



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

A-580-831

A-580-834

Section 129 Determination  
**PUBLIC DOCUMENT**  
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DATE: November 4, 2011

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Proceeding Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Stainless Steel Plate in Coils from the Republic of Korea; Stainless Steel Sheet and Strip from the Republic of Korea

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### Summary

This memorandum addresses issues briefed in the proceeding under section 129 of the Uruguay Round Agreements Act (“URAA”), with respect to the antidumping duty investigations on stainless steel plate in coils (“Plate”) from the Republic of Korea (“Korea”) and stainless steel sheet and strip (“Sheet”) from Korea, in response to the World Trade Organization (“WTO”) panel report in United States – Use of Zeroing in Antidumping Measures Involving Products from Korea (DS402) (“Panel Report”), dated February 24, 2011. Below is a complete list of the issues in this proceeding for which the Department of Commerce (“Department”) has received comments from interested parties:

### **Plate and Sheet**

1. Whether the Department Should Vacate the Preliminary 129 Results
2. Whether to Revoke the Plate Order<sup>1</sup>
3. Whether to Set Cash Deposits to Zero in Lieu of Revocation

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<sup>1</sup> Antidumping Duty Orders: Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan, 64 FR 27756 (May 21, 1999) (“Plate Order”).



## **Background**

On March 31, and June 8, 1999, the Department issued final determinations of sales at less-than-fair-value (“LTFV”) in the antidumping investigations on Plate and Sheet, respectively.<sup>2</sup> Following affirmative injury determinations issued by the United States International Trade Commission (“ITC”), the Department issued antidumping duty orders on these products on May 21, and July 27, 1999, respectively.<sup>3</sup>

### *2001 Section 129 Determination*

On October 14, 1999, the Government of the Republic of Korea (“GOK”) requested the establishment of a WTO dispute settlement panel (“the Panel”) to examine certain issues in the Department’s Plate Final and Sheet Final. The Panel issued its report<sup>4</sup> on December 22, 2000, which was adopted by the WTO Dispute Settlement Body (“DSB”) on February 1, 2001. Subsequently, on April 18, 2001, pursuant to section 129(b)(2) of the URAA, the U.S. Trade Representative (“USTR”) requested that the Department issue a determination that would render the Department’s determinations of dumping in both the Sheet and Plate investigations not inconsistent with the findings of the Panel. The Department implemented the calculation changes on August 28, 2001<sup>5</sup>, which resulted in a re-calculation of the weighted-average dumping margins for Pohang Iron and Steel Co., Ltd. (“Posco”), a manufacturer/exporter of Plate and Sheet from Korea, and a respondent in both the Plate and Sheet LTFV investigations. For the Plate Order, Posco’s LTFV rate was revised from 16.26 percent to 6.08 percent. There were no other calculated dumping margins in the Plate LTFV investigation. For the Sheet Order, Posco’s LTFV rate was revised from 12.12 percent to 2.49 percent. The Department also calculated a zero percent dumping margin for Inchon Iron & Steel Co., Ltd. (a manufacturer/exporter), and properly excluded this company from the Sheet Order. Additionally, the Department assigned an adverse facts available rate of 58.79 percent to Taihan Electric Wire Co., Ltd.

### *2011 Section 129 Determination*

On April 8, 2010, the GOK requested the establishment the Panel to consider the issue of zeroing in the Department’s Plate Final and Sheet Final. The Panel circulated its report on January 18, 2011. The Panel found that the Department acted inconsistently with the first sentence of Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs

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<sup>2</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15444 (March 31, 1999) (“Plate Final”) and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30664 (June 8, 1999) (“Sheet Final”).

<sup>3</sup> See Antidumping Duty Orders: Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan, 64 FR 27756 (May 21, 1999) (“Plate Order”) and Notice of Antidumping Duty Order: Stainless Steel Sheet and Strip in Coils From the United Kingdom, Taiwan and South Korea, 64 FR 40555 (July 27, 1999) (“Sheet Order”).

<sup>4</sup> See United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip From Korea, WT/DS179/R (“DS179”).

<sup>5</sup> See Notice of Amendment of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 66 FR 45279 (August 28, 2001) (“2001 129 Determinations”).

and Trade 1994 (“AD Agreement”) by using zeroing in its calculation of certain margins of dumping in three investigations involving Korean products, including these investigations of Sheet and Plate. On February 24, 2011, the DSB adopted the Panel Report.

Section 129 of the URAA allows the Department to amend, rescind, or modify a determination found by a WTO dispute settlement panel or the Appellate Body to be inconsistent with U.S. obligations under the Antidumping Agreement. Specifically, section 129(b)(2) provides that, “notwithstanding any provision of the Tariff Act of 1930 . . .,” within 180 days after receipt of a written request from USTR, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (“SAA”) refers variously to such a determination by the Department as a “new,” “second,” and “different” determination. This determination may be subject to judicial review separate and apart from judicial review of the Department’s original determination. In addition, section 129(c)(1)(B) of the URAA provides expressly 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. Thus, such determinations have prospective effect only.

The Department issued its preliminary results in this proceeding on September 26, 2011.<sup>6</sup> Since the issuance of the Preliminary 129 Results, the Department received case briefs from Petitioners<sup>7</sup> and Posco on October 7, 2011. Posco filed rebuttal briefs on October 12, 2011.

## **Discussion of Issues**

### **Comment 1: Whether the Department Should Vacate the Preliminary 129 Results**

#### **Petitioners:**

- The Department should vacate the Preliminary 129 Results because the Preliminary 129 Results ignored the principle of administrative finality in agency determinations, citing Thyssen Krupp Acciai Specialii Terni S.p.A v. United States, 603 F.3d 928 (Fed. Cir. 2010) (“Thyssen Krupp”) and Norsk Hydro Can., Inc. v. United States, 472 F.3d 1347 (Fed. Circ. 2006). The Department should find that the equitable doctrine of finality prevents the GOK from seeking relief before the agency for orders that are now 12 years old. Although there is no statute of limitations at the WTO, where U.S. law and international law conflict, U.S. law must prevail.
- Alternatively, the Department should find that res judicata applies, and that the GOK challenged zeroing, and obtained relief from zeroing, in the 2001 129 Determinations, which required the Department to eliminate the two averaging groups relied on in the LTFV

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<sup>6</sup> See “Memorandum from Christian Marsh to Ronald K. Lorentzen, re; Preliminary Results Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip in Coils from the Republic of Korea,” dated September 23, 2011 (“Preliminary 129 Results”).

<sup>7</sup> Petitioners are Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division Bethlehem Steel Corporation, the United Steel Workers of America, AFL-CIO/CLC, the Butler Armco Independent Union, Zanesville Armco Independent Organization.

investigations. Even if res judicata does not apply, the GOK was required to make all arguments concerning these investigations in its 1999 panel request.

- This is a violation of domestic parties' due process and equitable rights.

Posco:

- The Department's Preliminary 129 Results comply with the Panel Report, thus the Department should issue a Final Section 129 Determination that follows its decision in the Preliminary 129 Results. Petitioners fail to provide any legal support for the proposition that the Department's actions are contrary to law and instead appear to make a collateral attack on the WTO Panel decision itself — while conceding that neither “finality” nor res judicata apply to WTO proceedings.
- Res judicata is not applicable because the Panel in DS179 did not address the issue of zeroing and, as the United States noted before the Panel, the issue of zeroing was outside the terms of reference of that Panel.
- Member governments can raise challenges to Department's determinations at any time and, contrary to Petitioners' assertions, are not required to make all challenges in one panel request. The fact that the GOK chose to raise the issue of zeroing and specifically request consultations on this issue in 2010 rather than in its initial panel request in 1999 in DS179 is irrelevant.
- The GOK's arguments in DS179 focused on splitting the investigation period into two sub-periods for comparison purposes. The Panel stated that it “need not further address” zeroing and made no determination as to whether the zeroing methodology was in violation of the United States' obligations under the AD Agreement. Therefore, the issue of zeroing was not addressed by the Panel in 1999.

**Department's Position:**

The Department disagrees with Petitioners regarding their argument that the Preliminary 129 Results should be vacated. Section 129 of the URAA provides that:

{n}otwithstanding any provision of the Tariff Act of 1930..., the administering authority shall, within 180 days after receipt of a written request from the Trade Representative, issue a determination in connection with the particular proceeding that would render the administering authority's action...not inconsistent with the findings of the panel or the Appellate Body.<sup>8</sup>

The authority granted by this provision may be invoked based on a report by a dispute settlement panel or the Appellate Body of the WTO finding that the Department's action was not in conformity with the terms of the AD Agreement. In the Panel Report, adopted by the WTO DSB on February 24, 2011, the Panel found that the Department acted inconsistently with the obligations of the United States under the first sentence of the AD Agreement by using zeroing in calculating certain margins of dumping in three investigations involving Korean products, including the two investigations subject to this section 129 proceeding for Plate and Sheet.<sup>9</sup>

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<sup>8</sup> See section 129(b)(2) of the URAA.

<sup>9</sup> See Panel Report, at para. 8.1.

Subsequently, USTR submitted a written request to the Department to implement the findings of the Panel Report by issuing determinations as necessary to render the determinations in these investigations not inconsistent with the DSB recommendations and rulings. Therefore, the Department has the authority, pursuant to section 129(b)(2) of the URAA, to issue a determination that would bring the Department's LTFV determinations into conformity with the findings of the WTO Panel. Accordingly, in its Preliminary 129 Results, the Department preliminarily determined to recalculate the weighted-average dumping margins at issue by applying the calculation methodology described in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) ("Final Modification for Investigations").

Petitioners' request for the Department to vacate the Preliminary 129 Results would be in direct opposition to the statute, which requires the Department to issue a determination within 180 days. Further, Petitioners argue that res judicata applies because the GOK previously challenged the LTFV investigations at the WTO in 1999. The Department disagrees. Principles of res judicata, even to the extent that they apply to judicial review of antidumping investigations in U.S. courts, cannot be applied to prevent the Department from fulfilling its statutory obligation under section 129, which requires the Department to issue a new determination which is not inconsistent with the Panel's findings. Unlike in Thyssen Krupp, in which a newly alleged ministerial error in the original investigation was not implicated in the WTO's decision, here, the GOK raised the Department's zeroing methodology before the Panel. See Thyssen Krupp, 603 F.3d at 933.

Therefore, the Department declines Petitioners' suggestion to vacate the Preliminary 129 Results, as this would contradict USTR's request, and the Department's statutory obligation, to re-determine its dumping margin calculations to be not inconsistent with the findings of the panel or the Appellate Body. Concerning Petitioners' argument that the GOK should have raised the zeroing methodology in its 1999 panel request, this is irrelevant. Because USTR submitted a written request to the Department to implement the findings of the Panel Report, the Department has a statutory obligation to do so.

## **Comment 2: Whether to Revoke the Plate Order**

### Petitioners:

- The Department should not revoke the Plate Order, because Section 129 proceedings may have prospective effects only, and limits the Department's remedies to unliquidated entries of subject merchandise.

### Posco:

- The Department should wholly revoke the Plate Order and the Sheet Order as to Posco and instruct U.S. Customs and Border Protection ("CBP") to liquidate without regard to antidumping duty entries of Sheet manufactured and exported by Posco, which were entered, or withdrawn from warehouse, for consumption on or after that date and to discontinue the collection of cash deposits from Posco for estimated antidumping duties.
- Petitioners are mistaken that because Section 129 determinations are to be prospective only, revocation is not appropriate. The revocation is not retroactive. Rather, the effective date of

the revocation is “the date on which the Trade Representative directs the administering authority ... to implement that determination.”<sup>10</sup>

- Section 129 allows the Department to amend, rescind or modify a determination found by a WTO Panel to be inconsistent with U.S. obligations under the WTO. In this case, once zeroing is eliminated, there is no dumping for Posco or any other producer/exporter because the rate is de minimis. Therefore, the Plate Order should be revoked.

### **Department’s Position:**

The Department disagrees with Petitioners regarding the appropriateness of revoking the Plate Order. In its Preliminary 129 Results, the Department determined that no company for which a company-specific weighted-average dumping margin was re-calculated in the 2001 129 Determinations received a dumping margin above de minimis, and that the All Others rate was also de minimis. See section 735(c)(5)(A) of the Act. Section 735(a)(4) of the Act provides that, in making a determination in an investigation, the Department “shall disregard any weighted average dumping margin that is de minimis as defined in section 1673b(b)(3),” or less than two percent. The dumping margin for Posco, and the All Others Rate, is 0.55 percent. Accordingly, the Department determined in its Preliminary 129 Results that, if all dumping margins remained at de minimis for the final recalculation, the order would be revoked upon implementation. See Preliminary 129 Results at 5. The Department has not made any changes to the recalculation, and so if USTR directs the Department to implement this determination, then it will revoke the Plate Order.

Similarly, with respect to the Sheet Order, Posco’s dumping margin has now been re-calculated and is zero. Thus, because there is no affirmative finding of dumping for Posco, if USTR directs the Department to implement this determination, then it will revoke the Sheet Order with respect to Posco.<sup>11</sup>

### **Comment 3: Whether to Set Cash Deposits to Zero in Lieu of Revocation**

#### Petitioners:

- While the Department is permitted to set Posco’s antidumping duty rate to zero, the agency may not revoke that order. Revocation violates both the equitable and due process rights of domestic interested parties, and goes beyond the scope of remedies contemplated under 19 U.S.C. § 3538(c)(1).

#### Posco’s:

- With respect to the Plate Order, since Posco was the sole respondent in the investigation, the order must be revoked because there is no longer an underlying finding of dumping in the case. To not revoke would be inconsistent with the Panel’s findings because the Plate Order cannot exist in absence of the zeroing.

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<sup>10</sup> See 19 U.S.C. 3538 (c)(1)(A).

<sup>11</sup> This is consistent with Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 FR 25261 (May 4, 2007) (“2007 Section 129 Determinations”).

## Department's Position:

The Department disagrees with Petitioners that the Department should set the cash deposit rates to zero going forward while leaving the Plate Order in place. Because the re-calculated dumping margin rates for the period of investigation are all de minimis or zero for the Plate Order and zero for Posco in the Sheet Order, there is no basis to sustain (1) the entire Plate Order and (2) Posco under the Sheet Order, after USTR directs the Department to implement its finding. Additionally, revocation is consistent with the Department's practice in previous section 129 determinations that involved revised zero or de minimis dumping margins.<sup>12</sup>

Further, Petitioners note that section 129 proceedings are to be prospective only and not have retrospective effects. Therefore, Petitioners claim that the Department should simply reset the cash deposit rate to zero in this case, without revocation, as this would be consistent with the requirement under 19 U.S.C. 3538 (c)(1)(B) that any alteration of a prior decision in reaction to an adverse WTO ruling be prospective only. As discussed above, the Department agrees that the section 129 determination will apply prospectively only. As such, it is unclear why Petitioners believe that revocation in this context would have any retrospective effect. Nevertheless, there are no remaining positive dumping margins in the Plate Order, following the Department's recalculations pursuant to the USTR's request to comply with the Panel Report. There is no legal basis for setting cash deposits to zero in lieu of revoking the Plate Order because, with respect to entries made on or after the effective date of implementation, there would be no affirmative finding of dumping of Plate. Similarly, in the Sheet Order, Posco's positive rate of 2.49 percent has now been re-calculated pursuant to the Panel Report, which resulted in a zero dumping margin. Therefore, with respect to entries made on or after the effective date of implementation, the Department would not have the authority to include Posco in the Sheet Order.

## Final Antidumping Margins

<b>Stainless Steel Plate in Coils From the Republic of Korea (A-580-831) (revoked)</b>		
<b>Manufacturer/Exporter</b>	<b>2001 Section 129 Results<sup>13</sup></b>	<b>2011 Section 129 Results<sup>14</sup></b>
Pohang Iron & Steel Co., Ltd.	6.08 percent	.55 percent ( <u>de minimis</u> )
All-Others	6.08 percent	.55 percent ( <u>de minimis</u> )

<b>Stainless Steel Sheet and Strip in Coils From the Republic of Korea (A-580-834)</b>		
<b>Manufacturer/Exporter</b>	<b>2001 Section 129 Results<sup>15</sup></b>	<b>2011 Section 129 Results<sup>16</sup></b>
Pohang Iron & Steel Co., Ltd.	2.49 percent	0 percent (excluded)
Inchon Iron & Steel Co., Ltd. <sup>17</sup>	0 percent (excluded)	0 percent (excluded—no change)
Taihan Electric Wire Co., Ltd. <sup>18</sup>	58.79 percent (no change)	58.79 percent (no change)
All Others	2.49 percent	19.60 percent

<sup>12</sup>See, e.g., Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador: Notice of Determination Under section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador, 72 FR 48257 (August 23, 2007); Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand, 75 FR 48940 (August 12, 2010).

## **Adverse Facts Available**

In the Sheet Final and Sheet Order, the Department assigned a dumping margin based on section 776 of the Act in the LTFV investigation to Taihan Electric Wire Co., Ltd.<sup>19</sup> The Department has not recalculated this dumping margin because it is not affected by the implementation of the Panel Report. This dumping margin was based on information contained in the petition and “zeroing” was not used to calculate the dumping margins in the petition.<sup>20</sup>

## **All-Others Dumping Margin**

In the Plate Final and Plate Order, the Department originally calculated an above-de minimis dumping margin for the single mandatory respondents listed above. In accordance with section 735(c)(5)(A) of the Act, in the Plate Final, the Department calculated an “All-Others” dumping margin equal to the weighted average of the estimated weighted-average dumping margins established for producers and exporters individually investigated, excluding any zero or de minimis dumping margins and any dumping margins determined entirely under section 776 of the Act. As a result of the changes to the dumping margin calculations which result in a de minimis dumping margin for Posco, the All-Others dumping margin would also be de minimis. Therefore, in accordance with Department practice, because Posco’s dumping margin remains at de minimis for the final recalculation, and if USTR directs the Department to implement this determination, then it will revoke this order.<sup>21</sup>

In the Sheet Final and Sheet Order, the Department must determine an appropriate All-Others dumping margin pursuant to section 735(c)(5) of the Act. While section 735(c)(5)(A) of the Act provides that the All-Others dumping margin in an investigation is to be calculated excluding any dumping margins that are zero, de minimis or based entirely on facts available, section 735(c)(5)(B) provides that, where the dumping margins are all zero, de minimis, or based entirely on facts available, the Department may use “any reasonable method” (including a simple average of the dumping margins that are zero, de minimis, or based entirely on facts available) to determine the All-Others dumping margin. Consistent with the Department’s past practice in the

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<sup>13</sup> See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From the Republic of Korea; and Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 66 FR 45279 (August 28, 2001) (“2001 Section 129 for SSSS and SSPC”).

<sup>14</sup> See Memorandum to the File entitled “Preliminary Recalculation of the Weighted-Average Margin for Pohang Iron & Steel Co., Ltd. pursuant to the Preliminary Section 129 Determination in the Implementation of Findings of the WTO Panel” dated concurrently with this memorandum.

<sup>15</sup> See 2001 Section 129 for SSSS and SSPC.

<sup>16</sup> See Memorandum to the File entitled “Preliminary Recalculation of the Weighted-Average Margin for Pohang Iron & Steel Co., Ltd. pursuant to the Preliminary Section 129 Determination in the Implementation of Findings of the WTO Panel” dated concurrently with this memorandum.

<sup>17</sup> Since the weighted average margin percentage for Incheon Iron & Steel Co., Ltd. continues to be zero, it continues to be excluded from the Korea Sheet Order. See, e.g., 2001 Section 129 for SSSS and SSPC, 66 FR at 45283.

<sup>18</sup> See Korea Sheet Final, 64 FR at 30687.

<sup>19</sup> See Sheet Final, 64 FR at 30687.

<sup>20</sup> See id.; see also Initiation of Antidumping Duty Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom, 63 FR 37521, 37526 (July 13, 1998) (where the Department stated that “based on comparisons of EP to adjusted CV, estimated margins range from 18.40 to 58.79 percent”).

<sup>21</sup> See, e.g., 2007 Section 129 Determinations.



2007 Section 129 Determinations, a simple average of the adverse facts available dumping margin and the calculated zero dumping margins is a reasonable method, in this case, to assign a dumping margin to all other producers or exporters because there are no other calculated dumping margins from which to assign an All-Others dumping margin.<sup>22</sup> Therefore, the Department has determined that the All-Others dumping margin for Sheet is a simple average of the zero dumping margins calculated for Pohang Iron & Steel Co., Ltd. and Inchon Iron & Steel Co., Ltd., and the adverse facts available dumping margin of 58.79 percent assigned to Taihan Electric Wire Co., Ltd., resulting in an All-Others dumping margin of 19.60 percent. Consequently, because the Taihan Electric Wire Co., Ltd. and the All-Others dumping margins are above de minimis, and if USTR directs the Department to implement this determination, then it will not revoke this order.

### **Revocation**

With respect to the Plate Order, upon recalculation of the only calculated weighted-average dumping margin, absent the zeroing methodology, there remains no positive dumping margins. Therefore, if directed to implement this section 129 determination, the Department will revoke the Plate Order in whole effective for entries made on or after the date upon which USTR directs the Department to implement its final results. Accordingly, the Department would instruct CBP to liquidate without regard to antidumping duties entries of the subject merchandise which were entered, or withdrawn from warehouse, for consumption on or after that date and to discontinue the collection of cash deposits for estimated antidumping duties.

With respect to the Sheet Order, the Department has re-calculated a dumping margin of zero percent for Posco. Therefore, if directed to implement this section 129 determination, the Department will revoke the Sheet Order in whole effective, with respect to Posco only, for entries made on or after the date upon which USTR directs the Department to implement its final 129 results. Accordingly, the Department would instruct CBP to liquidate without regard to antidumping duties, Posco's entries of Sheet which were entered, or withdrawn from warehouse, for consumption on or after that date and to discontinue the collection of cash deposits for estimated antidumping duties for Posco.

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<sup>22</sup> See 2007 Section 129 Determinations, 72 FR at 25262-63 (where the Department calculated a simple average of existing adverse facts available margins with above de minimis/zero margins as an All-Others rate following section 129 recalculations for the mandatory respondents that resulted in zero or de minimis rates).

**Recommendation**

In light of the Panel’s findings, we recommend issuing this determination which, if implemented, would render our original determination not inconsistent with the recommendations and rulings of the Dispute Settlement Body by applying the methodology in Final Modification for Investigations, and adopting the recalculated weighted-average dumping margins as outlined above.

Agree  Disagree

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

11/4/2011  
\_\_\_\_\_  
Date