¹ We did not receive a response from the Government of China (GOC), nor from any other interested party. Accordingly, we conducted an expedited (120-day) sunset review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(1)(ii)(C)(2). 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 in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

II. BACKGROUND

On May 1, 2019, Commerce published the notice of initiation of the second sunset review of the *Order*, in accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act).² Commerce received a notice of intent to participate from Atlas Tube, a division of Zekelman Industries, Bull Moose Tube Co., California Steel and Tube, Hannibal Industries, Maruichi American Corporation, Searing Industries, and Vest, Inc. (collectively, domestic interested

¹ See *Notice of Countervailing Duty Order: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 45405 (August 5, 2008) (*Order*).

² See *Initiation of Five-Year (Sunset) Review*, 84 FR 18477 (April 1, 2019).

parties), and from Independence Tube Corporation, a Nucor company, and Southland Tube, Incorporated, a Nucor company (collectively, Nucor Pipe Mills) (collectively, domestic producers), within the deadline specified in 19 CFR 351.218(d)(1)(i).^{3,4} Each of the companies claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of light-walled rectangular pipe and tube.

Commerce received a substantive response from domestic producers⁵ within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On July 2, 2019, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁶ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

III. SCOPE OF THE *ORDER*

The merchandise subject to the *Order* is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to the *Order* is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the *Order* is dispositive.

³ See Domestic Interested Parties' Letter, "Notice of Intent to Participate in Second Five-Year Review of the Countervailing Duty Order on Light-Walled Rectangular Pipe and Tube from China," dated May 13, 2019; see also, Nucor Pipe Mills' Letter, "Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Intent to Participate," dated May 16, 2019.

⁴ On July 15, 2019, Commerce was notified of the inadvertent omission of Wheatland Tube Company, a division of Zekelman Industries, from the notice of appearance, application for administrative protective orders, and notice of intent to participate, although it was included in the domestic industry's substantive response dated May 31, 2019. See Domestic Interested Parties' Letter, "Second Five-Year Reviews of the Antidumping {sic} Duty Order on Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey: Errata," dated July 15, 2019.

⁵ See Domestic Producers' Letter, "Light-Walled Rectangular Pipe and Tube from the People's Republic of China, Second Review: Substantive Response to Notice of Initiation," dated May 31, 2019, and filed on behalf of Atlas Tube; Bull Moose Tube Co.; California Steel and Tube; Hannibal Industries; Independence Tube Corp., a Nucor company; Maruichi American Corporation; Searing Industries, Inc.; Southland Tube, Inc., a Nucor company; Vest, Inc.; and Wheatland Tube Company (Domestic Producers' Substantive Response).

⁶ See Commerce Letter, "Sunset Reviews Initiated on May 1, 2019," dated July 2, 2019.

IV. HISTORY OF THE ORDER

On June 24, 2008, Commerce published its final determination in the CVD investigation of light-walled rectangular pipe and tube from China.⁷ Commerce determined that benefits that constituted subsidies within the meaning of section 701 of the Act were being provided by the Government of China (GOC) to Chinese manufacturers, producers, and exporters of this merchandise.

Commerce found the following net subsidies:

Manufacturers/producer/exporter	Net Countervailable Subsidy (percent)
Zhangjiagang Zhongyuan Pipe-making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd.	15.28
Qingdao Xiangxing Steel Pipe Co., Ltd.	200.58
Kunshan Lets Win Steel Machinery Co., Ltd.	2.17
All-Others	15.28

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

- (1) Hot-rolled Steel for Less than Adequate Remuneration
- (2) Land for Less than Adequate Remuneration (ZZPC Land Discount)
- (3) Income Tax Subsidies for Foreign Invested Enterprises (FIEs) - Reduced Income Tax Rates for FIEs Based on Location

Following notification of an affirmative injury determination by the ITC, on August 5, 2008, Commerce published its countervailing duty order on light-walled rectangular pipe and tube from China in the *Federal Register*.⁸

On August 30, 2012, Commerce implemented its revised countervailable subsidy rates pursuant to the findings in the section 129 proceeding of the Uruguay Round Agreements Act (URAA).⁹

On June 23, 2014, at the conclusion of the first sunset review, Commerce issued a notice of continuation of the *Order*.¹⁰ Commerce has not conducted any administrative reviews of the *Order*. Commerce has issued two scope rulings.¹¹

⁷ See *Light-Walled Rectangular Pipe and Tube from People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008).

⁸ See *Order*.

⁹ 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) (adjusting the rate for Kunshan Lets Wind Steel Machinery Co., Ltd. to 2.20 percent).

¹⁰ See *Light-Walled Rectangular Pipe and Tube from Mexico, Turkey, the People's Republic of China, and the Republic of Korea: Continuation of Antidumping and Countervailing Duty Orders*, 79 FR 35522 (June 23, 2014).

¹¹ See *Notice of Scope Rulings*, 83 FR 31733 (July 9, 2018) (noting that Acme Manufacturing Company's black and perforated square tubes are covered by the scope of the antidumping duty and countervailing duty orders on light-

V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would likely 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, as 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 the ITC with the net countervailable subsidy likely to prevail if the *Order* were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with 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).

VI. DISCUSSION OF THE ISSUES

Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Party Comments¹²

The domestic producers argue that application of the factors delineated in the statute and *Sunset Policy Bulletin*¹³ dictates a determination that revocation of the *Order* would be likely to lead to a continuation or recurrence of countervailable subsidies.

Commerce's Position:

As stated *supra*, in determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce 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, Commerce will consider the net countervailable subsidies in effect after

walled rectangular pipe and tube from the People's Republic of China because they possess all of the physical characteristics of subject merchandise that are described in the scope; April 26, 2017.); *see also* Memorandum, "Final Scope Ruling on the Antidumping and Countervailing Duty Order on Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Carlson AirFlo Merchandising Systems Scope Ruling Request," dated May 29, 2018; and Final Results of Remand Redetermination; *Stein Industries Inc., D/B/A/ Carlson AirFlo Merchandising Systems v. United States*, Court No. 18-00150, Slip Op. 19-75 (CIT 2019) (sustaining Commerce's finding, on remand, that certain finished components of refrigerated merchandising and display structures are not within the scope of the orders).

¹² See Domestic Producers' Substantive Response at 7.

¹³ See *Policies Regarding Conduct of Five Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.¹⁴ The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹⁵ The presence of programs that have not been used, but 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, Commerce will normally determine that revocation of the relevant order would likely to lead to continuation or recurrence of a countervailable subsidy, regardless of the level of subsidization.¹⁷

In the investigation, Commerce found that countervailable subsidies were being provided to Chinese exporters and producers of light-walled rectangular pipe and tube under the three programs listed *supra*. Commerce has not conducted an administrative review of the *Order*. Further, no party submitted evidence to demonstrate that these countervailable programs have expired or been terminated, and there is no information on the record of this proceeding indicating any changes to the programs found countervailable during the investigation. Absent argument or evidence to the contrary, we find that these countervailable programs continue to exist and be used. Therefore, Commerce determines that there is a likelihood of continuation or recurrence of countervailable subsidies.

2. Net Countervailable Subsidy Likely to Prevail

Interested Party Comments¹⁸

The domestic producers assert that, in the absence of any administrative reviews, the only rates available are the net countervailable subsidy rates calculated in the original investigation as modified for Lets Win in the Section 129 determination: (1) 15.28 percent Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.; (2) 200.58 percent for Qingdao Xiangxing Steel Pipe Co., Ltd.; (3) 2.20 percent for Kunshan Lets Win Steel Machinery Co., Ltd.; and (4) 15.28 percent for the China-wide entity.

Commerce's Position:

Consistent with the SAA and legislative history, Commerce will normally provide the ITC with the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked because, as noted by the domestic producers, it is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.¹⁹ Section 752(b)(1)(B) of the Act, however, provides that Commerce will consider whether any change in the programs which gave rise to the net

¹⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (SAA), at 888 (1994), reprinted at 1994 U.S.C.A.N. 4040, 4199.

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 (IDM) at Comment 1.

¹⁷ *Id.*

¹⁸ See Domestic Producers' Substantive Response at 7.

¹⁹ See SAA at 890; see also H.R. Rep. No. 103-826 (1994) at 64.

countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Therefore, a rate calculated in the investigation may not be the most appropriate if, for example, the rate was derived, in whole or part, from subsidy programs subsequently found 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.²⁰

In this sunset review, absent an administrative review, Commerce determines the company-specific countervailable subsidy rates likely to prevail based on the rates assigned in the investigation, adjusted to reflect the results of the Section 129 proceeding. The adjusted countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the *Order*, are provided in the “Final Results of Review” section of this memorandum.

3. Nature of the Subsidies

In accordance with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of these subsidy programs and whether these programs constitute subsidies that fall within Article 3 or Article 6.1 of the SCM Agreement. We note that Article 6.1 of the SCM Agreement expired, effective January 1, 2000.

The programs listed below do not fall within the meaning of Article 3.1 of the SCM Agreement, but they could 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 could also fall within the meaning of Article 6.1 if they constitute debt forgiveness, grants to cover debt repayment, or subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for Commerce to make such a determination. Nevertheless, we are providing the ITC with the following program descriptions.

1. *Provision of Inputs for Less than Adequate Remuneration - Hot-Rolled Steel*

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

2. *Land for Less than Adequate Remuneration (ZZPC Land Discount)*

ZZPC purchased land-use rights from the GOC in 1998, 2001, 2004, 2006 and 2007. In the investigation, we did not examine the 1998 or 2001 transactions because they occurred before China’s accession to the World Trade Organization on December 11, 2001. We also did not analyze the 2007 transaction because it occurred after our period of investigation. We did determine that the GOC’s failure to collect the full amount owed by ZZPC for the land-use rights purchased in 2004 constituted a financial contribution in the form of revenue foregone, with the benefit equal to the amount not collected. The GOC effectively charged less on this transaction

²⁰ 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 IDM at Comment 2.

than it should have charged under its normal procedures. The actual recipients of the subsidy were limited in number, so the subsidy was found to be specific in fact.

3. *Income Tax Subsidies for Foreign Invested Enterprises - Reduced Income Tax Rates for FIEs Based on Location*

FIEs are encouraged to locate in designated coastal economic zones, special economic zones, and economic and technical development zones in the PRC through preferential tax rates. This program was originally created in 1988 under the *Provisional Regulations of the Ministry of Finance of the People’s Republic of China Concerning the Reduction and Exemption from Enterprise Income Tax and Consolidated Industrial and Commercial Tax for the Encouragement of Foreign Investment in Coastal Open Economic Zones* and administered under the *Income Tax Law of the People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* (FIE Tax Law). Under Article 7 of the FIE Tax Law, “productive” FIEs located in the designated economic zones pay corporate income tax at a reduced rate of either 15 or 24 percent, depending on the zone. The FIE Tax Law was repealed effective January 1, 2008, and there are no provisions regarding this program in the superseding *Enterprise Income Tax Law of the People’s Republic of China* that was adopted on March 16, 2007.

VII. FINAL RESULTS OF SUNSET REVIEW

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

Manufacturers/producer/exporter	Net Countervailable Subsidy (percent)
Zhangjiagang Zhongyuan Pipe-making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd.	15.28
Qingdao Xiangxing Steel Pipe Co., Ltd.	200.58
Kunshan Lets Win Steel Machinery Co., Ltd.	2.20
All-Others	15.28

VIII. RECOMMENDATION

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

Agree

Disagree

8/23/2019

X 

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