A-122-838, 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
Section 129 Determinations
Public Document

April 9, 2007

MEMORANDUM

TO: David Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

RE: Final 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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Section 129 Determinations

Summary

This memorandum addresses issues briefed in the above-referenced section 129 proceedings. Below is a complete list of the issues in this proceeding for which we have received comments from the parties:

Comment 1: Whether the Department of Commerce (the Department) Has the Authority to Implement the WTO Appellate Body Decision

Comment 2: Targeted Dumping

Comment 3: Treatment of Unliquidated Entries

Comment 4: Calculation of All-Others Rate

Comment 5: Clerical Error Allegation in the Investigation of Stainless Steel Sheet and Strip in Coils from Italy

Comment 6: Clarification of Valbruna Exporter Name

Comment 7: The Department's Briefing Schedule

Background

On February 16, 2004, the European Communities ("EC") requested the establishment of a World Trade Organization (WTO) dispute settlement 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 report. On May 30, 2006, the United States indicated to the DSB that the United States intends 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.

On February 26, 2007, the Department issued the Preliminary Results for these Section 129 Determinations. See Memorandum from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, Regarding Section 129 Determinations: Calculation of the Weighted-Average Margins (Preliminary Results). In the Preliminary Results, the Department determined to implement the recommendations and rulings of the DSB by offsetting dumped sales with non-dumped sales in the challenged investigations as explained in the Final Modification.

We received case briefs and/or rebuttal briefs, respectively, from the following parties:

- Several domestic interested parties (hereinafter referenced as "the steel and pasta petitioners"), in the following investigations:
    - Carpenter Technology Corporation, Crucible Speciality Metal Division, Crucible Materials Corporation, Electralloy Corporation, a Division of G.O. Carlson, Inc., and Universal Stainless & Alloy Products, Inc. in the investigation of Stainless Steel Bar from Italy;
    - Carpenter Technology Corporation, Crucible Speciality Metal Division, Crucible Materials Corporation, Electralloy Corporation, a Division of G.O. Carlson, Inc., Universal Stainless & Alloy Products, Inc., and Valbruna Slate Steels Inc. in the investigations of Stainless Steel Bar from France, Germany and the United Kingdom ;
    - Carpenter Technology Corporation and Universal Stainless & Alloy Products, Inc. in the investigations of Stainless Steel Wire Rod from Sweden, Stainless Steel Wire Rod from Italy, and Stainless Steel Wire Rod from Spain;
    - New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company in the investigation of Certain Pasta from Italy; and

[1]Although the EC challenged fifteen antidumping investigations, the Department revoked the antidumping duty 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 the determination, there is no need to issue Section 129 Determinations with respect to these three investigations.

- Allegheny Ludlum and AK Steel Corporation in the investigations of Stainless Steel Sheet and Strip in Coils and Italy and Stainless Steel Plate in Coils from Belgium.

- Nucor Corporation (Nucor) in the investigation of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands and the investigation of Cut-to-Length Carbon-Quality Steel Plate from Italy
- IPSCO Steel Inc. Steel Dynamics and Gallatin Steel (IPSCO, Steel Dynamics and Gallatin)in the investigations of Certain Cut-to-Length Carbon-Quality Steel Plate from Italy and Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands
- United States Steel Corporation (U.S. Steel), in the investigation of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands
- Mittal Steel USA, Inc. (Mittal USA) in the investigations of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands and Cut-to-Length Carbon-Quality Steel Plate from Italy
- UGITECH S.A (Italy) and UGITECH S.A. (UGITECH) in the investigations of Stainless Steel Bar from Italy and Stainless Steel Bar from France, respectively
- ThyssenKrupp Acciai Speciali Terni S.p.A. and ThyssenKrupp AST USA (TKAST) in the investigation of Stainless Steel Sheet and Strip in Coils from Italy
- Fagersta Stainless AB (Fagersta) in the investigation of Stainless Steel Wire Rod from Sweden
- Acciaierie Valbruna S.p.A. (Valbruna) in the investigation of Stainless Steel Bar from Italy
- Corus Staal BV (Corus) in the investigation of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands
- The Government of the United Kingdom in the investigation of Stainless Steel Bar from the United Kingdom
- The European Commission in all investigations
- The Government of France in the investigation of Stainless Steel Bar from France
- BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH and BGH Edelstahl Siegen Gmbh (BGH) in the investigation of Stainless Steel Bar from Germany
- Foroni S.p.A. and Foroni Metals of Texas, Inc. (collectively, Foroni), in the investigation of Stainless Steel Bar from Italy
- Walzwerke Einsal Gmbh (Einsal), in the investigation of Stainless Steel Bar from Germany
- Rodacciai S.p.A. (Rodacciai), in the investigation of Stainless Steel Bar from Italy

Nucor, a domestic interested party, requested a hearing in the investigation of Certain Carbon Steel Flat Products from the Netherlands. Nucor withdrew its request on March 30, 2007. TKAST requested a hearing in the investigation of Stainless Steel Sheet and Strip in Coils from Italy. A hearing was held in this section 129 proceeding on April 6, 2007.

DISCUSSION OF ISSUES

Comment 1: Whether the Department Should Implement, and Has the Authority to Implement, the WTO Appellate Body Decision

DISCUSSION OF CASE BRIEFS

The steel and pasta petitioners argue that the WTO Appellate Body's assertion that "zeroing" is inconsistent with Articles 1, 2.1, 2.4, 2.4.2, 5.8, 9.1, 9.3, 9.5, 11, 18.3, and 18.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs on Trade 1994 (AD Agreement), Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article XVI:4 of the WTO Agreement is wrong. The steel and pasta petitioners contend that the United States, in compliance with the URAA, codified a new provision, section 771(35) of the Tariff Act of 1930, as amended (the Act), which defines "dumping margin" and "weighted-average dumping margin." According to the steel and pasta petitioners, this section of the Act indicates that an item is considered to have been dumped when normal value exceeds the export price or constructed export price, and that when export price or constructed export price is not below normal value then no dumping has occurred.

The steel and pasta petitioners also argue that, in past negotiations, the WTO Members have permitted "zeroing." The steel and pasta petitioners contend that the Appellate Body has only been able to attack "zeroing" by legislating new rights and obligations, rather than interpreting the Members' negotiated rights and obligations. The steel and pasta petitioners also note the criticisms made by the United States against the Appellate Body's recent findings on "zeroing."

The steel and pasta petitioners contend that the Department has failed to explain whether its change to its longstanding practice is consistent with U.S. law. According to the steel and pasta petitioners, the Department has only stated that the Courts have not found that zeroing was mandated by the statute. However, the steel and pasta petitioners argue that the Courts have approved the Department's practice of "zeroing."

The steel and pasta petitioners argue that the Department must specifically explain if it agrees with the Appellate Body's decision, and if this decision is in accordance with U.S. law. Moreover, the steel and pasta petitioners assert that, if the Department believes that the Appellate Body decision violates U.S. law, the Department must state whether it is nevertheless required to implement this decision. If the Department does not believe that U.S. law permits it to stop "zeroing", or cannot explain this policy, but nevertheless implements the Appellate Body decision, the steel and pasta petitioners contend, then the "Executive Branch will be engaging in unconstitutional legislative action."

Mittal USA argues that the Court of Appeals for the Federal Circuit (CAFC), in Timken v. U.S., 354 F.3d 1334, 1341-42 (Fed. Cir. 2004) (Timken) erred in finding that "zeroing" was not required by the statute. According to Mittal USA, there can only be a "dumping margin" when

there is "dumping." For Mittal USA, negative values cannot result in dumping margins and thus should not be included in the weighted-average dumping margin. In support, Mittal USA points to 19 U.S.C. 1677(35)(A) and (B) {sections 771(35)(A) and (B) of the Act} (a dumping margin is "determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer") and 19 USC 1673c(b)(2) {section 734(b)(2) of the Act}, a provision that allows the Department to suspend an investigation if the exporters of the subject merchandise agree "to revise their prices to eliminate completely any amount by which normal value exceeds the export price (or constructed export price) of that merchandise." Moreover, Mittal USA argues, 19 U.S.C. 1677(34) {section 771(34) of the Act} "specifies that the terms 'dumped' and 'dumping' refer to sales or likely sales at less than fair value." Mittal USA contends that the Court in Timken did not address the context for the interpretation of the word "exceeds" in 19 USC 1673c(b)(2) {section 734(b)(2) of the Act}. Mittal USA also contends that not zeroing would result in the same margin regardless of whether weighted average or individual U.S. transaction prices are compared to a weighted average normal value, thus rendering the Department's authority to address "targeted dumping" meaningless. Moreover, Mittal USA argues, it is not permissible for the Department to interpret the statute as allowing for zeroing under one methodology but not another.

IPSCO, Steel Dynamics and Gallatin assert that the term "dumping margin" is clearly defined by the statute as the amount by which the normal value exceeds the export price. IPSCO, Steel Dynamics and Gallatin cite the CAFC's decision in Timken and argues that unlike the word "exceeds," which the CAFC found "does not unambiguously preclude the calculation of a negative dumping margin," the definition of "dumping margin" in the statute identifies "normal value" first in the equation and "export price" second in the equation. Therefore, according to IPSCO, Steel Dynamics and Gallatin, "when the full statutory definition of the dumping margin is interpreted, it is clear the offset cannot be included in the statutory definition of the dumping margin."

In further discussion of the Timken decision, IPSCO, Steel Dynamics and Gallatin argue that neither the CAFC, nor any other U.S. court, has ever ruled that it would be reasonable to offset dumped sales by non-dumped sales. IPSCO, Steel Dynamics and Gallatin contend that this new policy would effectively establish a credit for assessment which was not contemplated by the statute. IPSCO, Steel Dynamics and Gallatin argue this is the case because U.S. law equates the dumping margin to the assessment amount at 19 U.S.C. 1675(a) {section 752 of the Act}. IPSCO, Steel Dynamics and Gallatin note that this case involves dumping margins in investigations and not reviews, to which 19 U.S.C. 1675(a) pertains; however, IPSCO, Steel Dynamics and Gallatin argue, the issue of whether the offset is part of the dumping margin is the same in investigations and reviews. Since the statutory definition is the same in investigations as in reviews, IPSCO, Steel Dynamics and Gallatin assert, the Department's new practice clearly violates the Department's requirement to determine a dumping margin for each entry in reviews. IPSCO, Steel Dynamics and Gallatin contend that the Department's new practice also violates

the Statement of Administrative Action's (SAA) statement of methodology for calculating the dumping margin in investigations.

IPSCO, Steel Dynamics and Gallatin assert that the WTO decision that the Department offset dumped sales by non-dumped sales is outside of its scope because it is not based on the language of the AD Agreement. In particular, IPSCO, Steel Dynamics and Gallatin note that the term "dumping" is defined in the AD Agreement in a manner nearly identical to that in U.S. law in that it defines dumping as occurring when the export price is less than the normal value. IPSCO, Steel Dynamics and Gallatin note that the AD Agreement does not speak to calculating dumping based on "a product as a whole" as the Appellate Body found. This finding, IPSCO, Steel Dynamics and Gallatin assert, indicates that the Appellate Body "pursues its own trade agenda" and is "dishonest, deceitful, and cannot be trusted." IPSCO, Steel Dynamics and Gallatin assert that it is generally impossible to make a meaningful comparison of normal value and export price at the level of the "product as a whole."

IPSCO, Steel Dynamics and Gallatin argue that Article 17.6(ii) of the AD Agreement specifies that there may be provisions that allow for "more than one permissible interpretation." In this case, IPSCO, Steel Dynamics and Gallatin aver, the Appellate Body has ruled that the only permissible interpretation is its offset scheme. IPSCO, Steel Dynamics and Gallatin note that the transaction-to-transaction methodology has also been found impermissible by the Appellate Body.

U.S. Steel asserts that a complete reading of the statute, in particular 19 U.S.C. 1677f-1(d) {section 771A(d) of the Act}, makes it clear "beyond all doubt that the statute mandates the denial of offsets." U.S. Steel argues that this is the case because a respondent's dumping margin would always be the same regardless of whether weighted average or individual U.S. transaction prices are compared to a weighted average normal value. Such an outcome would have rendered Congress' actions "pointless," U.S. Steel avers, in providing for the different comparison methods in the statute. According to U.S. Steel, "this undeniable fact conclusively demonstrates that Congress intended for the Department not to offset dumping margins with non-dumped sales." U.S. Steel asserts that the United States and three separate WTO panels have recognized the truth of this principle, and that the statute "cannot be construed to contain a meaningless provision."

Corus argues that the Department was correct to offset dumped sales with non-dumped sales in the Preliminary Results. Corus avers that "as a result of *US – Zeroing (EC)*, the Department is obligated to redetermine the margin for the Dutch Steel AD Investigation without zeroing."

DISCUSSION OF REBUTTAL BRIEFS

U.S. Steel argues that Corus is "flatly wrong" in contending that the Department was correct to apply offsets for non-dumped sales in the Preliminary Results. U.S. Steel affirms that WTO decisions like *US – Zeroing (EC)* are not binding on the United States. Moreover, U.S. Steel contends, U.S. law does not permit the Department to apply offsets for non-dumped sales.

Nucor expresses support for arguments made by other domestic interested parties regarding why it was impermissible under the statute for the Department to abandon its "zeroing" practice. Nucor affirms that "the Department cannot alter the methodology until Congress changes the law."

Corus asserts that domestic interested parties' arguments that the statute requires "zeroing" and that Congress must amend the law for the Department not to "zero" are "devoid of any legal support" and contradict arguments made by the Department itself before the CIT regarding the absence of statutory language mandating zeroing. Corus contends that both the CIT and CAFC have clearly stated that the statute does not mandate "zeroing." Corus argues that the Department, under the principle of stare decisis, is now bound by these decisions, and has in fact implemented its new policy in the recent final determination of activated carbon from China. Corus also argues that, assuming the domestic interested parties were correct that the Department in not bound by CAFC precedent, the domestic interested parties' arguments are "nevertheless unavailing." Corus contends that the CAFC has found that the word "exceeds" in 19 U.S.C. 1677(35)(A) allows for both positive and negative numbers. Corus further argues that because Mittal has found a provision in the statute where the word "exceeds" may only be used to refer to positive amounts "does not detract from the Timken court's analysis of the term in a different context." Corus cites Supreme Court decisions in Atlantic Cleaners & Dryers, Inc. v. United States, 286 U.S. 427, 433 (1932) and United States v. Cleveland Indians Baseball Co., 532 U.S. 200, 213 (2001) in support of its contention that "because 'exceeds' is not a defined term, it need not be given a single interpretation."

Valbruna and Foroni argue that the Department clearly has the authority to offset dumped sales with non-dumped sales and that several court decisions, particularly the Timken decision, belie the domestic interested parties' claims that "zeroing" is mandated by the statute. Foroni also asserts that the "Department has no discretion" but to implement the WTO panel's report once it has received a written request from USTR to do so.

BGH argues that the Department's "change in methodology is the result of a long and thorough process." BGH contends that it is not inappropriate for the Department to modify its practice to bring it into conformity with the AD Agreement. Moreover, BGH argues, the Department has already addressed the issue of a Congressional amendment to allow it to offset dumped sales with non-dumped sales.

Einsal, Fagersta, and Rodacciai argue that the steel and pasta petitioners' "platitudes about the Appellate Body 'disregarding its charter' and 'disrupting the constitutional balance of the WTO' are irrelevant." Einsal, Fagersta, and Rodacciai argue that the Department need not agree with a WTO decision in order to implement that decision. Moreover, Einsal, Fagersta, and Rodacciai contend that the Department "is not implementing a decision of the Appellate Body, but rather certain aspects of the decision of the lower-body WTO panel, which decision the Department chose not to appeal." Einsal, Fagersta, and Rodacciai maintain that the USTR's criticism of the Appellate Body were limited to the Appellate Body's findings related to zeroing outside of the

context of average-to-average comparisons in investigations. Einsal, Fagersta, and Rodacciai further contend that the Department has the "full authority to end zeroing," and that the decision not to "zero" "is within the Department's prerogative."

Department Position:
While the Department, through these section 129 proceedings, is taking actions to bring these investigations into conformity with an adopted WTO panel report, the Department must apply U.S. law. See SAA at 1023 (USTR may request that the Department issue a new determination in response to a WTO report only if the action required to render the agency determination not inconsistent with the panel report is in accord with U.S. law). The CAFC, in construing U.S. law, held that the denial of offsets when calculating the weighted-average dumping margin is not required by statute, but is instead a reasonable interpretation of the statute. See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023 (2006); Timken Co. v. United States, 354 F.3d 1334, 1341-42 (Fed. Cir.), cert. denied sub nom., Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). While many parties have expressed disagreement with these CAFC decisions, they are binding legal precedent. See Paul Muller Industrie GmbH v. United States, 435 F. Supp. 2d 1241, 1245 (CIT 2006) (stating new argument alone does not defeat binding precedent).

Section 771(35)(A) of the Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The "weighted average dumping margin" is defined as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." Section 771(35)(B) of the Act. Some parties argue that the use of the word "exceeds" in section 771(35)(A) of the Act demonstrates that only positive dumping margins should be aggregated when calculating the weighted-average dumping margin. This position, however, has been rejected by the CAFC in Timken.

In interpreting section 771(35)(A) of the Act, the CAFC examined closely the use of the word "exceeds." Although dictionary definitions cited to the CAFC defined the word "exceeds" in terms of being greater than or going beyond something else, the court found that these dictionary definitions were not so clear so as to compel the denial of offsets. Timken, 435 F.3d at 1341. Rather, in a mathematical context, the court held that the word "'exceeds' does not unambiguously preclude the calculation of a negative dumping margin." Id.

The Department's calculation of the weighted-average dumping margins in these section 129 proceedings, therefore, is consistent with U.S. law. The Department has aggregated all of the comparison results for a particular exporter or producer, regardless of whether the specific comparisons yielded a positive or negative result. As the CAFC held in Timken, the use of the word "exceeds" in section 771(35)(A) of the Act does not require the exclusion of those comparisons that yielded a negative result.

Mittal USA argues that the CAFC in Corus and Timken did not consider the use of the word "exceeds" as it is found in section 734(b)(2) of the Act. Section 734(b)(2) provides the authority for the Department to enter into a suspension agreement if the exporters who account for substantially all of the imports of the subject merchandise agree to completely eliminate any amount by which normal value exceeds export price or constructed export price. As stated above, such argument does not defeat the fact that Corus and Timken are binding precedent. Paul Muller, 435 F.Supp.2d at 1245. Moreover, section 734 of the Act does not concern the definition of "dumping margin," but rather explains the conditions under which the Department may enter into a suspension agreement. As such, the Department finds Mittal's argument unpersuasive.

With respect to the argument that interpreting the statute so as to permit the granting of offsets when using average-to-average comparisons in an investigation would nullify the targeted dumping methodology of section 777A(d)(1)(B), this argument makes certain presumptions concerning how the Department would implement the targeted dumping methodology. To date, the Department has not used the targeted dumping methodology, and has not determined how it would apply it. Moreover, the Department's Final Modification was expressly limited to the use of average-to-average comparisons in investigations and was done for the stated purpose of bringing these investigations into conformity with the panel report in *US – Zeroing (EC)*. Consistent with the basis and purpose of its change in methodology, the Department has not foreclosed any methodological options except for the continued use of zeroing with average-to-average comparisons in investigations. Accordingly, the Department will consider, to the extent appropriate, the nullification argument in any future investigation in which it considers whether and how to apply the targeted dumping methodology.

With respect to the argument that the calculation methodology used in these section 129 proceedings is inconsistent with the SAA, the SAA does not specifically state that in aggregating dumping margins to calculate the weighted-average dumping margin the Department would only consider those comparisons with positive results. See SAA at 842 (describing average-to-average comparison methodology). Accordingly, the Department disagrees that the SAA precludes the Department from permitting offsets in these Section 129 Determinations.

With respect to the argument that providing offsets would be inconsistent with section 751(a) of the Act as it concerns the assessment of antidumping duties, these section 129 proceedings address only the 12 antidumping investigations that were subject to the WTO panel's report in *US – Zeroing (EC)*. The results of these section 129 proceedings do not address the actual assessment of antidumping duties. As stated above, the Department's Final Modification was expressly limited to the use of average-to-average comparisons in investigations and was done for the stated purpose of bringing these investigations into conformity with the panel report in *US – Zeroing (EC)*. Consistent with the basis and purpose of its change in methodology, the Department has not foreclosed any methodological options except for the continued use of zeroing with average-to-average comparisons in investigations. Accordingly, the Department

disagrees that these section 129 proceedings are in any way inconsistent with section 751(a) of the Act.

Comment 2: Targeted Dumping

Multiple domestic interested parties argue that the Department should accept their targeted dumping allegations outside of the "normal" deadline for such allegations in the Department's regulations. These parties note that the Department's regulations at 19 CFR 351.301(d)(5) and 351.414(f)(1) "normally" require that targeted dumping allegations be made 30 days prior to the preliminary determination in an investigation. However, these parties argue that they relied on the Department's original methodology of not offsetting dumped sales by non-dumped sales and believed that this methodology would account for the targeted dumping that was occurring and that is masked by applying offsets. Therefore, these parties contend, the Department should now consider their targeted dumping allegations. Mittal Steel USA, moreover, notes that the European Union has employed a targeted dumping analysis without offsetting dumped sales with non-dumped sales. The following parties have alleged in their case briefs that the listed respondent parties engaged in targeted dumping by customer, by region, or by regional division, during the original investigations:

1) The steel and pasta petitioners, allegations of targeted dumping by customer, by region, and by regional division:

Stainless Steel Bar from Italy:
Foroni
Rodacciai
Valbruna

Stainless Steel Bar from France:
Ugine-Savoie Imphy, S.A.

Stainless Steel Bar from the United Kingdom:
Corus.

Stainless Steel Bar from Germany:
Einsal

Stainless Steel Wire Rod from Sweden:
Fagersta

2) Nucor Corporation, allegation of targeted dumping by customer and time period; U.S. Steel, allegation of targeted dumping by customer; Mittal Steel, allegation of targeted dumping by customer:

Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands

Numerous respondent parties, including Corus, Valbruna, BGH, Einsal, UGITECH, Rodacciai, and Foroni, argue that the petitioners' allegations regarding targeted dumping are untimely. These parties argue that in its initiation notice of March 1, 2007, the Department clearly defined the scope of these proceedings as limited to solely recalculating the dumping margins using the methodology described in the Final Modification. Petitioners' targeted dumping allegations, Corus contends, "fit nowhere within that scope" and, since the petitioners also ask the Department to continue to zero, are also "contrary to the scope." UGITECH argues, moreover, that "the limited scope of these proceedings is mandated by Section 129, which limits the Department to 'reopen only those matters 'integral' to implementing an adverse WTO decision." UGITECH argues that, if the Department were to accept these allegations, then a reconsideration of the entire investigation would have to follow. Valbruna further argues that the petitioners' request for an extension to file a targeted dumping allegation is also untimely. Corus asks the Department to strike petitioners' allegations concerning targeted dumping from the record.

Corus and Foroni maintain that, contrary to petitioners' assertions, the situation here is no different from that dealt with by the Department in Activated Carbon from the PRC, where, they contend, the Department explained that its "change in margin computation methodology is legally distinct from the targeted dumping legal provisions." Moreover, Corus and Foroni argue, the petitioners in Activated Carbon from the PRC made the same arguments as the petitioners in this proceeding regarding not being aware that the Department was going to change its methodology. Disputing the petitioners' contention that they believed the Department's original methodology would cover the targeted dumping that was occurring, Rodacciai, Fagersta, and Einsal contend that "petitioners had the data at the time to choose either the regular methodology or the targeted dumping methodology." BGH argues that the purported new margin for Einsal under the petitioners' targeted dumping allegation, which is much larger than Einsal's original investigation rate, "shows either that the petitioners did not consider targeted dumping during the original investigation or that their current calculations are wildly exaggerated."

Regarding the importance of the regulatory deadline for targeted dumping allegations, Corus, Rodacciai, Fagersta and Einsal argue that, in the preamble to the Department's regulations, the Department specifically rejected calls to allow targeted dumping allegations at any time during an antidumping investigation prior to the filing of the case briefs. Thus, Corus contends, "by adopting a deadline that purposefully antedates the preliminary determination, the Department implicitly rejected the notion that the choice in margin computation methodology determines whether a targeted dumping allegation should be made." Rodaccia, Fagersta, and Einsal note, moreover, that the Department explained, in the preamble to its regulations, that allowing targeted dumping allegations after 30 days prior to the preliminary determination "would make any verification of issues relative to the allegation extremely difficult."

Foroni and Corus contend that the targeted dumping provision addresses both the practice of charging lower prices in one subset of the U.S. market than in the home market and the practice of charging lower prices in that U.S. market subset as compared to other parts of the United States, which, they argue, the petitioners have failed to do. Corus further contends that, if the

Department were to find targeted dumping in this case regarding time period, then the ITC would also need to reconsider its analysis regarding injury. Corus affirms that the Department's only guidance on targeted dumping comes from the Redetermination on Remand Final Determination of Sales at Less than Fair Value of Certain Pasty from Italy (Department of Commerce Aug. 28, 1998) (Pasta Remand). According to Corus, if the evidentiary requirements and testing procedures developed in the Pasta Remand are applied in this case, then none of the allegations made by petitioners "can withstand scrutiny." Corus contends that the petitioners have instead employed differing methodologies that do not capture factors of any form of targeting. Moreover, Corus avers that the Department cannot extend a targeted dumping analysis to all of its sales, as U.S. Steel and Mittal argue.

Valbruna, BGH, Einsal, Fagersta, UGITECH, Rodacciai, and Foroni all argue that the petitioners' respective arguments regarding targeted dumping in their cases are insufficient. UGITECH, Valbruna, and Foroni argue that the petitioners' allegations rely on dumping margins, rather than prices, as required by the Department's regulations. Valbruna further argues that petitioners' approach would have the Department find targeted dumping wherever there is evidence of any positive margin. Rodacciai, Fagersta, and Einsal contend, moreover, that "petitioners have not supplied the Department with a standard and appropriate statistical analysis of U.S. prices," nor with a basis for their allegations.

Foroni and Valbruna contend that the petitioners' allegations are distortive. Foroni asks whether it can "possibly be targeting when the purported sweep is so broad." Several parties, moreover, point to what they consider inaccuracies in the petitioners' targeted dumping calculations. Foroni argues that price differences in time periods were nothing more than a reflection of a general trend of increasing prices in the market. Lastly, UGITECH asserts that "even if the Department were to accept Petitioners' claims of targeted dumping, the weighted average dumping margin using the method specified in the regulations for average-to-average for non-targeted dumping sales and the targeted dumping methodology for the remainder would still produce a negative dumping margin."

Department Position:
First, the Department has not stricken domestic interested parties' allegations from the record. We invited interested parties to comment on all issues they believed continued to be relevant in this proceeding, which domestic interested parties have done in making these allegations. We note, however, that, for the reasons described below, we are not considering these allegations in these proceedings.

The Department's regulations provide, "The Secretary normally will examine *only targeted dumping described in an allegation, filed within the time indicated in § 351.301(d)(5)*." 19 CFR 351.414(f)(3) (emphasis added). That deadline is "no later than 30 days before the scheduled date of the preliminary determination." 19 CFR 351.301(d)(5).

In the preamble to the Department's regulations, the Department declined to adopt suggestions to extend or eliminate this deadline. Antidumping Duties; Countervailing Duties, 62 FR 27295, 27338 (May 19, 1997) (final rule). The Department reasoned that the regulation gave domestic interested parties sufficient time to analyze the relevant data, and allow the Department to consider the allegation before issuing the preliminary determination. Id. at 27338, 27375. The Department stated that a later deadline would make verification issues extremely difficult. Id. at 27375. The Department noted that it intended to be flexible with the deadline where appropriate, such as where the timing of the filing of the responses did not permit an adequate analysis. Id. at 27338, 27375.

In all of the investigations subject to these section 129 proceedings, there was ample time during the original investigations for domestic interested parties to analyze the responses and make targeted dumping allegations. At this late stage, the Department does not have sufficient time to make a preliminary finding regarding targeted dumping, and allow time for comment. Additionally, the Department is unable at this time to conduct verification regarding the targeted dumping allegations. Accordingly, the Department does not find that there is "good cause" to extend the deadline in 19 CFR 351.301(d)(5) and consider the targeted dumping allegations made in these section 129 proceedings.

With respect to the argument that in the original investigations the domestic interested parties relied on the Department's denial of offsets to account for any targeted dumping that may have been masked by applying offsets, the Department notes that the targeted dumping methodology, section 777A(d)(1)(B) of the Act, is an independent provision of the antidumping law, unrelated to the Department's modification of its methodology of calculating weighted-average dumping margins in these investigations. Thus, if the domestic interested parties believed that targeted dumping was occurring, they had the opportunity to make their targeted dumping allegations in a timely manner.

Comment 3: Treatment of Unliquidated Entries

Fagersta, respondent in the investigation of Stainless Steel Wire Rod from Sweden, argues that the Department has the authority to apply the revocation of the antidumping duty order to all unliquidated entries. Fagersta notes that, when an antidumping investigation is negative, section 735(c)(2) of the Act requires the Department to "terminate the suspension of liquidation" and to "release any bond or other security." Fagersta contends that in its case, this means that the Department must release all cash deposits from the 2004-05 and 2005-06 administrative reviews and liquidate these entries without regard to antidumping duties. Fagersta notes that the Court of International Trade (CIT) in Sonco Steel Tube Div. v. United States , 698 F. Supp. 927, 928 (CIT 1988) ruled that "valid orders must underlie continuing proceedings," and that the CAFC agreed stating in Asociacion Colombiana de Exportadores v. United States, 916 F.2d 1571, 1577 (Fed. Cir. 1990) that "without a valid antidumping determination in the original order, there can be no valid determination in a later annual review." Fagersta also points to the CIT's recent decision in Tembec, Inc. v. United States, 461 F. Supp. 2d 1355, 1366-67 (CIT 2006) (Tembec). Fagersta

argues that in that case, the CIT affirmed that the important issue is the "simple fact that there is no longer an antidumping duty order for which to conduct administrative reviews."

Fagersta argues that consistent with the CAFC's holding in Parkdale Int'l. v. United States, due to the retrospective nature of the antidumping law, the "prospective" nature of section 129 determinations would apply to all entries that are unliquidated as of the date of implementation of the section 129 determination. Moreover, Fagersta argues that the Department has successfully argued before the WTO that neither the statute nor the SAA preclude the Department from applying a revocation to unliquidated entries made prior to the implementation of a section 129 determination. Fagersta further contends that the Department has the authority to do exactly this, and should exercise this authority. Moreover, Fagersta notes that if the Department were not to exercise its authority, it could be susceptible to a WTO DSU Article 21.5 compliance proceeding. In the alternative, Fagersta requests a changed circumstances review to determine whether to revoke the antidumping duty ab initio, terminate any pending administrative reviews, and liquidate any unliquidated entries made by Fagersta without regard to antidumping duties.

Corus, a respondent in the investigation of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, Valbruna, a respondent in the investigation of Stainless Steel Bar from Italy, and UGITECH, a respondent in the investigation of Stainless Steel Bar from France, also argue that the Department must liquidate, without regard to antidumping duties, any entries of subject merchandise produced by Corus that are currently suspended. Foroni supports this position in its rebuttal brief. Given the April 9, 2007, deadline for the Department to fully implement, Corus argues, the Department must address the issue of unliquidated entries "forthwith." Corus and Valbruna assert that liquidating suspended entries without regard to antidumping duties is "prospective" in relation to the date of implementation. Therefore, Corus avers, "the Department must consider the revocation of the Dutch Steel AD Order when taking any *future* actions." Valbruna affirms that "the unliquidated entries of Valbruna's merchandise should not be subject to final assessment of antidumping duties." Corus and Valbruna also suggest that their position is supported by the Department's implementation of an adverse WTO compliance report with regard to the countervailing duty investigation and first administrative review of Softwood Lumber from Canada. See Additional Memorandum from the United States, United States-Final CVD Determination with Respect to Certain Softwood Lumber from Canada: Recourse to Article 21.5 of the DSU by Canada, (October 5, 2005)Like Fagersta, Corus also argues that the Department has successfully argued before a WTO dispute settlement panel that neither the statute nor the SAA preclude it from applying revocation to entries made prior to the implementation of a section 129 determination. Lastly, Corus argues that, were the Department not to terminate any segment of the proceeding based on revocation, that the Department must then recalculate margins by offsetting dumped sales with non-dumped sales.

The European Commission (Commission) makes similar arguments concerning liquidation of entries for exporters whose rates are now calculated to be zero or de minimis. Namely, the Commission argues that the Department should liquidate all suspended entries for such exporters

without regard to antidumping duties. For cases in which the investigation rate was superseded by an administrative review, the Commission argues that the Department should recalculate the most recent review rate without offsetting dumped sales with non-dumped sales. Also, the Commission argues that the magnitude of dumping considered in any sunset reviews should be calculated without zeroing.

REBUTTAL BRIEFS

The steel and pasta petitioners, Nucor, Mittal USA, and U.S. Steel all argue that the statute, the SAA, and the Department's practice do not permit the Department to apply section 129 determinations to entries made prior to the USTR's implementation direction. Therefore, these parties contend, the Department may not apply its determination to any unliquidated entries made prior to the implementation date instructed by USTR, nor to any post-investigation administrative reviews. Nor can the Department, these parties contend, calculate any administrative review margins by offsetting dumped sales with non-dumped sales.

Mittal USA affirms that it is the original investigation of Certain-Hot Rolled Carbon Steel Flat Products from the Netherlands that was challenged at the WTO and that it is this investigation specifically that is the subject of this proceeding. Mittal USA argues that assessment rates and current cash deposit rates were determined in administrative reviews. The steel and pasta petitioners argue that Fagersta's reliance on Tembec is misplaced because the decision "has been vacated and has no precedential effect."

Nucor argues that Corus' argument is rebutted by the statutory provision establishing the timeline for section 129 determinations by the ITC. Namely, Nucor argues, "the statutory timeline, and the prospective nature of relief, are the same for the ITC's section 129 proceedings, although the statute explicitly states that such proceedings will result in revocation." Nucor and U.S. Steel also argue that Corus' implication that the Department applied the results of its redetermination in Canadian Softwood Lumber are misplaced because in that case, as Nucor argues, "the Department specifically limited actual application of the new margins resulting from the methodology to entries made on or after the Trade Representative's direction." Nucor and U.S. Steel point to other section 129 determinations where the Department specifically limited implementation of its determinations to commence on the date that USTR instructed the Department to do so. Moreover, U.S. Steel notes that the Department has very recently argued for applying its section 129 determinations prospectively before the CAFC, specifically in its response brief submitted to the CAFC on March 6, 2007, in Corus' appeal of the second administrative review.

Department Position:

The Department disagrees that any revocations that result from these section 129 proceedings apply to any entries made prior to the implementation date. Rather, section 129 itself, and the SAA, specifically provide for which entries will be affected by a revocation resulting from a section 129 proceeding.

Section 129(c)(1) of the URAA provides that any determinations made by the Department pursuant to section 129 "shall apply with respect to unliquidated entries of the subject merchandise . . . that are entered, or withdrawn from warehouse, for consumption on or after . . . the date on which the Trade Representative directs the administering authority under subsection (b)(4) of this section to implement that determination."

The SAA confirms the meaning of this language in a situation in which a section 129 proceeding results in the revocation of an order. Specifically, the SAA states, "Under 129(c)(1), if implementation of a WTO report should result in the revocation of an antidumping or countervailing duty order, entries made prior to the date of the Trade Representative's direction would remain subject to potential duty liability." SAA at 1026. Accordingly, pursuant to the statute and the SAA, any revocations resulting from these section 129 proceedings will not apply to entries made before the date of USTR's direction.

The Department disagrees with Fagersta that if the Department revokes an order as a result of these section 129 proceedings, the original determination of sales at less than fair value was invalid, and thus the Department must release all cash deposits currently held and order liquidation without regard to antidumping duties. The original determinations of sales at less than fair value were made under U.S. law. None of the 12 investigations subject to these section 129 proceedings was found to be invalid under U.S. law. These section 129 proceedings are meant to render the Department's determinations not inconsistent with the panel's findings in *US – Zeroing (EC)*. That panel did not apply U.S. law, but rather considered whether the Department's determinations were inconsistent with the AD Agreement. As such, for each of the section 129 proceedings that result in a revocation of the antidumping order, a determination of sales at less than fair value, valid under U.S. law, remains in place up until the date on which USTR directs the Department to implement the new determinations. Consistent with section 129(c)(1) and the SAA, all entries made prior to this date remain subject to potential liability for antidumping duties.

Apart from confirming that the effect of these section 129 determinations will be prospective only, meaning that they will apply with respect to unliquidated entries made on or after the date on which USTR directs the Department to implement these determinations, the Department is taking no further position in these determinations. Because the treatment of any unliquidated entries made prior to the effective date of these determinations will not be governed by these determinations, such entries will be addressed through separate segments of these proceedings, as appropriate.

Issue 4: Calculation of All-Others Rate

In the Preliminary Results, the Department recalculated the all-others rates based on the recalculated dumping margins for the original respondents. In three investigations, Stainless Steel Bar from France, Stainless Steel from Italy, and Stainless Steel Bar from the United Kingdom, there were no margins remaining that were not based on adverse facts available (AFA) that were above de minimis. Therefore, pursuant to Department practice, the Department based

the all-others rate on a simple average of the zero/de minimis margins and the AFA margins. The following parties contested this methodology:

1) UGITECH, in the investigation of Stainless Steel Bar from Italy

2) Sandvik Limited, in the investigation of Stainless Steel Bar from the United Kingdom

3) The Commission, in the investigations of Stainless Steel Bar from France, Stainless Steel Bar from Italy, and Stainless Steel Bar from the United Kingdom

4) The Government of the United Kingdom, in the investigation of Stainless Steel Bar from the United Kingdom

5) The Government of France, in the investigation of Stainless Steel Bar from France

All of the above parties take issue with the Department's recalculation of the all-others rate as a simple average of zero or de minimis margins and AFA margins. These parties note that 19 U.S.C. 1673d(c)(5)(B) grants the Department the discretion to use a reasonable method to determine the all-others rate in such situations and that the SAA offers a preferred methodology in weight-averaging the zero and de minimis margins and margins based on AFA. However, these parties also note that the SAA states that, "if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods." These parties assert that, in each of the three investigations noted above, the simple averaging methodology is inappropriate because the margins generated by it are not reasonable and not reflective of the potential antidumping margins for non-investigated exporters.

Moreover, the Government of France argues that this methodology is in violation of Article 6.8 and Annex II of the AD Agreement; the Commission and the Government of the United Kingdom argue that the methodology is "inconsistent with the United States' international obligations," particularly because the Appellate Body has held, in cases where sampling is employed, that Article 9.4 of the AD Agreement prohibits the inclusion of AFA rates in the calculation of the all-others rate. UGITECH argues that the calculation is flawed because the SAA favors a weight average first before a simple average is employed, and because it asserts that the Department erred in setting the below-zero margins of several of the respondents in its all-others rate recalculation to zero. Instead, UGITECH contends that the Department should average the actual negative margins of the respondents, and should not set these margins to zero.

As alternative methodologies, the Government of France argues that the Department should use the original all-others rate of 3.9 percent in the investigation of Stainless Steel Bar from France. The Commission proposes that the all-others rate remain what they were in the original investigations. Sandvik Limited contends that a more reasonable rate would be the current rate of 4.48 percent in the investigation of Stainless Steel Bar from the United Kingdom, a weight-

average of Corus' new zero margin shipments and Firth Rixons's 125.77 percent margin shipments during the 2005-06 administrative review; or, leave the 4.48 percent rate in effect until a new Enpar/Firth Rixson rate is determined which could become the new all-others rate at the completion of the pending review. Lastly, UGITECH avers that the Department should not set the respondents' below zero-margins to zero when averaging and should employ a weight average in its calculation of the all-others rate.

REBUTTAL BRIEFS

In their rebuttal briefs, the steel and pasta petitioners argue that the Department's methodology was reasonable and that a respondent may request an administrative review if it believes the new all-others rate is not reflective of its own rate of dumping. The steel and pasta petitioners point to Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Indonesia, 70 FR 13456 (March 21, 2005) (PET Resin from Indonesia), Notice of Final Determination of Sales at Less Than Fair Value: Polyethlene Retail Carrier Bags from Malaysia, 69 FR 34128 (June 18, 2004) (Bags from Malaysia), and Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany, 67 FR 4703 (January 31, 2002) as examples in which the Department employed this methodology to generate an all-others rate.

Department Position:

Where the weighted-average dumping margins for all of the individually investigated respondents are zero or de minimis or are based on AFA, the Department's practice is to calculate the all other's rate based on a simple average of the zero or de minimis margins and the margins based on AFA. See PET Resin from Indonesia and Bags from Malaysia. The Department finds that it is appropriate to continue to follow its practice in these section 129 proceedings.

This practice is based on the SAA, which states:

> The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.

SAA at 873.

Regarding UGITECH's argument that the SAA first prescribes that the Department calculate a weighted average, rather than a simple average, of the zero or de minimis margins and the margins based on AFA, the Department notes that this is simply not feasible in situations where a margin is based on AFA. In such a situation, the quantity and value information for companies whose margins are based on AFA is not reliable.

The Department further finds unavailing arguments from various parties that the all-others rate should remain unchanged from the original investigation. The very reason for these section 129 proceedings is that the Panel found those margins to be flawed due to the Department's treatment of the non-dumped sales. The Department finds it inappropriate to continue to base the all-other's rate on the very margins that the Department has had to recalculate through these section 129 proceedings.

The Department likewise declines to adopt Sandvik Limited's suggestion to base the calculation of the all-others rate in the investigation of Stainless Steel Bar from the United Kingdom on Corus' new rate, and Enpar/Firth Rixson's rate from the 2005-06 administrative review. First, these two rates come from different time periods. Second, information regarding Enpar/Firth Rixson's 2005-06 administrative review is not on the record of this section 129 proceeding.

Moreover, the Department disagrees with UGITECH that, in calculating the all-others rate, it should use the negative values for those exporters or producers whose weighted-average dumping margin were below zero. Section 735(c)(5)(A) of the Act specifically instructs the Department to exclude "any zero and de minimis margins" when calculating the all-others rate. Moreover, both section 735(c)(5)(B) of the Act and the SAA expressly refer to averaging zero, de minimis and FA rates. The statute makes no mention of negative weighted-average dumping margins. Thus, where no weighted-average dumping margins exist other than those which are zero, de minimis or based on facts available, the Department is not required to treat negative weighted-average dumping margins as other than zero in calculating the all-others rate. Further, the methodology used is similar to that described in the statute and the SAA.

The Department notes that the new all-others rates will be applied initially as cash deposit rates. The new all-other's rates will not necessarily serve as the assessment rates, if the companies subject to those rates request administrative reviews. Rather, the Department will establish the assessment rates and calculate new, company-specific cash deposit rates through such administrative reviews.

Comment 5: Clerical Error Allegation in the Investigation of Stainless Steel Sheet and Strip in Coils from Italy

TKAST alleges that, in the original margin calculation, the Department incorrectly calculated the U.S. price for certain unreported sales through TKAST's affiliate Ken-Mac. In the original investigation, the Department applied an AFA rate to AST for failing to report 84 U.S. sales made through its affiliate Ken-Mac. The Department allegedly verified the quantity and value of these 84 unreported sales.

For the AFA calculation, the Department applied the highest non-aberrational rate calculated for TKAST's other properly reported U.S. sales (29.83%), to the average unit value (AUV) of TKAST's 84 unreported Ken-Mac sales for a hybrid calculation of the potential uncollected dumping duties (PUDD). TKAST argues that the Department miscalculated the AUV of these unreported sales by inadvertently dividing quantity by value, instead of correctly dividing the

value by the quantity. This miscalculation, TKAST alleges, resulted in an overstatement of the total PUDD and ultimately of the final margin. TKAST did not raise this issue as a clerical error or in the litigation subsequent to the original investigation.

Additionally, TKAST argues that the calculation of the highest non-aberrational rate (which is applied to the AUV of the unreported 84 sales and also to the AUV of a group of affiliated downstream sales which could not be verified), should be modified to take into account the Department's new methodology of not zeroing. TKAST maintains that without zeroing, the new highest non-aberrational margin is 14.08%.

Finally, TKAST argues that the Department, pursuant to a remand from the CIT (which was dropped by TKAST prior to the issuance of a final order), recalculated the AUV for its affiliated downstream sales that took into account verified selling expenses and that netted these expenses from the U.S. price. TKAST argues that these expenses should also be deducted from the 84 unreported sales when generating a net price.

In rebuttal, domestic interested parties Allegheny Ludlum and AK Steel Corporation maintain that the Department's new zeroing methodology is not related to the issue of a clerical error that may or may not have existed at the time of the original investigation. Allegheny Ludlum and AK Steel Corporation argue that TKAST does not argue that it was somehow precluded from raising this alleged clerical error during the original investigation. Allegheny Ludlum and AK Steel Corporation argue that the time has passed for the introduction of clerical errors. Allegheny Ludlum and AK Steel Corporation contend that TKAST could have asked for judicial review of this issue at the time of the original investigation and thus should be barred from raising it at this time. If the Department, however, decides to consider this issue, Allegheny Ludlum and AK Steel Corporation contend, the entire record should be opened to allow a comprehensive analysis of TKAST's data, including specifically whether TKAST engaged in targeted dumping. If the Department considers this issue, Allegheny Ludlum and AK Steel Corporation contend, it should re-open the entire record, delay the final determination and provide all parties with a full and fair opportunity to address all issues related to the calculation of TKAST's dumping margin.

Department Position:
We find that there is a reasonable basis to investigate these allegations further. The Department's goal is to ensure that its recalculations accurately reflect its methodological choices. The Department is not reconsidering any of those methodological choices other than to apply the Final Modification. To ensure all parties have access to the information needed to analyze this issue, we are postponing our decision with respect to stainless steel sheet and strip in coils from Italy and placing further information on the record. We will announce a further schedule for comments once this additional information is placed on the record.

Comment 6: Clarification of Valbruna Exporter Name

Valbruna argues that the Department should use the name Acciaierie Valbruna S.p..A. and not Acciaierie Valbruna S.r.l. in its final results of this proceeding and in any liquidation instructions sent to U.S. Customs and Border Protection. Valbruna argues that the Department has previously recognized that Valbruna's name was changed from Acciaierie Valbruna S.r.l. to Acciaierie Valbruna S.p.A.

Department Position:

We agree with Valbruna that the customs instructions should reflect the name Acciaierie Valbruna S.p.A. In the investigation, the Federal Register notices all reflect the old name. However, all the customs instructions reflect the new name for cash deposit purposes. Also, letters sent to Valbruna's counsel during the investigation were addressed using the new name. The Department performed a changed circumstances review for Valbruna in the stainless steel wire rod from Italy case and found that Acciaierie Valbruna S.p.A. was the successor-in-interest to Acciaierie Valbruna S.r.l. See Stainless Steel Wire Rod from Italy: Notice of Final Results of Changed Circumstances Antidumping Duty Review, 71 FR 24643 (April 26, 2006).

Comment 7: The Department's Briefing Schedule

IPSCO, Steel Dynamics and Gallatin argue that the "Department's limited briefing schedule chills U.S. producers' due process rights." IPSCO, Steel Dynamics and Gallatin note that the Department issued its preliminary determinations in these proceedings only four days after issuing its initiation notice. Moreover, IPSCO, Steel Dynamics and Gallatin note, parties were only afforded 15 days to submit comments on the preliminary determinations. This short time period, IPSCO, Steel Dynamics and Gallatin assert, especially given the magnitude of the Department's change in methodology, "gives the appearance that the Department is attempting to sweep its highly questionable new offset practice under the rug without a full hearing of the issues."

Department Position:

The Department's change in methodology has been the result of a long, deliberative process that did not begin with the initiation notice of these 129 proceedings. Instead, this process dates to March 6, 2006, when the Department published a notice in the Federal Register proposing that it would no longer make average-to-average comparisons without providing offsets for non-dumped comparisons. See 71 FR 11189. In that notice, the Department solicited comments on its proposed change in methodology. The Department received numerous comments, which it carefully considered prior to publishing the Final Modification notice on December 27, 2006.

As the Department stated when it initiated these section 129 proceedings, its sole intention was to recalculate the dumping margins using the methodology described in the Final Modification. Implementation of the Findings of the WTO Panel in US Zeroing (EC): Notice of Initiation of Proceedings Under Section 129 of the URAA; Opportunity to Request Administrative Protective Orders; and Proposed Timetable and Procedures, 72 FR 9306 (March 1, 2007). The Department,

therefore, has given the parties to these proceedings sufficient time to comment on the application of the Final Modification to the investigations subject to these section 129 proceedings.

FINAL ANTIDUMPING MARGINS

The recalculated margins, unchanged from the Preliminary Results for all cases, except the investigation of Stainless Steel Sheet and Strip in Coils from Italy, are as follows:

1) Certain Hot-Rolled Carbon Steel from the Netherlands

- The margin for Corus, the sole respondent, decreases from 2.59 percent to zero. Since Corus was the only respondent in the investigation, this order will be revoked.

2) Stainless Steel Bar from France

- The margin for UGITECH decreases from 3.9 percent to zero. This order will be revoked for UGITECH.
- The margin for Aubert and Duval S.A. was based on total AFA. This margin does not change as a result of this proceeding.
- Since there are no non- AFA, above de minimis margins remaining, pursuant to Department practice, the all others rate is based on a simple average of the zero margins and the AFA margins. Therefore, the all-others rate changes from 3.9 percent to 35. 92 percent.

3) Stainless Steel Bar from Germany

- The margin for BGH decreases from 13.63 percent to 2.59 percent.
- The margin for Einsal decreases from 4.17 percent to de minimis. The order will be revoked for Einsal.
- 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-others rate changes from 16.96 percent to 15.16 percent.

4) Stainless Steel Bar from Italy

- The margin for Acciaiera Valbruna S.p.A. decreases from 2.50 percent to zero. This order will be revoked for Acciaiera Valbruna S.p.A.
- The margin for Acciaiera Foroni S.p.A. decreases from 7.07 percent to zero. 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 AFA. 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. The order will be revoked for Rodacciai S.p.A.
- Since there are no non-AFA above de minimis margins remaining, pursuant to Department practice, the all-others rate is based on a simple average of the zero margins and the AFA margins. Therefore, the all-others 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. 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 AFA. These margins do not change as a result of this proceeding.
- Since there are no non-AFA above de minimis margins remaining, pursuant to Department practice, the all-others rate is based on a simple average of the zero margins and the AFA margins. Therefore, the all-others 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, 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-others 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.p.A. was excluded from the order and that does not change as a result of this proceeding.
- The all-others rate changes from 12.73 percent to 11.25 percent.

9) 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-others rate changes from 9.84 percent to 8.54 percent.

10) 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-others rate changes from 7.85 percent to 7.64 percent.

11) 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 AFA. This margin does not change as a result of this proceeding.
- The all-others 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-others 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-others 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.

Additional Comments from the EC

The EC also argued that the United States needs to undertake section 129 proceedings with respect to the challenged administrative reviews and made certain suggestions about how such proceedings should occur. Such comments are beyond the scope of the present section 129 proceedings and the Department will not otherwise address them in these proceedings.

RECOMMENDATION

In light of the Panel's report, we recommend 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