

March 12, 2010

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Final Results of Proceeding Under Section 129 of the Uruguay
Round Agreements Act (URAA): Antidumping Measures on
Chlorinated Isocyanurates from Spain

SUBJECT: Issues and Decision Memorandum for the Final Results

Summary

This memorandum addresses the issues raised by the European Commission in the above-referenced proceeding.

Background

The Department issued its preliminary results in this proceeding on December 17, 2009. See Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled “Redetermination of the Weighted-Average Dumping Margin” (Preliminary Results).

The European Commission submitted comments on the Preliminary Results. We did not receive any other comments, or a request for a hearing.

Discussion of the Issue

Comment 1: Whether the Department’s Section 129 Proceeding Should Recalculate Margins in Subsequent Administrative Reviews

The European Commission (EC) submitted on the record of this section 129 proceeding, a letter commenting that the Preliminary Results, and three other preliminary section 129 results concurrently issued by the Department, improperly cover only the Department determinations in

the four separate original antidumping investigations.¹ The EC asserts that the subsequent administrative reviews fall within the scope of implementation and, thus, the relevant dumping margins in those reviews should be recalculated without zeroing. Similarly, the EC argues that the preliminary section 129 results improperly cover four of the eighteen antidumping cases challenged in the DS350 dispute.²

The EC states that, regarding four of the cases challenged in the DS350 dispute, the Appellate Body explicitly ruled the use of zeroing to be World Trade Organization (“WTO”) inconsistent in all future reviews, and that the established WTO case law makes clear that reviews conducted subsequent to the challenged measure must be free of zeroing. These issues, argues the EC, should be addressed within the section 129 results.

Finally, the EC argues that the United States is required at the end of the reasonable period of time to recalculate cash deposit rates for the cases at issue and must only liquidate duties at non-zeroed rates. The EC argues that these issues should also be included within the section 129 results.

The Department received no other comments on the Preliminary Results in this section 129 proceeding.

Department’s Position

The Department has determined not to make changes to the preliminary results in this section 129 proceeding. We note that the EC has not commented upon any substantive finding within the Department’s Preliminary Results. In particular, the EC does not argue that the Department’s dumping margins in the Preliminary Results are inaccurate or improper or that such margins should be changed in any way in the Department’s final section 129 results. Rather, the EC’s comments involve only the scope of this section 129 proceeding, and the three concurrent section 129 proceedings. Accordingly, the Department has made no change to its preliminary margins for this final section 129 results.

With respect to the EC’s comment that the Department should expand the scope of this section

¹ The four antidumping investigations are the antidumping investigations of Purified Carboxymethylcelulose from Finland, the Netherlands, and Sweden, and Chlorinated Isocyanurates from Spain. See Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland, 70 FR 28279 (May 17, 2005); Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from the Netherlands, 70 FR 28275 (May 17, 2005); Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Sweden, 70 FR 28278 (May 1, 2005); and, Chlorinated Isocyanurates from Spain: Notice of Final Determination of Sales at Less Than Fair Value, (Final Determination) 70 FR 24506 (May 10, 2005). See, also Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden, 70 FR 39734 (July 11, 2005); and, Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order, (Order) 70 FR 36562 (June 24, 2005).

² See United States—Continued Existence and Application of Zeroing Methodology, WT/D350/R.

129 proceeding to address other determinations at issue in the DS350 dispute, the Department disagrees that this proceeding is an appropriate forum in which to address determinations not identified in the USTR's request to the Department pursuant to section 129.³ Pursuant to section 129 of the Uruguay Round Agreements Act, the USTR directed the Department to issue a determination that would render the Department's determinations in the four original antidumping investigations not inconsistent with the findings of the Dispute Settlement Body ("DSB") of the WTO. Consequently, the scope of this section 129 proceeding, and the three concurrent proceedings, properly encompasses only the Department's determinations in those four original antidumping investigations. Additionally, because the Department is only recalculating the investigation rates in these section 129 proceedings, the issue of liquidation and the timing thereof, raised by the EC, is inapposite.

Final Antidumping Margins

The redetermined margins, unchanged from the Preliminary Results, are as follows:

<u>Manufacturer/Exporter</u>	<u>Final Determination Margin⁴</u>	<u>Redetermined Margin⁵</u>
Aragonesas Industrias y Energia S.A. ⁶ /		
Aragonesas Delsa S.A.	24.83%	24.83%
All Others	24.83%	24.83%

³ See Memorandum from Ronald Kirk to Gary Locke, dated November 25, 2009.

⁴ See Order.

⁵ As we explained in the Preliminary Results, because no negative comparison results occurred in calculating the weighted-average dumping margin, no comparison results were set to zero in the original Final Determination and no offsets were generated in the redetermined margin calculation.

⁶ This company was included in the less-than-fair-value investigation under the name of its predecessor, Aragonesas Delsa S.A.. The Department made a formal successor-in-interest finding with respect to these companies in the 2004-2006 administrative review. See Chlorinated Isocyanurates from Spain: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 37189, 37191 (July 9, 2007) (unchanged in the Final Results).

Recommendation

In light of the Panel's findings, we recommend these results which, if implemented, would render our original determination not inconsistent with the recommendations and rulings of the DSB by applying the methodology in the Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Duty Investigation; Final Modification, 71 FR 77722 (December 27, 2006), and adopting the above-referenced recalculated weighted-average dumping margins.

Agree_____ Disagree_____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration