

October 24, 2003

**ISSUES AND DECISION MEMORANDUM**

**TO:** James J. Jochum  
Assistant Secretary  
for Import Administration

**FROM:** Joseph A. Spetrini  
Deputy Assistant Secretary  
Import Administration, Group III

**SUBJECT:** Section 129 Determination: Final Results of the 1994 Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Sweden

---

**Background**

On January 8, 2003, the Dispute Settlement Body (“DSB”) of the World Trade Organization (“WTO”) adopted the report of the WTO Appellate Body in United States - Countervailing Measures Concerning Certain Products from the European Communities, WT/DS212/AB/R (December 9, 2002) (“Certain Products”). Pursuant to the DSB findings in Certain Products, the Department of Commerce (“the Department”) changed its methodology for analyzing privatizations in the context of the countervailing duty (“CVD”) law. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 (June 23, 2003) (“Modification Notice”).

The Department is now applying this modification pursuant to Section 129(b)(2) of the Uruguay Round Agreements Act (“URAA”); we are conducting “Section 129 Determinations” with respect to twelve different CVD proceedings involving certain steel products originating in various member states of the European Communities. This memorandum concerns the privatization that was addressed in the administrative review of the CVD order on certain cut-to-length carbon steel plate from Sweden. See Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review, 62 FR 16551 (April 7, 1997)(“Final Results”).

In Final Results, the Department determined that the Government of Sweden (“GOS”) had provided countervailable subsidies to SSAB during the period of review (1994), including certain allocable subsidies conferred prior to and during SSAB’s privatization. In this Section 129 Determination, using the Department’s modified methodology for analyzing privatizations, the

Department is examining whether those pre-privatization subsidies were eliminated as a result of SSAB's privatization. On September 29, 2003, the Department issued a draft Section 129 Determination in this case. None of the interested parties filed comments on our draft Section 129 Determination. Therefore, we are incorporating the draft Section 129 Determination in its entirety as our Section 129 Determination regarding the CVD order on cut-to-length carbon steel plate from Sweden.

Section 129 of the URAA is the applicable provision governing the nature and effect of determinations issued by the Department to implement findings by WTO panels and the Appellate Body. Specifically, section 129(b)(2) provides that "{n}otwithstanding any provision of the Tariff Act of 1930 . . .," within 180 days of a written request from the U.S. Trade Representative ("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. 19 U.S.C. § 3538(b)(2). The Statement of Administrative Action for the URAA ("SAA") variously refers to such a determination by the Department as a "new," "second," and "different" determination. SAA at 1025, 1027. This determination is subject to judicial review separate and apart from judicial review of the Department's original determination. 19 U.S.C. § 1516a(a)(2)(B)(vii).

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

### **Privatization of SSAB**

The privatization of SSAB began in late 1986 when the Government of Sweden ("GOS"), a 75 percent shareholder, acquired the remaining 25 percent ownership interest in SSAB which had been held by a private company. The GOS subsequently sold one-third of the company's shares to a group of six private institutional investors: Skandia Insurance, the Fourth National Pension Fund, the Swedish Staff Pension Society (SPP), the National Labour Market Board (AMF), Stockholms Enskilda Banken Pension Fund, and Skandnivska Enskilda Banken's Pension Foundation. At that time, the GOS and the institutional investors agreed on the primary objective of listing SSAB shares on the Stockholm Stock Exchange as soon as possible.

In 1989, the GOS and the institutional investors made a public offering of 23 percent of SSAB shares at a price of 140 SEK per share. After this public offering, SSAB shares were listed on the Stockholm Stock Exchange.

On December 18, 1991, the GOS adopted Government Bill 1991/92:69 providing for the privatization of government-owned companies. According to this bill, the GOS authorized the selling of GOS holdings in 35 designated companies, including SSAB.

The privatization of SSAB was completed in 1992 when SSAB issued government bonds with detachable warrants. Each government bond carried a face value equal to the strike price of the warrants (e.g., the final value of the bond equals the share value of the stock from the exercised warrant); the warrants entitled the holder to purchase 100 shares of SSAB stock at a price of 170 SEK per share. The bonds were issued at a price of 14,600 SEK, a discount from face value (17,000 SEK) which resulted in an effective interest rate of 10.06 percent annually. The term of the bonds was from June 30, 1992 through January 31, 1994. The right to exercise the warrant ran from January 4, 1993 through February 15, 1994. The warrants were detachable, *i.e.*, could be traded separately from the bonds, which were also publicly traded. At the close of the period to exercise the warrant, all warrants had been exercised for the remaining GOS shares in SSAB.

## **Analysis**

As mentioned above, pursuant to the findings in Certain Products, the Department modified its methodology for analyzing a privatization in the context of the CVD law. The Department's privatization analysis, under the Modification Notice, is predicated on a baseline presumption that allocable, non-recurring subsidies can benefit the recipient over a period of time (*i.e.*, allocation period) normally corresponding to the average useful life of the recipient's assets. A party may rebut this presumption by demonstrating that, during the allocation period, a privatization occurred in which the government sold its ownership of all or substantially all of a company or its assets and retained no control of the company or its assets. Additionally, the party must demonstrate that the privatization was conducted through an arm's-length transaction for fair market value. We have analyzed the privatization of SSAB consistent with the methodology put forth in the Modification Notice, 68 FR at 37127.

### *Incremental Privatization*

As discussed above, the GOS sold its shares of SSAB over a period of five years. The Modification Notice does not specify the Department's approach as to how (or whether) the new methodology should be applied to "gradual" privatizations, and provides the public additional opportunity for further comment on this particular issue.<sup>1</sup> As suggested in the Modification Notice, the impact of a gradual or similar type of privatization on the countervailability of pre-privatization subsidies may depend on the particular facts and circumstances of the privatization in question. For example, the incremental sale of a government-owned company can, in some instances, result in a transfer of control to private shareholders in cases where the government still maintains an ownership interest in the company. In the instant case regarding the

---

<sup>1</sup>The Department did not receive any further comments on this issue, pursuant to its request for additional comments.

incremental privatization of SSAB, the final 1992 warrant offering relinquished all government ownership and control in SSAB.

In Final Results, the Department found that allocable subsidies were received by SSAB in most years from 1978 through 1990, *i.e.*, prior to and during SSAB's privatization process. However, no such allocable, non-recurring subsidies were provided to SSAB during or after 1992, the year in which SSAB's privatization was completed.

#### *Arm's-Length Transaction*

In determining whether allocable subsidies received by SSAB prior to its privatization continued to benefit post-privatization SSAB, the Department first considered whether the privatization of SSAB was conducted through an arm's-length transaction. For a definition of an "arm's-length transaction," we rely on guidance from the Statement of Administrative Action, which states in relevant part that an arm's-length transaction is "a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties." See, Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. I (1994) ("SAA") at 928.

The record in this instance indicates that the privatization of SSAB involved 1987, 1989, and 1992 sales of company shares, rather than assets. The 1987 transaction involved a private placement of one-third of SSAB's shares with a consortium of six institutional investors. Both the 1989 and 1992 sales were effected by announced public offerings of outstanding shares: the 1989 offering involved both GOS-held shares and shares held by the institutional investors; the 1992 bond/warrant issue involved only shares held by the GOS. Both offerings were allotted to different classes of purchasers: SSAB employees, institutional investors, the general public, and foreign investors.

Consistent with the SAA guidance, in determining whether these various purchases constituted arm's-length transactions, we must assess (a) whether they were transacted between unrelated parties, each acting in its own interest, or, (b) if transacted between related parties whether the terms of the transactions were those that would exist if negotiated between unrelated parties.

In 1987, the GOS sold one-third of SSAB's shares to a consortium of six institutional investors: Skandia Insurance, the Fourth National Pension Fund, the Swedish Staff Pension Society ("SPP"), the National Labour Market Board (AMF), Stockholms Enskilda Banken Pension Fund, and Skandinaviska Enskilda Banken's Pension Foundation. These institutional investors were all private companies which negotiated with the GOS for this purchase/sale of SSAB shares. The negotiations lasted for two to three months. See Verification Report Concerning Certain Carbon Steel Products from Sweden at 4 (C-401-401), February 11, 1991, from the record of the 1987 administrative review ("1987 Verification Report"), and included as Attachment I to the Department's second supplemental questionnaire issued September 5, 2003. As the six

institutional investors were private companies, they were not related to the seller, the GOS. Therefore, we determine that this sale constituted an arm's-length transaction.

In 1989, SSAB shareholders (the GOS and the private investors) offered 7.5 million shares to the public for a price of 140 SEK per share. According to the terms of the 1989 public offering, SSAB employees were offered a total of 1.5 million shares; the general public was allocated 5 million shares; and, the remaining 1 million shares were allocated to institutional investors and to business contacts of SSAB (600,000) shares, and to LKAB's Jubilee Fund (400,000 shares). See Response to Questionnaire Pursuant to Section 129 of the URAA, July 28, 2003, Enclosure 5 at translation ("Questionnaire Response"). LKAB was, at the time, a wholly government owned iron ore supplier and held an SSAB debenture convertible to equity. According to the GOS, this allocation process was chosen to reach a balanced ownership structure that was needed in order to have SSAB stock listed on the Stockholm Stock Exchange.

Approximately 70 percent of the shares offered in the 1989 public offering were purchased by the general public, and the remaining shares were acquired by the institutional investors and employees of the company. Since the general public and institutional investors were not related to the seller, we determine that those shares were sold at arm's length. The SSAB employees and business contacts are related to SSAB. However, these purchasers paid the same price and acquired shares under the same sales terms as the unrelated purchasers. Thus, although those purchasers were related to the seller (the GOS), the sale was conducted such that the "the terms of the transaction are those that would exist if negotiated between unrelated parties." See Modification Notice, 68 FR at 37127. Consequently, we find that the sales to SSAB employees and business contacts also constituted arm's-length transactions. With respect to the shares purchased by LKAB's Jubilee Fund, we have no information about whether this entity is related to the seller. However, even assuming this entity is related to the GOS, the shares were purchased for the same price as other shares sold in this offering, thus, this sale also constituted an arm's-length transaction.

In 1992, to complete the privatization of SSAB, the GOS issued bonds with detachable warrants for the purchase of 100 shares. The issue was allotted to the following groups: SSAB employees, private persons, institutional investors, and foreign investors (with the "International Placing"). All bonds were issued at the same price and terms. Although the employees are not unrelated parties, and the institutional investors (to the extent that they were already shareholders) are not unrelated parties, the bonds/warrants were issued at the same price and terms to these two groups of purchasers. Therefore, we determine that all purchases of bonds and subscriptions to SSAB shares occurring as a result of this offering constituted arm's-length transactions.

#### *Fair Market Value*

Next, in determining whether the sale of SSAB was for fair market value, consistent with the methodology in the Modification Notice (68 FR at 37127), we first considered whether there was any contemporaneous, benchmark price actually observed in the marketplace for a comparable

company or assets. However, in the instant determination, we find no evidence in the record of any contemporaneous sales of companies comparable to SSAB, nor any appropriate benchmark price. Consequently, we have relied on an examination of various “process factors” from among the non-exhaustive list in the Modification Notice.

*(1) Objective Analysis*

In evaluating the process used by the GOS to sell SSAB, we first looked to see whether the government performed or obtained, and implemented the recommendations of, an objective analysis in determining the appropriate sales price. We considered whether the analysis was objective, timely (*i.e.*, completed prior to agreement on the final transaction price), and complete (*i.e.*, contained the information typically considered by private, commercial sellers contemplating such a sale).

Prior to and during the 1987 sale to institutional investors, the GOS did not conduct or obtain an independent, objective evaluation to determine an appropriate sales price for shares in SSAB. No bidding process was used to select the institutional investors, and no prospectus was issued. Instead, the GOS negotiated directly with a consortium of six private institutional investors who based their offer on SSAB’s long-term earnings capacity. SSAB’s total value was determined using SSAB’s previous five-year earnings average before tax, multiplied by a price/earnings ratio of seven (considered standard for the steel industry and normal for companies listed on the Swedish stock market at that time for companies with similar risk profiles). See 1987 Verification Report at 2; also Questionnaire Response at 13. Accordingly, one third of this total value was offered by and paid to the GOS by the six institutional investors in order to obtain one-third of the shares in SSAB.

In determining the selling price for the 1989 public offering, the GOS and the six institutional investors obtained an independent evaluation of SSAB from the investment bank of Alfred Berg Fondkommission. In addition, SSAB itself requested a joint appraisal report of the company that was prepared by two other independent investment banks, Enskilda Fondkommission and Carnegie Fondkommission. The GOS and the six other institutional investors selected the selling price of 140 SEK per share, which according to the GOS, fell within the range of both of these independent valuations. See GOS Response to 129 Proceeding of Certain Cut-to-Length Steel Plate from Sweden; Second Supplemental Questionnaire at 2, dated September 15, 2003 (“Second Supplemental Response”). We consider these valuations timely as they were conducted prior to the agreement on the final transaction price. Further, these evaluations are objective since they were conducted by independent parties.

Evaluations of SSAB’s stock for purposes of the 1992 warrant offer, were carried out by four independent investment banks (Handelsbanken Investment Bank, Dresdner Bank, James Capel & Company, and Lehman Brothers International). Based upon their recommendations, the GOS structured the terms and conditions of the warrant offer which were forwarded to an independent Privatization Commission for approval. According to the GOS, this commission was composed

of senior representatives from the industry and finance sectors. See GOS Response to Questionnaire regarding Certain Cut-to-Length Carbon Steel Plate, Section 129 Review at 4, dated September 5, 2003 (“First Supplemental Response”). The exercise price for shares in SSAB associated with these detachable warrants was 170 SEK per share. See Questionnaire Response, Enclosure 6 (1992 Placing Memorandum) at 1. On the date at which the exercise price was determined (June 12, 1992), SSAB shares were trading on the Stockholm Stock Exchange for 145 SEK per share. See First Supplemental Response at 4. We consider these valuations timely as they were conducted prior to the agreement on the final transaction price. Further, the evidence on the record indicates that these evaluations are objective, since they were conducted by independent parties.

## *(2) Artificial Barriers to Entry*

The Department considered whether there were any restrictions or requirements that distorted the bidding process. Conditions that unduly restrict the number or identity of otherwise legitimate bidders (e.g., exclusion of foreign purchasers or purchasers from a different industry, minimum bid requirements, overly-burdensome or unreasonable bidder-qualification requirements) would be particularly suspect, in that they would tend to undermine competition and increase the likelihood that something less than full value was paid for the shares or assets.<sup>2</sup>

On the other hand, if potential purchasers of a company were able to place their bids or purchase shares without burdensome restrictions and there were no restrictions which served to narrowly define the pool of potential purchasers, this would support a finding that the purchasers paid full value for the company they purchased.

The initial 1987 sale to the six institutional investors did not involve any bidding process or formal selection process that was open to the public at large. Instead, the GOS unilaterally selected and entered into negotiations with the six institutional investors. According to the GOS, these investors were chosen because they expressed an interest in obtaining an ownership interest in SSAB and were willing to be long-term investors who would support the further restructuring of the company in order to have SSAB publicly listed on the Stockholm Stock Exchange. See Questionnaire Response at 8. Accordingly, the investors required that the stock be publicly traded within five years from the date of this sale in order to put pressure on SSAB to achieve a sound financial condition. See Verification Report - - Government of Sweden at 9, March 23, 1993 from the record of the 1991 administrative review (“1991 GOS Verification Report”), and included as Attachment II to the Department’s second supplemental questionnaire issued September 5, 2003.

---

<sup>2</sup> This is an illustrative list only. There may be other pertinent aspects of the sales or bidding process in other privatizations that inhibit the market’s ability to settle a transaction at full value.

Both the 1989 and 1992 sales were effected by announced public offerings. Approximately 70 percent of the shares offered in the 1989 public offering were sold to the general public. See Second Supplemental Response at 3. The 1992 warrant offer was also made to private persons and institutions, employees, as well as selected institutional investors. The category of investors who were private or public entities not selected by the government represented the majority of the allotment. See Questionnaire Response, Enclosure 6 (1992 Placing Memorandum) at 4.

### *(3) Purchase Price*

Another factor in determining whether the sale of SSAB was for fair market value is whether the government accepted the highest bid and received payment in cash or close equivalent. As described in the Objective Analysis and Artificial Barriers to Entry sections above, the 1987 sale to institutional investors did not involve an open bidding process, but was limited to six investors identified by the GOS to enter into direct negotiations. Cash payment was received by the GOS as compensation for the shares purchased by these investors. The two subsequent sales of the remaining ownership interest in SSAB also involved cash payments to the GOS.

The 1989 public offering and the 1992 warrant offering utilized independent valuation studies in order to determine the respective share prices of each offering. As noted above in the Objective Analysis section, the GOS and the six institutional investors selected 140 SEK per share for the 1989 public offering price, which fell within the range of share prices determined by the independent valuations. The exercise price of the 1992 warrant offering was also based on evaluations carried out by four independent investment banks. At the time of this warrant offer, SSAB shares were already listed on the Stockholm Stock Exchange and were trading at 145 SEK per share. Both the 1989 and the 1992 offerings were oversubscribed.

### *(4) Committed Investments*

The term “committed investment” encompasses a range of possible restrictions or requirements that the government, as the seller, imposes on the future operation of, or investment in, the company or its assets. In analyzing the possible impact of committed investment on a privatization, we will consider, *inter alia*, whether (1) the precise details of the committed investment were fully transparent to all potential bidders and, therefore, reflected in the final bid values of the potential bidders; (2) there is no implicit or explicit understanding or expectation that the buyer will be relieved of the requirement or commitment after the sale; and (3) there is no evidence otherwise on the record indicating that the committed investment was not fully reflected in the transaction price. See Modification Notice, 68 FR at 37133.

There is no evidence on the record of this Section 129 Determination of any post-sale investments or commitments that were a condition of sale in any of SSAB’s privatization transactions. To the contrary, the 1987 Verification Report at 4, notes that two months after the sale to the institutional investors, a new board and Chief Executive Officer were elected and a new structural plan was adopted that involved the closing down of steel mills and the sale of



some product lines over the objections of the trade unions. Furthermore, it was noted by SSAB company officials that this restructuring plan reduced the work force by 2,500 to 3,000 people. See Company Verification Report - - SSAB (C-401-804) at 6, dated March 26, 1993, from the record of the 1991 Countervailing Duty Investigation of Certain Steel Products from Sweden administrative review (1991 SSAB Verification Report), and included as Attachment III to the Department's second supplemental questionnaire issued September 5, 2003.

#### *(5) Concurrent Subsidies*

“Concurrent subsidies” are subsidies given to facilitate or encourage the privatization, or that are otherwise bestowed concurrent with a privatization. See Modification Notice, 68 FR at 37136. These subsidies often include debt forgiveness and rescheduling, subsidized loans, and worker-related benefits.

Although the GOS claims that no concurrent subsidies were received prior to these three privatization transactions of SSAB, we note that the GOS wrote off large portions of principal and accrued interest between 1980 and 1990. These reconstruction loans were used to finance employment promotion project{s} or investments which created new jobs. See Cut-to-Length Carbon Steel Plate From Sweden; Final Results of Expedited Sunset Review of Countervailing Duty Order, 65 FR 18305, (April 7, 2000) and accompanying Issues and Decision Memo at 15. These reconstruction loans were forgiven prior to and after the 1987 sale to institutional investors and the 1989 public offering. However, there is no evidence on the record that this debt forgiveness was not fully reflected in the sales prices.

#### *Fair Market Value - Conclusion*

Based on our review of the factors relevant to fair market value, the privatization of SSAB presents a mixed picture. On the one hand, there were real and perceived barriers to entry in the 1987 sale to institutional investors. No bidding process was involved and the participation was limited to the six firms selected by the GOS. The GOS did not commission an objective analysis and we have concerns regarding the objectivity of the analysis performed by the buyers themselves (the six institutional investors) which was used in the negotiations to set the price for SSAB's shares.

Specifically, the analysis performed by the six institutional investors did not take into consideration the book value of SSAB in 1987, but was primarily focused on the earnings capacity of SSAB based upon a long-term expectation of a 15 percent average rate of return in earnings growth for a company that in 1987, was sold below its par value. See 1987 Verification Report at 2 and 3. Furthermore, there is no explanation as to why SSAB is comparable in terms of its previous and existing price/earnings ratio, to the selected price/earnings ratio of seven which the six institutional advisors considered normal for standard steel companies or companies listed on the Swedish stock market with similar risk profiles.

On the other hand, the GOS commissioned objective analyses of the value of SSAB for the 1989 public offering and the 1992 warrant offer, and issued a prospectus in each of these offerings which laid out the general terms and conditions for each of these sales. As noted in the Artificial Barriers to Entry section, the majority of both the 1989 and 1992 offerings were made available to and subscribed by the general public, and all other purchasers paid the same price as the public.

We also note that the price received by the GOS for SSAB fell within the valuation range of the studies submitted in the 1989 public offering. In the case of the 1992 warrant offer, shares of SSAB had been publicly traded since 1989 (shortly after the public offering), and the market for SSAB shares on the Stockholm Stock Exchange at the time of the warrant offering was 145 SEK per share. This was in line with the “unit” offering price of 14,600 SEK, which provided the investor the opportunity to exercise these warrants for 100 shares in SSAB. See First Supplemental Response at 3. In essence, the investor spent 146 SEK per share for these warrant options, almost identical to the contemporaneous market value of SSAB at 145 SEK per share. Given the totality of these circumstances, we preliminarily determine that fair market value was paid for SSAB shares with regard to the 1989 and 1992 offerings.

Although we have concerns as to whether the 1987 sale to institutional investors produced a fair market value for SSAB absent any formal bidding process or objective analysis, we note that some of the shares acquired by the institutional investors in 1987 were subsequently offered to the public in an arm’s-length transaction for fair market value as part of the 1989 public offering. Therefore, most of the pre-1987-sale, non-recurring allocable subsidies are presumed to be extinguished as a result of the latter two offerings, and any remaining non-recurring, allocable subsidies would be *de minimis*. Accordingly, we need not address whether the 1987 sale to the six institutional investors was at fair market value.

## **Market Distortions**

Under the Department’s new privatization methodology, a party can obviate the arm’s-length and fair-market-value rebuttal to the baseline presumption by demonstrating (a) that the action or inaction of the government, in its capacities as regulator and policymaker, had severely distorted the broader market conditions at the time of the privatization, and (b) that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action or inaction.<sup>3</sup> The Modification Notice states that, where the evidence clearly shows this to be the case, the baseline presumption will not be rebutted and pre-sale subsidy benefits continue to be countervailable. According to the Modification Notice, in examining the evidence, the Department may consider various factors pertaining to (1) the basic market conditions (e.g., the interplay of supply and demand, access to information, safeguards against

---

<sup>3</sup> The Modification Notice characterizes broader market conditions as the economic, fiscal, legal and regulatory regimes necessary for the transaction price to reflect the subsidy benefit fairly and accurately. See Modification Notice, 68 FR at 37127 and at footnote 4.

collusive behavior, rule of law, enforcement of contracts and property rights), and (2) the government's use of its legal and fiscal prerogatives as the regulatory and policymaking authority (e.g., special duties and taxes, regulatory exemptions, subsidization or support).

United States Steel Corporations ("U.S. Steel") submitted on the record of this Section 129 Determination, a report sent to the Office of the U.S. Trade Representative alleging European market barriers to trade as a result of extensive cartelization within and outside the European steel market. See Request for the Inclusion of Steel in the National Trade Estimate Report on Foreign Trade Barriers in the European Union ("EU Trade Barrier Report"), dated December 17, 2001 and attached to U.S. Steel's August 5, 2003 letter to the Department.

According to this report, European cartels have established production quotas by product for each producer, mandatory minimum prices on some products, and a system of restrictive bilateral agreements with countries outside the European community. This report concludes that foreign market barriers foster the dumping of steel products into the United States and other third country markets.

The European Commission ("the EC") provided comments regarding market distortions in its August 14, 2003 letter to the Department. The EC notes that the WTO Appellate Body's criteria for the existence of market conditions were met in all 12 cases before the Department in these Section 129 Determinations. Specifically, the EC states that when all of these privatizations under review occurred, all of these conditions existed for a fair market value privatization: (1) unfettered interplay of supply and demand; (2) broad-based access to information; (3) decentralization of economic power; (4) an effective legal system guaranteeing the existence of private property; and, (5) the enforcement of contracts.

We agree with the EC that petitioner, U.S. Steel, has not provided sufficient evidence to indicate that either the European cartel or the GOS had severely distorted the broader market conditions at the time of the privatization. Additionally, the petitioners have not sufficiently demonstrated that the transaction price was "meaningfully different" from what it would otherwise have been, as required by the Modification Notice. See Modification Notice, 68 FR at 37127. The EU Trade Barrier Report does not directly deal with the issue of market distortions but focuses primarily on the effect that European market barriers to trade have on the dumping of steel products within the United States. In addition, Sweden was not a member of either the European Union or Eurofer, the association of European integrated mills, prior to January 1995, and any reference to their cooperation in the alleged European cartel does not occur until 1993, a year after the GOS relinquished all ownership and control in SSAB. Consequently, the petitioner has not sufficiently demonstrated that these activities of the European cartels distorted market conditions at the time of SSAB's privatization such that the relevant transaction price did not reflect fairly and accurately the subsidy benefits.

## **Conclusion**

The evidence presented on the record indicates that SSAB's privatization transactions involved in the 1989 public offering and the 1992 warrant offering were at arm's length and for fair

market value. However, due to the absence of an open bidding process and an objective analysis, we have concerns as to whether fair market value was paid in the initial 1987 sale to institutional investors even though we find this sale to be made at arm's length. Given that some of the shares acquired by the institutional investors in 1987 were subsequently offered to the public in an arm's-length transaction for fair market value, most of the pre-1987-sale, non-recurring allocable subsidies are presumed to be extinguished as a result of the subsequent sales in the latter two offerings. Any remaining non-recurring, allocable subsidies would be *de minimis*. Accordingly, we need not address whether the 1987 sale to the six institutional investors was at fair market value. As a result, we calculated the total estimated net countervailable rate and also found this rate to be *de minimis* for SSAB.

Based on our analysis, we are adopting the findings noted above and adjusting all related countervailing duty calculations accordingly. Upon direction from the USTR to implement our findings, we will publish our implementation of this Section 129 Determination in the Federal Register.

---

James J. Jochum  
Assistant Secretary  
for Import Administration

---

Date