



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-853]

Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the “Department”) has determined that countervailable subsidies are being provided to producers and exporters of circular welded carbon-quality steel pipe (“circular welded pipe”) from India. For information on the estimated countervailing duty rates, *see* the “Suspension of Liquidation” section, below.

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Shane Subler, Thomas Schauer, or David Layton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0189, (202) 482-0410, and (202) 482-0371, respectively.

Petitioners

The petitioners in this investigation are Allied Tube and Conduit, JMC Steel Group, United States Steel Corporation, and Wheatland Tube Corporation (“Wheatland”) (collectively, “Petitioners”).

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is April 1, 2010, through March 31, 2011.

Case History

The following events have occurred since the publication of the preliminary determination.¹

We received a case brief from the Government of India (“GOI”) on May 21, 2012. Wheatland submitted a rebuttal brief on May 29, 2012.

Zenith Birla (India) Ltd. (“Zenith”) submitted a case brief on May 23, 2012. We rejected Zenith’s case brief and removed it from the record because it contained new factual information. We requested that Zenith re-submit its case brief without the new factual information.² Zenith did not re-submit its case brief. Accordingly, we did not consider the arguments Zenith made in the case brief we rejected and removed from the record of this investigation.

The GOI and Wheatland each requested a hearing on April 30, 2012. We held the hearing on August 6, 2012.

Scope of the Investigation

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (“O.D.”) not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, American

¹ See *Circular Welded Carbon-Quality Steel Pipe From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 77 FR 19192 (March 30, 2012) (“*Preliminary Determination*”).

² See letter from Susan Kuhbach to Zenith dated May 24, 2012, and Memorandum from David Layton to File dated May 24, 2012.

Society for Testing and Materials International (“ASTM”), proprietary, or other) generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term “carbon quality” includes products in which: (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

- (i) 1.80 percent of manganese;
- (ii) 2.25 percent of silicon;
- (iii) 1.00 percent of copper;
- (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) 0.15 percent of molybdenum;
- (xi) 0.10 percent of niobium;
- (xii) 0.41 percent of titanium;
- (xiii) 0.15 percent of vanadium;
- (xiv) 0.15 percent of zirconium.

Subject pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications

A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications. These products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (“API”) API-5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above, and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (*e.g.*, polyester coated) surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) finished electrical conduit; (c) finished scaffolding;³ (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; (f) line pipe produced to only API specifications; and (g) mechanical tubing, whether or not cold-drawn. However, products certified to ASTM mechanical tubing specifications are not excluded as mechanical tubing if they otherwise meet the standard sizes (*e.g.*, outside diameter and wall thickness) of standard, structural, fence and sprinkler pipe. Also, products made to the following outside diameter and wall thickness combinations, which are recognized by the industry as typical for

³ Finished scaffolding is defined as component parts of a final, finished scaffolding that enters the United States unassembled as a “kit.” A “kit” is understood to mean a packaged combination of component parts that contain, at the time of importation, all the necessary component parts to fully assemble a final, finished scaffolding.

fence tubing, would not be excluded from the scope based solely on their being certified to

ASTM mechanical tubing specifications:

1.315 inch O.D. and 0.035 inch wall thickness (gage 20)

1.315 inch O.D. and 0.047 inch wall thickness (gage 18)

1.315 inch O.D. and 0.055 inch wall thickness (gage 17)

1.315 inch O.D. and 0.065 inch wall thickness (gage 16)

1.315 inch O.D. and 0.072 inch wall thickness (gage 15)

1.315 inch O.D. and 0.083 inch wall thickness (gage 14)

1.315 inch O.D. and 0.095 inch wall thickness (gage 13)

1.660 inch O.D. and 0.047 inch wall thickness (gage 18)

1.660 inch O.D. and 0.055 inch wall thickness (gage 17)

1.660 inch O.D. and 0.065 inch wall thickness (gage 16)

1.660 inch O.D. and 0.072 inch wall thickness (gage 15)

1.660 inch O.D. and 0.083 inch wall thickness (gage 14)

1.660 inch O.D. and 0.095 inch wall thickness (gage 13)

1.660 inch O.D. and 0.109 inch wall thickness (gage 12)

1.900 inch O.D. and 0.047 inch wall thickness (gage 18)

1.900 inch O.D. and 0.055 inch wall thickness (gage 17)

1.900 inch O.D. and 0.065 inch wall thickness (gage 16)

1.900 inch O.D. and 0.072 inch wall thickness (gage 15)

1.900 inch O.D. and 0.095 inch wall thickness (gage 13)

1.900 inch O.D. and 0.109 inch wall thickness (gage 12)

2.375 inch O.D. and 0.047 inch wall thickness (gage 18)
2.375 inch O.D. and 0.055 inch wall thickness (gage 17)
2.375 inch O.D. and 0.065 inch wall thickness (gage 16)
2.375 inch O.D. and 0.072 inch wall thickness (gage 15)
2.375 inch O.D. and 0.095 inch wall thickness (gage 13)
2.375 inch O.D. and 0.109 inch wall thickness (gage 12)
2.375 inch O.D. and 0.120 inch wall thickness (gage 11)
2.875 inch O.D. and 0.109 inch wall thickness (gage 12)
2.875 inch O.D. and 0.134 inch wall thickness (gage 10)
2.875 inch O.D. and 0.165 inch wall thickness (gage 8)
3.500 inch O.D. and 0.109 inch wall thickness (gage 12)
3.500 inch O.D. and 0.148 inch wall thickness (gage 9)
3.500 inch O.D. and 0.165 inch wall thickness (gage 8)
4.000 inch O.D. and 0.148 inch wall thickness (gage 9)
4.000 inch O.D. and 0.165 inch wall thickness (gage 8)
4.500 inch O.D. and 0.203 inch wall thickness (gage 7)

The pipe subject to this investigation is currently classifiable in Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our initiation notice for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.⁴ As described in the *Preliminary Determination*, SeAH Steel VINA Corp. ("SeAH VINA") filed comments on December 5, 2011, urging the Department to modify the scope description. No further comments on this issue were received. For the reasons explained in the *Preliminary Determination*, the Department is not adopting SeAH VINA's proposed modification of the scope.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the "Act"), section 701(a)(2) of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On December 16, 2011, the ITC published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of circular welded pipe from India.⁵

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are

⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997), and *Circular Welded Carbon-Quality Steel Pipe From India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 76 FR 72173 (November 22, 2011).

⁵ See *Circular Welded Carbon-Quality Steel Pipe From India, Oman, the United Arab Emirates, and Vietnam; Determinations*, 76 FR 78313 (December 16, 2011) and *Investigation Nos. 701-TA-482-485 and 731-TA-1191-1194 (Preliminary)* (December 12, 2011).

addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, entitled “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from India” (October 15, 2012) (hereafter “Decision Memorandum”), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. This Decision Memorandum is a public document and is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”). IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit (“CRU”), room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we have continued to rely on facts available and to draw an adverse inference, in accordance with sections 776(a) and (b) of the Act, to determine the subsidy rates for the mandatory respondents. For a full discussion of these issues, *see* the Decision Memorandum, at “Use of Facts Otherwise Available and Adverse Facts Available.”

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated individual rates for each producer/exporter of the subject merchandise individually investigated. With

respect to the all-others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated. The Court of International Trade recently concluded that the statute permits the Department to use mandatory respondents' AFA rates in the calculation of the all-others rate.⁶ The Court found this methodology reasonable. In this case, the rate calculated for both of the investigated companies is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which to determine an all-others rate. As a result, we have used the adverse facts available ("AFA") rate assigned for Lloyds Metals and Engineers Ltd. and Zenith as the all-others rate. This method is consistent with the Department's past practice.⁷

We determine the total countervailable subsidy rates to be as follows.

Exporter/Manufacturer	Net Subsidy Rate
Lloyds Metals and Engineers Ltd.	285.95
Zenith Birla (India) Ltd.	285.95
All Others	285.95

As a result of our *Preliminary Determination*, we instructed U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of circular welded pipe from India which were entered or withdrawn from warehouse for consumption on or after March 30, 2012, the date of the publication of the *Preliminary Determination* in the *Federal Register*, and to collect cash

⁶ See *MacLean-Fogg Co. v United States*, 836 F. Supp. 2d 1267, 1374-1375 (Ct. Int'l Trade 2012).

⁷ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina*, 66 FR 37007, 37008 (July 16, 2001); see also *Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India*, 68 FR 68356 (December 8, 2003).

deposits or bonds in the amount of the preliminary countervailing duty rates. In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered or withdrawn from warehouse on or after July 28, 2012, but to continue the suspension of liquidation of all entries from March 30, 2012 through July 27, 2012.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the U.S. International Trade Commission (“ITC”) issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated deposits or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (“APO”) of

their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

October 15, 2012
Date

APPENDIX

List of Comments and Issues in the Decision Memorandum

- Comment 1 Whether the GOI Cooperated to the Best of Its Ability and Should Not Be Subject to the AFA Rate that the Department Preliminarily Applied
- Comment 2 Whether the Application of the AFA Standard Is Inconsistent with Article 12.7 of ASCM
- Comment 3 Whether the Department's Application of AFA With Respect to Provision of Hot-Rolled Steel by SAIL For LTAR Was Justified
- Comment 4 Whether the Department's Application of AFA With Respect to Provision of Land For LTAR Was Justified
- Comment 5 Whether the Department Erred in Calculating the Subsidy Rate It Assigned in the Preliminary Determination

[FR Doc. 2012-25970 Filed 10/19/2012 at 8:45 am; Publication Date: 10/22/2012]