

DEPARTMENT OF COMMERCE

International Trade Administration

[C-427-817, C-427-815, C-475-827, C-475-823, C-475-825, C-475-821, C-401-804, C-475-812]

Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products From the European Communities

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

ACTION: Notice of implementation under section 129 of the Uruguay Round Agreements Act; countervailing measures concerning certain steel products from the European communities.

SUMMARY: On January 8, 2003, the Dispute Settlement Body of the World Trade Organization adopted the report of the Appellate Body in *United States—Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/AB/R (December 9, 2002). Consistent with the Appellate Body's findings, and pursuant to section 129(b)(2) of the Uruguay Round Agreements Act, the Department of Commerce applied its modified privatization methodology with respect to the twelve countervailing duty determinations, involving certain steel products originating in various member states of the European Communities, at issue in the WTO dispute. The Department of Commerce is now implementing its "Section 129 Determinations" with respect to eight of those twelve determinations.

EFFECTIVE DATE: November 7, 2003.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (French and Italian determinations), Robert Copyak (German determination), or Dana Mermelstein (all other determinations), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4126, (202) 482-2209, (202) 482-1391, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part

351 (2003). Finally, citation to "section 129" refers to section 129 of the Uruguay Round Agreements Act ("URAA"), codified at 19 U.S.C. 3538.

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"). To implement the DSB findings in Certain Products, the Department changed its methodology for analyzing a privatization 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").

Subsequently, pursuant to section 129(b)(2) of the URAA,¹ the Department applied this modification with respect to twelve countervailing duty determinations involving certain steel products originating in various member states of the European Communities. 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, 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 accompanying the URAA (the "SAA"), H.R. Doc. No. 103-316, Vol. 1 (1994) at 1025, 1027, variously refers to such a determination by the Department as a "new," "second," and "different" determination.

On October 24, the Department issued twelve Section 129 Determinations.² See "Issues and Decision Memorandum for the Section 129 Determination: *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon Quality Steel Plate from France*" from Jeffrey May, Deputy Assistant

Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum for the Section 129 Determination: *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum for the Section 129 Determination: *Corrosion-Resistant Carbon Steel Flat Products from France; Final Results of Expedited Sunset Review of Countervailing Duty Order*" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memo: Section 129 Determination: *Final Results of Full Sunset Review of Cut-to-Length Carbon Steel Plate from Germany*" from Melissa Skinner, Office Director, Office of AD/CVD Enforcement VI, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements: *Certain Cut-to-Length Carbon-Quality Steel Plate from Italy*" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: *Countervailing Duty Administrative Review: Grain-Oriented Electrical Steel from Italy*" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet*

¹ 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.

² Copies of the "Issues and Decision Memoranda" detailing our Section 129 Determinations in each proceeding are available online at <http://ia.ita.doc.gov/> as well as in the Department's Central Records Unit in room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. All issues raised in the comments and rebuttal comments submitted by the parties concerning these Section 129 Determinations are addressed in these Issues and Decision Memoranda.

and Strip in Coils from Italy" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: *Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Italy*" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum: Section 129 Determination: *Final Results of Expedited Sunset Review of Cut-to-Length Carbon Steel Plate from Spain*" from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum: Section 129 Determination: *Final Results of the 1994 Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Sweden*" from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; "Issues and Decision Memorandum: Section 129

Determination: *Final Results of Expedited Sunset Review of Cut-to-Length Carbon Steel Plate from the United Kingdom*" from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003.

Subsequent to the Department's issuance of the Section 129 Determinations and pursuant to section 129(b)(3) of the URAA, the U.S. Trade Representative consulted with the Department and the Congressional committees concerning these determinations. Then, by letter dated November 7, 2003, the U.S. Trade Representative requested the Department, pursuant to section 129(b)(4) of the URAA, to implement the Section 129 Determinations with respect to the eight determinations that did not involve sunset reviews under section 751(c) of the Act.

Implementation

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.*

Because the U.S. Trade Representative declined to direct the Department to implement the revised determinations with regard to the four sunset reviews involved in the WTO dispute, we are not implementing these Section 129 Determinations. See sections 129(b)(4) and 129(c)(1)(B) of the URAA.

We are, however, implementing the remaining Section 129 Determinations as follows. With respect to the five countervailing duty orders noted immediately below, we are revising the cash deposit rates for certain companies to reflect the impact that privatization had on non-recurring, allocable subsidies. Thus, in accordance with section 129(c)(1)(B) of the URAA, we will instruct U.S. Customs and Border Protection ("CBP") to collect cash deposits of estimated countervailing duties in the percentage detailed below of the f.o.b. invoice price on all shipments of the companies noted below, entered, or withdrawn from warehouse, for consumption on or after November 7, 2003. In addition, three of the five cases noted below involve determinations in investigations. The "all others" cash deposit rates for these three cases shall be revised as follows.

Case #	Order	Company	Deposit (%)
C-401-804	Cut-to-Length Carbon Steel Plate from Sweden	SSAB	0.0
C-475-812	Grain-Oriented Electrical Steel from Italy	AST	1.07
C-475-823	Stainless Steel Plate in Coils from Italy	AST	1.62
		All Others	1.62
C-475-825	Stainless Steel Sheet and Strip in Coils from Italy	AST	1.62
		All Others	1.61
C-475-827	Cut-to-Length Carbon Steel Plate from Italy	ILVA/ILT	3.44
		All Others	3.44

With respect to the countervailing duty orders on certain cut-to-length carbon quality steel plate from France (C-427-817) and stainless steel sheet and strip in coils from France (C-427-815), consistent with our Section 129 Determinations, we are revoking those orders in whole. Accordingly, we will instruct CBP to discontinue suspension of liquidation under those orders of all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 7, 2003.

With respect to the countervailing duty order on stainless steel wire rod from Italy (C-475-821), consistent with

our Section 129 Determination, we are revoking this order with respect to the company CAS. Accordingly, we will instruct CBP to discontinue suspension of liquidation under this order of all of CAS's shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 7, 2003. The "all others" cash deposit rate under this order will be revised to 1.28 percent.

This notice of implementation is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: November 7, 2003.

James J. Jochum,
Assistant Secretary for Import
Administration.

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