

January 12, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Preliminary Determination Under Section 129 of the Uruguay
Round Agreements Act: Calculation of the Weighted-Average
Dumping Margins for Stainless Steel Sheet and Strip in Coils from
Mexico

Summary

Consistent with section 129 of the Uruguay Round Agreements Act (URAA), codified at 19 U.S.C. § 3538, which provides for determinations by the Department of Commerce (the Department) in connection with the findings of World Trade Organization (WTO) dispute settlement reports, the Department has calculated new rates with respect to the antidumping duty investigation on stainless steel sheet and strip in coils (stainless steel) from Mexico. If the U.S. Trade Representative, after consulting with the Department and Congress, directs the Department to implement this determination, in whole or in part, the antidumping duty order on stainless steel from Mexico will remain in force with a revised all others cash deposit rate.

Background

On June 8, 1999, the Department published in the Federal Register the final determination of sales at less than fair value in the antidumping duty investigation on stainless steel from Mexico. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico, 64 FR 30790 (June 8, 1999) (Final Determination). Following an affirmative injury determination issued by the United States International Trade Commission, the Department published the amended final determination and antidumping duty order on this product on July 27, 1999. See Notice of Amended Final Determination of Sales at Less Than

Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Mexico, 64 FR 40560 (July 27, 1999) (Amended Final Determination and Order).

Subsequently, the Government of Mexico requested the establishment of a WTO dispute settlement panel (the Panel) to consider, among other things, various aspects of the Department's Amended Final Determination and Order. In its report circulated on December 20, 2007, the Panel found the Department acted inconsistently with Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement). See United States – Final Anti-Dumping Measures on Stainless Steel from Mexico (WT/DS344/R) (Panel Report), para. 7.63. On May 20, 2008, the WTO Dispute Settlement Body (DSB) adopted the Panel Report, as modified by United States - Final Anti-dumping Measures on Stainless Steel from Mexico (WT/DS344/AB/R) (Appellate Body Report).¹ On June 2, 2008, the United States informed the DSB that it intends to comply with its WTO obligations in that dispute.

Section 129 of the URAA provides for determinations issued by the Department in connection with the findings of WTO dispute settlement panels or the Appellate Body. Specifically, section 129(b)(2) of the URAA provides that “notwithstanding 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. See 19 U.S.C. § 3538(b)(2). The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA) variously refers to such a determination by the Department as a “new,” “second,” and “different” determination. See SAA at 1025, 1027. This determination is subject to judicial review separate and apart from judicial review of the Department's original determination. See 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 of the URAA applies only with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which the U.S. Trade Representative directs the Department to implement that determination. Thus, such determinations have prospective effect only. See section 129(c)(1) of the URAA.

¹ The Government of Mexico appealed certain issues covered in the Panel Report, all of which pertained to administrative reviews. Therefore, the issues discussed in the Appellate Body Report do not relate to the DSB's findings with respect to the Department's Amended Final Determination and Order in this case.

Panel Findings and Conclusions

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

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

In making its findings, the Panel considered the reasoning of the Appellate Body in United States – Final Dumping Determination on Softwood Lumber from Canada (WT/DS264/AB/R), adopted August 31, 2004 (Softwood Lumber from Canada). In Softwood Lumber from Canada the Appellate Body found that, when an investigating authority utilizes the average-to-average comparison methodology during the investigation phase and engages in multiple comparisons of EP and NV, the margin of dumping for the product in question must reflect the results of all comparisons, including comparisons where the EP is greater than the NV for individual models. Id., at para. 101. Accordingly, the Appellate Body found the Department acted inconsistently with Article 2.4.2 of the Antidumping Agreement in the less-than-fair-value investigation of softwood lumber from Canada. Id., at para. 117. The Panel found the issue in this case of comparing weighted-average NVs to weighted-average EPs or CEPs in investigations to be identical to that addressed in Softwood Lumber from Canada, and while expressly declining to follow certain aspects of the Appellate Body’s reasoning, found the Department acted inconsistently with the United States’ obligations under Article 2.4.2 of the Antidumping Agreement by using zeroing in the investigation on stainless steel from Mexico. See Panel Report, at para. 7.60 and 7.63.

Implementation

We have preliminarily recalculated the weighted-average dumping margins at issue in the antidumping duty investigation on stainless steel from Mexico by applying the calculation methodology described in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification (Final Modification), 71 FR 77722 (December 27, 2006) (stating the Department will normally calculate weighted-average dumping margins in investigations using average-to-average comparisons, and in doing so the Department will provide offsets for non-dumped comparisons). As a result of the changes to the calculations, we have determined the following dumping margins exist for companies for which a company specific weighted-average dumping margin was calculated in the Amended Final Determination and Order:

<u>Manufacturer/Exporter</u>	<u>Final Results</u> ²	<u>Recalculated Margins</u>
ThyssenKrupp Mexinox S.A. de C.V. ³	30.85 percent	30.69 percent
All Others	30.85 percent	30.69 percent

Interested Party Comments

Interested parties may submit case briefs on this preliminary determination under section 129 of the URAA no later than February 12, 2009. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than February 23, 2009. Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue and (2) a brief summary of the argument. Interested parties may request a hearing on the issues raised in the case and rebuttal briefs no later than February 12, 2009. Any public hearing, if requested, will be held at a time and location to be determined by the Department.

² See Amended Final Determination and Order, 64 FR at 40562.

³ This company was included in the less-than-fair-value investigation under the name of its predecessor, Mexinox S.A. de C.V. However, the Department subsequently made a formal successor-in-interest finding with respect to this company. See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Changed Circumstances Antidumping Duty Administrative Review, 67 FR 48878 (July 26, 2002).

RECOMMENDATION

In light of the Panel's report, and pursuant to section 129 of the URAA, we recommend preliminarily determining to apply the methodology in the Final Modification and adopt the above-referenced recalculated weighted-average dumping margins.

Agree _____ Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

(Date)