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DEPARTMENT OF COMMERCE

International Trade Administration

A-580-831 and A-580-834

Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Stainless Steel Plate in Coils From the Republic of Korea; and Partial Revocation of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From the Republic of Korea

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

SUMMARY: On November 16, 2011, the U.S. Trade Representative (“USTR”) instructed the Department of Commerce (“the Department”) to implement its determination under section 129 of the Uruguay Round Agreements Act (“URAA”) regarding the investigation of stainless steel plate in coils from the Republic of Korea (“SSPC”) and stainless steel sheet and strip from the Republic of Korea (“SSSS”). The Department issued its determination on November 4, 2011, regarding the offsetting of dumped comparisons with non-dumped comparisons when making average-to-average comparisons of export price and normal value in the investigation challenged by the Republic of Korea before the World Trade Organization (“WTO”) in United States – Use of Zeroing in Antidumping Measures Involving Products from Korea (DS402). The Department is now implementing this determination.

DATES: The effective date of this determination is November 16, 2011

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Lori Apodaca, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6905, or (202) 482-4551, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 2011, the Department informed interested parties that it was initiating a proceeding under section 129 of the URAA to implement the findings of the WTO dispute settlement panel in United States – Use of Zeroing in Antidumping Measures Involving Products from Korea (DS402) (“Panel Report”). On September 26, 2011, the Department issued the memorandum entitled “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”), in which the Department recalculated the weighted-average dumping margins from the antidumping investigations of SSPC and SSSS from Korea¹ 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). The Department invited interested parties to comment on the Preliminary 129 Results. After receiving comments and rebuttal comments from the interested parties, the Department issued its final results for the section 129 determinations on November 4, 2011.²

In its November 16, 2011, letter, the USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the November 4, 2011, determination have been

¹ 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”), as amended by 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).

² See Memorandum from Christian Marsh to Paul Piquado, “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,” dated November 4, 2011 (“Final 129 Results Memo”).

completed. On November 16, 2011, in accordance with section 129(b)(4) of the URAA, the USTR directed the Department to implement these determinations.

NATURE OF THE PROCEEDING

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and 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 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 report.³ 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.⁴ After consulting with the Department and the appropriate congressional committees, the USTR may direct the Department to implement, in whole or in part, the new determinations made under section 129 of the URAA.⁵ Pursuant to section 129(c) of the URAA, the new determinations shall apply with respect to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which the USTR directs the Department to implement the new determinations.⁶ The new determinations are subject to judicial review separate and apart from judicial review of the Department’s original determination.⁷

ANALYSIS OF COMMENTS RECEIVED

The issues raised in the case and rebuttal briefs submitted by interested parties are addressed in the Final 129 Results Memo, which is hereby adopted by this notice. A list of the issues, which the parties raised and we addressed in the Final 129 Results Memo, is attached to

³ See 19 U.S.C. 3538(b)(2).

⁴ See SAA at 1025, 1027.

⁵ See 19 U.S.C. 3538(b)(4).

⁶ See 19 U.S.C. 3538(c).

⁷ See 19 U.S.C. 1516a(a)(2)(B)(vii).

this notice as Appendix I. The Final 129 Results Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Final 129 Results Memo can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed Final 129 Results Memo and the electronic versions of the Final 129 Results Memo are identical in content.

FINAL ANTIDUMPING DUTY MARGINS

The recalculated margins, unchanged from the Prelim 129 Results, are as follows:

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

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

REVOCATION OF THE ORDER FOR STAINLESS STEEL PLATE IN COILS

Upon recalculation, Pohang Iron & Steel Co., Ltd. no longer has a positive dumping margin. Because the changes to the margin calculations result in no margins for the mandatory respondent, the All-Others rate decreases to zero. Therefore, the Department is revoking the Plate Order effective November 16, 2011, the date upon which USTR directed the Department to implement its final results. Accordingly, we will instruct U.S. Customs and Border Protection ("CBP") to liquidate without regard to antidumping duties entries of the subject merchandise

entered, or withdrawn from warehouse, for consumption on or after that date and to discontinue the collection of cash deposits for entries of stainless steel plate in coils from Korea.

PARTIAL REVOCATION OF THE ORDER FOR STAINLESS STEEL SHEET IN COILS

Since the weighted-average margin percentage for Incheon Iron & Steel Co., Ltd. continues to be zero, Incheon continues to be excluded from the Sheet Order. Further, because the Department has recalculated a dumping margin of zero percent for Pohang Iron & Steel Co., Ltd., the Department is revoking the Sheet Order with respect to Pohang Iron & Steel Co., Ltd., for entries made on or after November 16, 2011. Accordingly, the Department will instruct CBP to liquidate without regard to antidumping duties, Pohang Iron & Steel Co., Ltd.'s entries of SSSS 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 Pohang Iron & Steel Co., Ltd.

However, in the 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. 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.⁸ In addition, the Department must determine an appropriate All-Others dumping margin pursuant to section 735(c)(5) of the Tariff Act of 1930, as amended (“the Act”). The Department determines that a reasonable method for determining the All-Others dumping margin is a simple average of the adverse-facts available dumping margin and the calculated zero dumping margin, because there are no other calculated dumping margins from which to assign an All-Others dumping

⁸ See, e.g., 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 we stated that “based on comparisons of EP to adjusted CV, estimated margins range from 18.40 to 58.79 percent”).

margin.⁹ This is consistent with our past practice in the 2007 Section 129 Determinations.¹⁰

The All-Others dumping margin is now 19.60 percent. Consequently, because the Taihan Electric Wire Co., Ltd. and the All-Others dumping margins are above de minimis, we will not revoke the Sheet Order in its entirety.

We will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all other exporters or producers, except for Inchon Iron & Steel Co., Ltd. and Pohang Iron & Steel Co., Ltd., as stated above. We will instruct CBP to continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice. The All-Others rate of 19.60 percent established in this section 129 determination will be the new cash-deposit rate on or after November 16, 2011, for all exporters of subject merchandise for which the Department has not calculated an individual rate.

These amended final determinations are issued and published in accordance with section 129(c)(2)(A) of the URAA.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

November 25, 2011 _____
Date

⁹ See section 735(c)(5)(B) of the Act.

¹⁰ See 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 2526, 25262-63 (May 4, 2007) (“2007 Section 129 Determinations”) where the Department calculated a simple average of existing AFA 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.

Appendix I

DISCUSSION OF THE ISSUES:

Plate and Sheet

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

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