



C-570-931
Sunset Review 2019
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September 25, 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 Austenitic Stainless Pressure Pipe from the People's Republic of China

I. SUMMARY

We analyzed the substantive response of the domestic interested parties¹ in this expedited second sunset review of the countervailing duty (CVD) order² covering circular welded austenitic stainless pressure pipe (WSPP) 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: Bristol Metals, LLC, Felker Brothers Corporation, and Webco Industries. We also received a submission from Primus Pipe & Tube, Inc. (Primus Pipe) in support of the domestic interested parties' substantive response.

² See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Countervailing Duty Order*, 74 FR 11712 (March 19, 2009) (*Order*).

³ See Domestic Interested Parties' Letter, "Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China, Second Review: Substantive Response to Notice of Initiation," dated June 28, 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 March 19, 2009, the Department of Commerce (Commerce) published the CVD order on WSPP from China.⁵ On June 4, 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 June 13, 2019, we received a notice of intent to participate in the sunset review from the domestic interested parties.⁷ On June 18, 2019, Commerce also received a notice of intent to participate in the sunset review from Primus Pipe.⁸ The domestic interested parties and Primus Pipe are manufacturers of the domestic like product in the United States and claimed interested party status under section 771(9)(C) of the Act.⁹

On June 28, 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).¹⁰ On July 5, 2019, Primus Pipe stated its support for the substantive response filed by the domestic interested parties.¹¹ 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 countervailing duty order is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or

⁵ See *Order*.

⁶ See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 25741 (June 4, 2019).

⁷ See Domestic Interested Parties' Letter, "Welded Stainless Steel Pressure Pipe from China: Notice of Intent to Participate," dated June 13, 2019 (Domestics' Notice to Participate).

⁸ See Primus Pipe's Letter, "Circular Welded Austenitic, Stainless Steel Pressure Pipe from China: Notice of Intent to Participate," dated June 18, 2019 (Primus Pipe's Notice to Participate).

⁹ See Domestics' Notice to Participate at 2; Primus Pipe's Notice to Participate at 2.

¹⁰ See Substantive Response.

¹¹ See Primus Pipe's Letter, "Welded Stainless Steel Pipe Sunset Review: 2nd Review for China AD/CVD; 1st Review for Vietnam, Thailand and Malaysia; Substantive Response to Notice of Initiation," dated July 5, 2019.

comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

IV. HISTORY OF THE ORDER

On January 28, 2009, Commerce published its *Final Determination* in the CVD investigation on WSPP from China.¹² Commerce calculated subsidy rates of 1.10 percent for Winner Stainless Steel Tube Co. Ltd. (Winner)/Winner Steel Products (Guangzhou) Co., Ltd. (WSP)/Winner Machinery Enterprises Company Limited (Winner HK) (collectively, the Winner Companies), 299.16 percent for Froch Enterprise Co. Ltd. (Froch) (also known as Zhangyuan Metal Industry Co. Ltd.), and 1.10 percent for all others.¹³

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

1. Provision of Stainless Steel Coil for Less Than Adequate Remuneration
2. Reduced Income Tax Rate for Foreign Investment Enterprises (FIEs) Located in Economic and Technological Development Zones and Other Special Economic Zones
3. Import Duty and Value Added Tax Exemptions for Imported Equipment

In addition, Commerce relied on adverse facts available and found the following additional programs to provide countervailable subsidies to Froch.

Loan Programs

1. Loans and Export Credits Pursuant to the Northeast Revitalization Program
2. Preferential Loans Pursuant to Liaoning Province's Five-Year Framework

Income Tax Programs

3. "Two Free, Three Half" Program
4. Income Tax Reductions for Export-Oriented FIEs
5. Reduced Income Tax Rate for FIEs Located in Economic and Technological Development Zones and Other Special Economic Zones
6. Provincial and Local Tax Exemptions and Reductions for Productive FIEs
7. Local Income Tax Reductions in Certain Development Zones
8. Preferential Tax Policies for Town and Village Enterprises (TVEs)
9. Carry-forward of Tax Losses for FIEs

¹² See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*Final Determination*).

¹³ See *Final Determination*; see also *Order*.

Tax Credit and Value-Added Tax (VAT) Programs

10. Income Tax Credit Refund for Reinvestment of FIE Profits
11. Preferential Tax Policies for Research and Development at FIEs
12. Tax Credits on Purchases of Domestically-produced Equipment by Domestically-owned Companies
13. VAT Refunds on Purchases of Domestically-produced Equipment by FIEs
14. Tax Exemption for Imported Equipment
15. Tax Reductions for Firms Located in Third Industrial Park at Xiabu Village - VAT Exemptions on Raw Materials
16. Tax Reductions for Firms Located in Third Industrial Park at Xiabu Village - Tax Incentives - Import Duty Exemptions on Imported Equipment
17. Tax Reductions for Firms Located in Third Industrial Park at Xiabu Village - VAT Exemptions on Imported Equipment

Grant Programs

18. Guangdong Province's "Outward Expansion" Program
19. Support for Registered High-Tech Projects
20. Waiver of Land-Use and District Level Fees
21. Exemption and Reduction of Security Fees in the Huadu District
22. Exemption and Reduction of Construction Fees in the Huadu District

Less-than-Adequate Remuneration (LTAR) and Land Programs

23. Provision of Stainless Steel Coil for LTAR
24. Provision of Land Use Rights for LTAR
25. Export Restraints on Flat-rolled Steel

Following notification of an affirmative injury determination by the ITC, on March 19, 2009, Commerce published in the *Federal Register* its CVD order on WSPP from China.¹⁴

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.¹⁵ In that final determination, the subsidy rates for the Winner Companies, Froch, and all other companies remain unchanged from the *Final Determination*.¹⁶

¹⁴ See Order.

¹⁵ 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).

¹⁶ See *Section 129 Implementation of Determinations Notice*.

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. Commerce has conducted two scope rulings. Specifically, on August 15, 2016, Commerce determined that the pipes and fittings constituting Westlake Vinyl Company's (Westlake), engineered and manufactured pipe spools, that are produced in China and imported by Westlake, are within the scope of the *Order*.¹⁷ Additionally, on March 29, 2018, Commerce determined that pipe spools produced by SinoStruct Proprietary Limited, using third-country components, are outside of the scope of the *Order*.¹⁸

Sunset Review

Commerce has conducted one sunset review of the *Order* on WSPP from China, pursuant to section 751(c) of the Act.¹⁹ 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 the Winner Companies, Froch, and all others.²⁰

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.²¹ Following the publication of the ITC's determination, Commerce published a notice of continuation of the *Order*.²²

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.

¹⁷ See Memorandum, "Final Scope Ruling for Engineered and Manufactured Pipe Spools Imported from the People's Republic of China as part of the current Scopes of the Orders on Carbon Steel Butt-Weld Pipe Fittings; Circular Welded Carbon-Quality Steel Pipe; Circular Welded Austenitic Stainless Steel Pressure Pipe; and Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China," dated August 15, 2016.

¹⁸ See Memorandum, "Antidumping and Countervailing Duty Orders on Carbon Steel Butt-Weld Pipe Fittings; Circular Welded Carbon-Quality Steel Pipe; Circular Welded Austenitic Stainless Steel Pressure Pipe; and Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Scope Ruling on SinoStruct Engineered and Manufactured Pipe Spools," dated March 29, 2018.

¹⁹ See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 79 FR 32911 (June 9, 2014).

²⁰ *Id.*, 79 FR at 32911.

²¹ See *Welded Stainless Pressure Pipe from China*, 79 FR 40779 (July 14, 2014).

²² See *Continuation of Countervailing Duty Order: Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China*, 79 FR 47089 (August 12, 2014).

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).

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 WSPP from China would likely continue or recur if Commerce revoked the order because subsidies continued since the order was imposed. Specifically, the domestic interested parties argue that, where there have been no administrative reviews, Commerce will normally find that there have been no changes to a subsidy program.²³ Since there have been no administrative reviews conducted of this *Order*, the domestic interested parties argue that Commerce should conclude that subsidization would likely continue or recur if the CVD order on WSPP from China were revoked.²⁴

Commerce's Position: Section 752(b)(1) of the Act directs Commerce, 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 (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.²⁵ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.²⁶ 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.²⁷ 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.²⁸

²³ See Substantive Response at 6-7.

²⁴ *Id.*

²⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, 888 (SAA) (1994).

²⁶ *Id.*

²⁷ 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.

²⁸ *Id.*

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. 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.

B. Net Countervailable Subsidy Rates Likely to Prevail

Domestic Interested Parties' Comments: The domestic interested parties assert that subsidization is likely to continue at margins equivalent to or greater than those found in the original investigation.²⁹ The domestic interested parties state that section 752(b)(1) of the Act specifies that Commerce shall consider “the net countervailable subsidy determined in the investigation and subsequent reviews” and “whether any change in the program which gave rise to the net countervailable subsidy” has occurred that is likely to affect the net countervailable subsidy.³⁰ Further, the domestic interested parties assert that, because there have been no administrative reviews of the *Order* and no Chinese producer has participated in the present review, the original net countervailable subsidy rates are the only subsidy rates available and should be reported to the ITC as the rates likely to prevail if the order were revoked.³¹

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.³² 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.³³

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. Therefore, Commerce determines that the net countervailable subsidy rates found in the investigation, 1.10 percent for the Winner Companies, 299.16 percent for Froch, and 1.10 percent for all others, are the net countervailable subsidy rates likely to prevail were the order to be revoked.

²⁹ See Substantive Response at 7.

³⁰ *Id.*

³¹ *Id.*

³² See SAA at 890; see also House Report, H.R. Rep. No. 103-826 (1994) (House Report) at 64.

³³ 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.

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

1. Provision of Stainless Steel Coil (SSC) for LTAR

GOC authorities provided SSC to producers of WSPP for LTAR, which, pursuant to section 776(b) of the Act, we found to be *de facto* specific.

2. Reduced Income Tax Rate for FIEs Located in Economic and Technological Development Zones and Other Special Economic Zones

This program provides tax incentives for enterprises located in special zones and was first enacted on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Zones, as issued by the Ministry of Finance. The program was continued on July 1, 1991, pursuant to Article 30 of the FIE Tax Law. Specifically, pursuant to Article 7 of the FIE Tax Law for productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone, the applicable enterprise income tax rate is 15 or 24 percent, depending on the zones in which productive FIE are located, as opposed to the standard 30 percent income tax rate.

3. Import Duty and Value Added Tax Exemptions for Imported Equipment

Enacted in 1997, the State Council's Circular on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular No. 37) exempts both foreign invested enterprises (FIEs) and certain domestic enterprises from VAT and tariffs on imported equipment used in their production.

Commerce determined the following programs did not provide a benefit to, or were not used by, the Winner Companies, but found the programs to be countervailable on the basis of adverse facts available for non-cooperating companies:

1. Preferential Lending
 - a. Loans and Export Credits Pursuant to the Northeast Revitalization Program Income
2. Tax Programs
 - a. “Two Free, Three Half” Program
 - b. Income Tax Reductions for Export-Oriented FIBs
 - c. Income Tax Credit or Refund for Reinvestment of FIE Profits
 - d. Provincial and Local Tax Exemptions and Reductions for Productive FIBs
 - e. Local Income Tax Reductions in Certain Development Zones
 - f. Preferential Tax Policies for Research and Development at FIBs
 - g. Carry-Forward of Tax Losses for FIBs
3. Indirect Tax Programs and Import Tariff Program
 - a. VAT Refunds on Purchases of Domestically Produced Equipment by FIBs
 - b. Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
 - c. Tax Reductions for Firms Located in the Third Industrial Park at Xiabu Village – Tax Incentives -*Import Duty Exemptions on Imported Equipment*
 - d. Tax Reductions for Firms Located in the Third Industrial Park at Xiabu Village – *Value Added Tax (VAT) Exemptions on Imported Equipment*
 - e. Tax Reductions for Firms Located in Third Industrial Park at Xiabu Village - *Value Added Tax (VAT) Exemptions on Raw Materials*
4. Provincial Subsidy Programs
 - a. Guangdong Province’s “Outward Expansion” Program
 - b. Preferential Loans Pursuant to Liaoning Province’s Five-Year Framework
 - c. Preferential Tax Policies for TVEs
5. Provision of Goods or Services for Less than Adequate Remuneration
 - a. Provision of Stainless Steel Coil for Less than Adequate Remuneration
 - b. Provision of Land Use Rights for Less than Adequate Remuneration
6. Government Restraints on Exports
 - a. Export Restraints on Flat-rolled Steel

7. Grant Programs

- a. Waiver of Land-Use and District Level Fees
- b. Exemption and Reduction of Security Fees in the Huadu District
- c. Exemption and Reduction of Construction Fees in the Huadu District
- d. Support for Registered High-Tech Projects

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
Winner Stainless Steel Tube Co. Ltd. (Winner)/ Winner Steel Products (Guangzhou) Co., Ltd. (WSP)/ Winner Machinery Enterprises Company Limited (Winner HK) (collectively, the Winner Companies)	1.10 percent
Froch Enterprise Co. Ltd. (Froch) (also known as Zhangyuan Metal Industry Co. Ltd.)	299.16 percent
All Others	1.10 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

9/25/2019

X



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