

A-421-807, A-427-820, A-428-830,
A-475-829, A-412-822, A-401-806,
A-469-807, A-475-820, A-423-808,
A-475-824, A-475-818, A-475-826,
A-412-818, A-427-816, A-427-814
Section 129 Determinations
Public Document

February 26, 2007

MEMORANDUM

TO: David Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

RE: Preliminary Results for the Section 129 Determinations: Certain Hot-rolled Carbon Steel from the Netherlands, Stainless Steel Bar from France, Stainless Steel Bar from Germany, Stainless Steel Bar from Italy, Stainless Steel Bar from the United Kingdom, Stainless Steel Wire Rod from Sweden, Stainless Steel Wire Rod from Spain, Stainless Steel Wire Rod from Italy, Certain Stainless Steel Plate in Coils from Belgium, Stainless Steel Sheet and Strip in Coils from Italy, Certain Cut-To-Length Carbon-Quality Steel Plate Products from Italy, Certain Pasta from Italy, Stainless Steel Sheet and Strip in Coils from the United Kingdom, Certain Cut-to-Length Carbon-Quality Steel Plate from France, Stainless Steel Sheet and Strip in Coils from France

SUBJECT: Calculation of the Weighted-Average Dumping Margins

Background

On February 16, 2004, the European Communities (“EC”) requested the establishment of a WTO dispute resolution panel (“the Panel”) challenging, among other things, the final determinations of fifteen antidumping duty investigations concluded by the Department. The Panel circulated its report on October 31, 2005, finding that the Department’s calculation of the margins of dumping when using the average-to-average comparison methodology in the fifteen investigations was inconsistent with U.S. obligations under the WTO agreements. *United States – Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”)*,

WT/DS294/R (October 31, 2005) (“*US – Zeroing (EC)*”). The United States did not appeal this aspect of the Panel’s report. On March 6, 2006, the Department published a notice in the Federal Register proposing that it would no longer make average-to-average comparisons in investigations without providing offsets for non-dumped comparisons. Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation, 71 FR 11189 (March 6, 2006).

The EC and the United States appealed other aspects of the Panel’s report not relevant to these proceedings. The WTO Appellate Body issued its report on April 18, 2006, addressing those aspects of the Panel’s report appealed by the EC and the United States. *United States – Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”)*, WT/DS294/AB/R (April 18, 2006). The Panel’s finding concerning the fifteen investigations involving EC member countries, however, remained unchanged.

On May 9, 2006, the WTO Dispute Settlement Body (“DSB”) adopted the Panel’s report as modified by the Appellate Body. On May 30, 2006, the United States indicated to the DSB that the United States intended to implement the DSB’s recommendations and rulings.

Pursuant to the Panel’s findings in *US – Zeroing (EC)*, the Department published its final modification, adopting its March 6, 2006 proposal. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (“Final Modification”).

The Department is conducting “Section 129 Determinations” with respect to twelve different antidumping investigations involving certain products originating in various member states of the EC,¹ and applying the Final Modification to those proceedings.

Nature of the Proceedings

Section 129 of the URAA is the applicable provision governing the nature and effect of determinations issued by the Department to implement findings by WTO panels and the Appellate Body. Specifically, section 129(b)(2) provides that “notwithstanding any provision of

¹ Although the EC challenged fifteen antidumping investigations, the Department revoked the antidumping order associated with three of those investigations: *Certain Cut-to-Length Carbon-Quality Steel Plate from France* (A-427-816). Revocation of Antidumping Duty Order: Certain Cut-To-Length Carbon-Quality Steel Plate from France, 70 FR 72787 (December 7, 2005); Certain Stainless Steel Sheet and Strip in Coils from France and the United Kingdom; Final Results of Sunset Reviews and Revocation of Antidumping Duty Order, 70 FR 44894 (August 4, 2005). Because a Section 129 Determination affects only entries made on or after the date on which USTR instructs the Department to implement, there is no need to issue a Section 129 Determination with respect to these three investigations.

the Tariff Act of 1930 . . .,” (“the Act”), the Department shall issue a determination that would render its actions not inconsistent with the findings of a WTO panel or the Appellate Body within 180 days of a written request from the U.S. Trade Representative (“USTR”).

Pursuant to section 129(d), the Department must give interested parties an opportunity to provide written comments with respect to its determination. Before the Department may implement any such determination, section 129(b)(3) provides that USTR shall consult with the Department and Congress concerning that determination. After these consultations have occurred, section 129(b)(4) provides that USTR may direct the Department to implement the determination, in whole or in part. The final section 129 determination is subject to judicial review. 19 U.S.C. § 1516a(a)(2)(B)(vii).

In addition, section 129(c)(1)(B) of the URAA expressly provides that a determination under section 129 applies only with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which USTR directs the Department to implement that determination. In other words, as the SAA provides, “such determinations have prospective effect only.” SAA at 1026. Thus, “relief available under subsection 129(c)(1) is distinguishable from relief in an action brought before a court or a NAFTA binational panel, where . . . retroactive relief may be available.” *Id.*

The Department is conducting separate Section 129 Determinations for each of the twelve investigations mentioned in the caption above for which the orders have not been revoked. Each Section 129 Determination has its own administrative record, and its own Administrative Protective Order. This preliminary results decision memorandum is being issued for each of those twelve determinations. Consistent with section 129(d), interested parties are invited to provide written comments filed on the record of the specific Section 129 Determination in which those parties have an interest by March 12, 2007. Parties may provide rebuttal comments by March 19, 2007.

Panel Findings and Conclusions

Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the “Antidumping Agreement”) provides that there are three means of calculating a dumping margin “during the investigation phase.” The agreement states that “normally” a margin “will be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions” or that it will be established “by a comparison of normal value and export prices on a transaction-to-transaction basis.” The third means of comparison, a comparison of “a normal value on a weighted average basis with individual export transactions,” is provided for when certain criteria exist.

In the twelve investigations at issue here, the Department originally calculated dumping margins for the investigated respondents using average-to-average comparisons. Specifically, the Department compared weighted-average export prices (“EPs”) or constructed export prices (“CEPs”) to weighted-average normal values. When the EP or CEP was greater than the normal value, the comparison showed no dumping. In these circumstances, the Department did not offset or reduce the amount of dumping found on other comparisons based on the amount by which the EP or CEP exceeded the normal value for distinct comparisons. When the EP or CEP was less than the normal value, the comparison was considered to have revealed dumping. In order to calculate the weighted-average dumping margin, the Department aggregated the amount of dumping found through these comparisons and divided it by the aggregate value of all U.S. sales (regardless of whether they were dumped) to ensure that the results took account of all comparisons and thus all U.S. sales, dumped and non-dumped.

The Panel found that when an investigating authority utilizes the average-to-average comparison methodology during the investigation phase and engages in multiple comparisons of export price and normal value, the margin of dumping for the product in question must reflect the results of all comparisons, including comparisons where the export price is greater than normal value for individual models. *US – Zeroing (EC)*, para. 7.31. Accordingly, the Panel found that the Department acted inconsistently with Article 2.4.2 of the Antidumping Agreement in the investigations challenged by the EC. *Id.* at para. 7.32.

Implementation

In light of the Panel’s report, we have preliminarily determined to implement the recommendations and rulings of the DSB by allowing offsets for non-dumped sales as explained in the Final Modification. The results in each investigation² are as follows:

- 1) Certain Hot-rolled Carbon Steel from the Netherlands
 - The margin for Corus Staal BV, the sole respondent, decreases from 2.59 percent to zero. Since Corus Staal BV was the only respondent in the investigation, if this margin remains at zero or de minimis for the final recalculation, this order will be revoked.

² The recalculations for both the company-specific margins and the all-other’s rates are detailed in separate calculation memos which are on file in the Department’s Central Records Unit, Room B-099 of the main Department building.

2) Stainless Steel Bar from France

- The margin for Ugine-Savoie Imphy, S.A. (now known as UGITECH S.A.³) decreases from 3.9 percent to zero. If the margin remains at zero or de minimis for the final recalculation, the order will be revoked for Ugine-Savoie Imphy, S.A.
- The margin for Aubert and Duval S.A. was based on total adverse facts available. This margin does not change as a result of this proceeding.
- Since there are no non- adverse facts available, above de minimis margins remaining, pursuant to Department practice, the all other's rate is based on a simple average of the zero margins and the AFA margins. Therefore, the all other's rate changes from 3.9 percent to 35.92 percent.

3) Stainless Steel Bar from Germany

- The margin for BGH Group of Companies decreases from 13.63 percent to 2.59 percent.
- The margin for Walzwerke Einsal GmbH decreases from 4.17 percent to de minimis. If the margin remains at de minimis for the final recalculation, the order will be revoked for Walzwerke Einsal GmbH.
- The margin for Edelstahl Witten-Krefeld GmbH decreases from 15.40 percent to 10.82 percent.
- The margin for Krupp Edelstahlprofile GmbH decreases from 32.32 percent to 31.25 percent.
- The all other's rate changes from 16.96 percent to 15.16 percent.

4) Stainless Steel Bar from Italy

- The margin for Acciaiera Valbruna S.r.l. decreases from 2.50 percent to zero. If the margin remains at zero or de minimis for the final recalculation, the order will be revoked for Acciaiera Valbruna S.r.l.
- The margin for Acciaiera Foroni S.p.A. decreases from 7.07 percent to zero. If the margin remains at zero or de minimis for the final recalculation, the order will be revoked for Acciaiera Foroni S.p.A.
- Trafilerie Bedini S.r.l. was excluded from the order and that does not change as a result of this proceeding.
- The margin for Cogne Acciai Speciali Srl was based on total adverse facts available. This margin does not change as a result of this proceeding.
- The margin for Rodacciai S.p.A. decreases from 3.83 percent to zero. If the margin remains at zero or de minimis for the final recalculation, the order will be

³ In the 2003 - 2004 administrative review of the antidumping duty order on stainless steel bar from France, we determined that UGITECH S.A. is the successor-in-interest to Ugine-Savoie Imphy, S.A. See Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review, 70 FR 46482 (August 10, 2005).

revoked for Rodacciai S.p.A.

- Since there are no non-adverse facts available above de minimis margins remaining, pursuant to Department practice, the all other's rate is based on a simple average of the zero margins and the AFA margins. Therefore, the all other's rate changes from 3.81 percent to 6.60 percent.

5) Stainless Steel Bar from the United Kingdom

- The margin for Corus Engineering Steels Ltd. decreases from 4.48 percent to zero. If the margin remains at zero de minimis for the final recalculation, the order will be revoked for Corus Engineering Steels Ltd.
- Firth Rixon Special Steels Ltd. and Crownridge Stainless Steel Ltd.'s s/Valkia Ltd.'s margins were based on total adverse facts available. These margins do not change as a result of this proceeding.
- Since there are no non-adverse facts available above de minimis margins remaining, pursuant to Department practice, the all other's rate is based on a simple average of the zero margins and the AFA margins. Therefore, the all other's rate changes from 4.48 percent to 83.85 percent.

6) Stainless Steel Wire Rod from Sweden

- The margin for Fagersta Stainless AB decreases from 5.71 percent to zero. Since Fagersta Stainless AB was the only respondent in the investigation, if this margin remains at zero or de minimis for the final recalculation, this order will be revoked.

7) Stainless Steel Wire Rod from Spain

- The margin for Roldan S.A., the sole respondent, decreases from 4.76 percent to 2.71 percent.
- The all other's rate changes from 4.76 percent to 2.71 percent.

8) Stainless Steel Wire Rod from Italy

- The margin for Cogne Acciai Speciali S.r.l. decreases from 12.73 percent to 11.25 percent.
- Acciaiera Valbruna S.r.L. was excluded from the order and that does not change as a result of this proceeding.
- The all other's rate changes from 12.73 percent to 11.25 percent.

9) Certain Stainless Steel Plate in Coils from Belgium

- The margin for Ugine & ALZ Belgium (formerly ALZ N.V.), the sole respondent,

- decreases from 9.84 percent to 8.54 percent.
 - The all other's rate changes from 9.84 percent to 8.54 percent.
- 10) Stainless Steel Sheet and Strip in Coils from Italy
- The margin for ThyssenKrupp Acciai Speciali Terni S.p.A. (formerly known as Acciai Speciali Terni S.p.A.), the sole respondent, decreases from 11.23 percent to 2.11 percent.
 - The all other's rate changes from 11.23 percent to 2.11 percent.
- 11) Certain Cut-To-Length Carbon-Quality Steel Plate Products from Italy
- The margin for Palini and Bertoli S.p.A. decreases from 7.85 percent to 7.64 percent.
 - ILVA S.p.A. was excluded from the order and that does not change as a result of this proceeding.
 - The all other's rate changes from 7.85 percent to 7.64 percent.
- 12) Certain Pasta from Italy
- The margin for Arrighi S.p.A. Industrie Alimentari decreases from 21.34 percent to 20.84 percent.
 - The margin for Liguori Pastificio Dal 1820 S.p.A. decreases from 12.41 percent to 12.14 percent.
 - The margin for Pastificio Fratelli Pagani S.p.A. decreases from 18.30 percent to 18.23 percent.
 - The margin for La Molisana Industrie Alimentari S.p.A. remains at 14.78 percent based on this recalculation.
 - De Matteis Agroalimentare S.p.A. and Delverde S.r.l. were excluded from the order and that does not change as a result of this proceeding.
 - F.lli De Cecco de Filippo Fara San Martino S.p.A.'s margin was based on total adverse facts available. This margin does not change as a result of this proceeding.
 - The all other's rate changes from 12.09 percent to 16.51 percent. We note that Delverde S.r.l.'s margin in the investigation was a component of the all other's rate. However, since Delverde S.r.l. was later revoked from the order as a result of litigation relating to the investigation, its margin is no longer a component of the all other's rate. We note also that, for cash deposit purposes, we deduct from the margin of dumping any export subsidies. On that basis, the new cash deposit rate that will be established for All Others is 15.45 percent.

RECOMMENDATION

In light of the Panel's report, we recommend preliminarily implementing the recommendations and rulings of the DSB by applying the methodology in the Final Modification, and adopting the above recalculations.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date