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 it will not disclose such information, either publicly or under an administrative protective order (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 APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

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

Dated: June 16, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I: Decision Memorandum

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[FR Doc. E8–14256 Filed 6–23–08; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–915]

Light–Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination

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

SUMMARY: The Department of Commerce (the ''Department'') has made a final determination that countervailable subsidies are being provided to producers and exporters of light–walled rectangular pipe and tube (''LWR'') from the People's Republic of China (''PRC''). For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section, below.

EFFECTIVE DATE: June 24, 2008./P≤

FOR FURTHER INFORMATION CONTACT: Shane Subler, or Damian Felton, 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, or (202) 482–0133 respectively.

Petitioner

The Petitioners in this investigation are the Allied Tube & Conduit, Atlas Tube, Bull Moose Tube, California Tube and Steel, EXLTUBE, Hannibal Industries, Leavitt Tube, Maruichi American Corporation, Searing Industries, Southland Tube, Vest, Inc. Welded Tube and Western Tube (collectively, ''Petitioners'').

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2006, through December 31, 2006.

Case History

The following events have occurred since the announcement of the preliminary determination published in the **Federal Register** on November 30, 2007. *See Light–Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty*

Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 72 FR 67703 (Nov. 30, 2007) (''*Preliminary Determination*'').

On December 5, 2007, supplemental questionnaires were issued to the Government of the People's Republic of China (''GOC''); Kunshan Lets Win Steel Machinery Co., Ltd. (''Lets Win''); and Zhangjiagang Zhongyuan Pipe–making Co., Ltd. and its affiliates, Jiangsu Zhongjia Steel Co., Ltd.; Zhangjiagang Zhongxin Steel Product Co., Ltd.; Zhangjiagang Baoshuiqu Jiaqi International Business Co.; and Jiangsu Qiyuan Group Co., Ltd. (''collectively ZZ Pipe''). We received responses to these questionnaires from Lets Win on December 18, 2007, from ZZ Pipe on December 26, 2007, and from the GOC on December 28 and December 31, 2007.

On December 27, 2007, the Department published an *Amended Affirmative Preliminary Determination* to correct a significant ministerial error in the *Preliminary Determination*. *See Light–walled Rectangular Tube and Pipe from the People's Republic of China: Notice of Amended Affirmative Preliminary Countervailing Duty Determination*, 72 FR 73322 (Dec. 27, 2007) (''*Amended Preliminary Determination*'').

The GOC and ZZ Pipe submitted factual information regarding the GOC's provision of land within various deadlines set by the Department subsequent to the *Preliminary Determination* for submissions of factual information and/or arguments.

From January 7 through January 18, 2008, we conducted verification of the questionnaire responses submitted by the GOC, Lets Win, and ZZ Pipe.

On April 21, 2008, we issued our post–preliminary determination regarding the provision of land for less than adequate remuneration. *See* Memorandum to David M. Spooner, Assistant Secretary for Import Administration, entitled *Post–Preliminary Analysis for the Provision of Land For Less Than Adequate Remuneration*, dated April 21, 2008, which is on file in the Central Records Unit (''CRU'').

We received case briefs from the GOC and Guangdong Walsall Steel Pipe Industrial Co., Ltd. (''GWSP'') and Petitioners on April 30, 2008. Rebuttal briefs were submitted by the GOC, GWSP and Petitioners on May 5, 2008, and by Lets Win on May 6, 2008. A hearing for this investigation was held on May 9, 2008.

Scope of the Investigation

The merchandise that is the subject of this investigation is certain welded carbon–quality light–walled steel pipe and tube, of rectangular (including square) cross section (LWR), having a wall thickness of less than 4mm.

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 this investigation 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 this investigation is dispositive.

Injury Test

Because the PRC 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 International Trade Commission (''ITC'') must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On August 28, 2007, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from China of LWR. *See ITC Affirmative Preliminary Determination*, 72 FR 49310 (August 28, 2007).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *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*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Use of Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b)

of the Act also authorizes the Department to use as adverse facts available (''AFA'') information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See Statement of Administrative Action* (''SAA'') accompanying the Uruguay Round Agreements Act, attached to H.R. Rep. No. 103–316, Vol. I at 870 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3773, 4163 (''SAA''). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA at 869.

The Department has concluded that it is appropriate to base the final determination for Qingdao Xiangxing Steel Pipe Co., Ltd. (''Qingdao'') on adverse facts available. Qingdao did not respond to the Department's requests on August 7 and October 24, 2007, to respond to the CVD questionnaire. By failing to submit a response to the Department's CVD questionnaire, Qingdao did not cooperate to the best of its ability in this investigation. Consequently, in selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act to ensure that Qingdao will not obtain a more favorable result than had it fully complied with our request in this investigation. Thus, our final determination for Qingdao is based on total AFA.

We have also concluded that it is appropriate to apply adverse facts available to determine the percentage of hot–rolled steel production accounted for by state–owned enterprises. Specifically, the GOC reported that the China Iron and Steel Association (''CISA'') determined the ownership structure of certain hot–rolled steel producers. Subsequently, we learned that the reported ownership structures were developed by the GOC's legal counsel, not by CISA as the GOC claimed. Therefore, the GOC misrepresented the source of the reported ownership structure of hot–rolled steel producers.

Consequently, we find that the GOC did not act to the best of its ability because they failed to properly disclose how the reported ownership structures of CISA members were obtained. In misrepresenting how the information was obtained, the GOC did not provide the Department with ''full and complete answers.'' *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). Instead, the GOC purposefully made a decision to conceal how the information on ownership structure was derived. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the ownership of HRS producers in the PRC.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See*, *e.g.*, *Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006), and accompanying Issues and Decision Memorandum at ''Analysis of Programs'' and Comment 1.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

Therefore, with respect to Qingdao, for every program based on the provision of goods for less than adequate remuneration, the Department has used ZZ Pipe's rate for the provision of hot–rolled steel for less than adequate remuneration. For grant programs we are relying on the rate applied to ZZ Pipe in the form of revenue forgone in relation to its purchase of land–use rights. For value added tax (''VAT'') programs, we are unable to utilize company–specific rates from this proceeding because neither respondent received any countervailable subsidies from these subsidy programs. Therefore, for VAT programs, we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe's rate for the provision of hot–rolled steel for less than adequate remuneration. Similarly, neither respondent received any countervailable subsidies from loan programs; hence, we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe's rate for the provision of hot–rolled steel for less than adequate remuneration. Since we do not have information regarding the location of Qingdao, we are attributing all three loan programs to Qingdao, in the calculation of their AFA rate. In the instant investigation, there is no record evidence indicating that Qingdao did not operate within the provinces at issue in this investigation (*i.e.*, Zhejiang, Liaoning). Consequently, we are including provincial–specific programs in Qingdao's AFA rate.

Finally, for the six alleged income tax programs pertaining to either the reduction of the income tax rates or the reduction or exemption from income tax, we continue to apply an adverse inference that Qingdao paid no income tax during the period of investigation (*i.e.*, calendar year 2006). The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these six income tax rate programs is 33 percent. We are applying the 33 percent AFA rate on a combined basis (*i.e.*, the six programs combined provided a 33 percent benefit). This 33 percent AFA rate does not apply to income tax

deduction or credit programs. For income tax deduction or credit programs, we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe's rate for the provision of hot–rolled-steel at less than adequate remuneration. For income tax deduction or credit programs, we are applying the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe's rate for the provision of hot–rolled-steel for less than adequate remuneration.

We do not need to corroborate these rates because they are not considered secondary information as they are based on information obtained in the course of this investigation, pursuant to section 776(c) of the Act. *See also* SAA at 870.

Regarding the application of adverse facts available to the GOC, we have treated companies as state–owned where the GOC did not provide information regarding the companies' ownership. *See Decision Memorandum* at ''Analysis of Programs'' and Comment 5.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for each of the companies investigated, Lets Win, ZZ Pipe and for Qingdao. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all–others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. As Qingdao's rate was calculated under section 776 of the Act, it is not included in the all–others rate. In addition, pursuant to 19 CFR 351.204(d)(3), we have excluded Lets Win's rate because it is a voluntary respondent. Consequently, we have assigned ZZ Pipe's rate as the all–others rate.

Exporter/Manufacturer	Net Subsidy Rate
Kunshan Lets Win Steel Machinery Co., Ltd.	2.17%
Zhangjiagang Zhongyuan Pipe–making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd.	15.28 %
Qingdao Xiangxing Steel Pipe Co., Ltd.	200.58%
All–Others	15.28%

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of LWR from the PRC which were entered or withdrawn from warehouse, for consumption on or after November 30, 2007, the date of the publication of the *Preliminary Determination* in the **Federal Register**, except for entries from Lets Win, which had a *de minimis* rate.

On December 27, 2007, the Department issued its *Amended Affirmative Preliminary Determination* in this countervailing duty investigation. In that determination, ZZ Pipe's rate fell below the *de minimis* level. Consequently, we instructed CBP to release any suspended entries and to discontinue the suspension of liquidation for ZZ Pipe. *See Amended Affirmative Preliminary Determination*, 72 FR 73322.

In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for countervailing duty purposes on all shipments of the subject merchandise entered, or withdrawn from the warehouse, for consumption on or after March 29, 2008, but to continue the suspension of liquidation of entries made from November 30, 2007 through March 28, 2008. This did not apply to Lets Win and ZZ Pipe as their entries were not being suspended.

We will issue a countervailing duty order and suspend liquidation for Lets Win and ZZ Pipe as well as reinstate the suspension of liquidation for Qingdao and all other companies under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise 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 duties deposited 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.

Dated: June 13, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Application of CVD Law to Non–Market Economies

Comment 2: Double Counting/Overlapping Remedies

Comment 3: Requirement to Provide Evidence of Lower Prices

Comment 4: Proposed Cutoff Date for Identifying Subsidies

Comment 5: Purchases of Hot–rolled Steel by Respondents

Comment 6: Whether State–owned Hot–rolled Steel Suppliers are ''Authorities''

Comment 7: Hot–rolled Steel Benchmark Issues

Comment 8: Use of Hot–Rolled Steel to Produce Subject merchandise Shipped to the United States

Comment 9: One Supplier Treated as State–owned is Private and the Volume of Hot–Rolled Steel Supplied by Baosteel

Comment 10: Land/Financial Contribution

Comment 11: Land/Benchmark

Comment 12: Discount Rate

Comment 13: Provision of Water

Comment 14: Government Policy Lending

Comment 15: All–Others Rate

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