



A-423-808, A-449-804,
A-405-803, A-475-818,
A-421-811, A-469-807,
A-475-703, A-588-845
Section 129 Proceedings
Public Document

March 23, 2012

MEMORANDUM

TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *CPM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Results for the Section 129 Proceedings: Stainless Steel Plate in Coils from Belgium, Steel Concrete Reinforcing Bars from Latvia, Purified Carboxymethylcellulose from Finland, Certain Pasta from Italy, Purified Carboxymethylcellulose from the Netherlands, Stainless Steel Wire Rod from Spain, Granular Polytetrafluoroethylene Resin from Italy, Stainless Steel Sheet and Strip in Coils from Japan

Summary

Consistent with section 129 of the Uruguay Round Agreements Act (“URAA”),¹ the Department has recalculated cash deposit rates currently in effect for certain companies whose merchandise is subject to eight different antidumping duty orders involving certain products originating from various member states of the European Union (“EU”) and Japan, in response to the findings adopted by the DSB in *US – Zeroing (EC)*,² *US – Continued Zeroing (EC)*,³ and *US – Zeroing*

¹ Citation to “section 129” refers to section 129 of the Uruguay Round Agreements Act, codified at 19 USC 3538. Section 129 provides for determinations by the Department of Commerce (“the Department”) to address the findings of World Trade Organization (“WTO”) dispute settlement panels and the Appellate Body adopted by the WTO Dispute Settlement Body (“DSB”).

² *United States-Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”) (“US-Zeroing (EC)”)*, WT/DS294/R, WT/DS294/AB/R, adopted May 9, 2006; *United States-Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”), Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS294/AB/RW, adopted June 11, 2009.



(Japan).⁴

Background

On February 13, 2012, the U.S. Trade Representative (“USTR”) requested that, pursuant to section 129 of the URAA, the Department render the cash deposit rates currently in effect for certain companies not inconsistent with the DSB’s recommendations and rulings in *US – Zeroing (EC)*, *US – Continued Zeroing (EC)*, and *US – Zeroing (Japan)*.⁵ Accordingly, the Department is conducting these section 129 proceedings to recalculate current cash deposit rates for the specified companies listed below:

Companies	Proceeding	Basis of Current Cash Deposit Rate
ArcelorMittal Stainless Belgium N.V. ⁶	Stainless Steel Plate in Coils from Belgium A-423-808	<i>Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review</i> , 74 FR 53468 (October 19, 2009).
Joint Stock Company Liepajas Metalurgs	Steel Concrete Reinforcing Bars from Latvia A-449-804	<i>Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia</i> , 71 FR 74900 (December 13, 2006)
CP Kelco ⁷	Purified Carboxymethylcellulose from Finland A-405-803	<i>Purified Carboxymethylcellulose From Finland; Notice of Final Results of Antidumping Duty Administrative Review</i> , 75 FR 73035 (November 29, 2010).

³ *United States-Continued Existence and Application of Zeroing Methodology (“US-Continued Zeroing (EC)”)*, WT/DS350/R, WR/DS350/AB/R, adopted Feb. 19, 2009.

⁴ *United States-Measures Related to Zeroing and Sunset Reviews*, WT/DS322/R, WT/DS322/AB/R, adopted Jan. 23, 2007; *United States-Measures Relating to Zeroing and Sunset Reviews, Recourse to Article 21.5 of the DSU by Japan*, WT/DS322/AB/RW, adopted August 31, 2009 (collectively “*US-Zeroing (Japan)*”).

⁵ See letter from Ambassador Ron Kirk to The Honorable John Bryson, Secretary of Commerce, dated February 13, 2012, (“USTR letter”).

⁶ The Department preliminarily determined that Aperam Stainless Belgium N.V. is the successor-in-interest to ArcelorMittal Stainless Belgium N.V. *Stainless Steel Plate in Coils from Belgium: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 76 FR 66271 (October 26, 2011). The Department’s final determination is due by April 17, 2012.

⁷ The full name of this company is CP Kelco Oy.

Companies	Proceeding	Basis of Current Cash Deposit Rate
Garofalo ⁸ Tomasello Agritalia Erasmus Indalco Labor PAM P.A.P. Afeltra Fabianelli Riscossa Rustichella	Certain Pasta from Italy A-475-818	<i>Certain Pasta From Italy: Notice of Final Results of the Fourteenth Antidumping Duty Administrative Review</i> , 76 FR 76937 (December 9, 2011).
PAM (for non-selected rate) Garofalo (for non-selected rate) IAPC/Pasta Lensi S.r.l. ⁹ Pagani ¹⁰		<i>Certain Pasta from Italy: Notice of Amended Final Results of the Twelfth Antidumping Duty Administrative Review</i> , 75 FR 11116 (March 10, 2010).
Divella ¹¹ Pasta Zara Gaetano Felicetti		<i>Certain Pasta From Italy: Notice of Final Results of the Eleventh Administrative Review and Partial Rescission of Review</i> , 73 FR 75400 (December 11, 2008).

⁸ The full names of the companies concerning this review are: Pastificio Lucio Garofalo S.p.A. (“Garofalo”), Molino e Pastificio Tomasello S.p.A. (“Tomasello”), Agritalia S.r.L. (“Agritalia”), Domenico Paone fu Erasmo S.p.A. (“Erasmo”), Industria Alimentare Colavita, S.p.A. (“Indalco”), Labor S.r.L. (“Labor”), PAM S.p.A. and its affiliate, Liguori Pastificio dal 1820 S.p.A. (“PAM”), P.A.P. SNC Di Paziienza G.B. & C. (“P.A.P”), Premiato Pastificio Afeltra S.r.L. (“Afeltra”), Pastificio Fabianelli S.p.A. (“Fabianelli”), Pastificio Riscossa F.lli Mastromauro S.p.A. (“Riscossa”), and Rustichella d’Abruzzo S.p.A (“Rustichella”).

⁹ Pasta Lensi S.r.l. was found to be the successor-in-interest to Italian American Pasta Company Italia S.r.l. (IAPC) for purposes of determining antidumping (and countervailing duty) liability. *See Notice of Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta From Italy*, 68 FR 41553 (July 17, 2003).

¹⁰ The full name of this company is Pastificio Fratelli Pagani S.p.A. (Pagani)

¹¹ The full names of the companies concerning this review are: F. Divella SpA (“Divella”), Pasta Zara SpA 1 and Pasta Zara SpA 2 (collectively, “Pasta Zara”), Pastificio Di Martino Gaetano & F. Ili SrL (“Gaetano”), and Pastificio Felicetti SrL (“Felicetti”).

Companies	Proceeding	Basis of Current Cash Deposit Rate
Atar ¹² Corticella/Combattenti		<i>Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy, 72 FR 7011 (February 14, 2007).</i>
Barilla ¹³		<i>Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy and Determination to Revoke in Part, 70 FR 71464 (November 29, 2005).</i>
Russo/Di Nola ¹⁴		<i>Notice of Final Results of the Seventh Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part, 70 FR 6832 (February 9, 2005).</i>
La Molisana ¹⁵		<i>Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (December 13, 2000).</i>
Akzo Nobel B.V. ¹⁶	Purified Carboxymethylcellulose from the Netherlands A-421-811	<i>Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review, 76 FR 66687 (October 27, 2011).</i>
CP Kelco BV		<i>Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review, 75 FR 77829 (December 14, 2010).</i>
Roldan S.A.	Stainless Steel Wire Rod from Spain A-469-807	<i>Stainless Steel Wire Rod from Spain; Final Results of Antidumping Duty Administrative Review, 66 FR 10988 (February 21, 2001).</i>

¹² The full names of the companies concerning this review are: Atar, S.r.L. (“Atar”) and Corticella Molini e Pastifici S.p.A. and its affiliate Pasta Combattenti S.p.A. (collectively, “Corticella/Combattenti”).

¹³ The full name of this company is G.e.R. Barilla Fratelli, S.p.A.

¹⁴ The full name of this collapsed entity is Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A.

¹⁵ The full name of this company is La Molisana Industrie Alimentari S.p.A.

¹⁶ The full name of this company is Akzo Nobel Functional Chemicals B.V. In the USTR Letter, the first word in the name of this company was erroneously spelled “Azko” instead of “Akzo.”

Companies	Proceeding	Basis of Current Cash Deposit Rate
Solvay Solexis S.p.A. (formerly Ausimont S.p.A.) ¹⁷	Granular Polytetrafluoroethylene Resin from Italy A-475-703	<i>Granular Polytetrafluoroethylene Resin From Italy: Amended Final Results of Antidumping Duty Administrative Review</i> , 74 FR 19931 (April 30, 2009).
Nippon Kinzoku Co., Ltd.	Stainless Steel Sheet and Strip in Coils from Japan A-588-845	<i>Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review</i> , 75 FR 6631 (February 10, 2010).

The current cash deposit rates being applied to imports from the companies listed above are based on the weighted-average dumping margins calculated by the Department in the antidumping duty administrative reviews identified above. The Department determined the weighted-average dumping margins by comparing normal value with either the export price or constructed export price of comparable merchandise, as determined in the final results or amended final results of the relevant underlying review. As was its practice prior to the modification adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (“*Final Modification for Reviews*”), the Department compared normal value with export price using the average-to-transaction method, which involved a comparison of the weighted-average normal value¹⁸ to the export price of individual transactions for comparable merchandise. When aggregating the results of these comparisons to determine the weighted-average dumping margin for each company, the Department did not offset the results of the comparisons for which export price or constructed export price was less than normal value by the results of comparisons for which export price or constructed export price exceeded normal value.¹⁹

This methodology was challenged as inconsistent with the obligations of the United States under the WTO General Agreement on Tariffs and Trade 1994 (“GATT 1994”) and the Agreement on Implementation of Article VI of the GATT 1994 (“Antidumping Agreement”). Subsequently, the WTO Appellate Body in *US – Zeroing (EC)*, *US – Zeroing (Japan)* and *US – Continued Zeroing (EC)* found the denial of offsets for non-dumped comparisons in antidumping duty

¹⁷ See *Granular Polytetrafluoroethylene Resin From Italy: Final Results of Changed Circumstances Review*, 68 FR 25327 (May 12, 2003).

¹⁸ In addition to weighted-average comparison market prices, the Department may base normal value on constructed value or appropriately valued factors of production, where required by law or regulation.

¹⁹ Section 771(35)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the dumping margin as the amount by which normal value “exceeds” export price (or constructed export price). Section 771(35)(B) of the Act defines the weighted-average dumping margin as the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export or constructed export price of that exporter or producer.

reviews to be inconsistent with Article 9.3 of the Antidumping Agreement and Article VI:2 of the GATT 1994, either “as such,” or “as applied” in certain reviews, or both.²⁰ The DSB adopted the dispute settlement panel reports, as modified by the WTO Appellate Body, which found the denial of offsets for non-dumped comparisons in reviews to be inconsistent with the United States’ WTO obligations. Following these adverse findings, the USTR informed the DSB that the United States intended to comply with its WTO obligations in these disputes.²¹

Consequently, pursuant to section 123(g)(1) of the URAA, the Department published the *Final Modification for Reviews*, in which the Department explained that it will calculate weighted-average dumping margins in a manner which provides offsets for non-dumped comparisons while using monthly average-to-average comparisons in reviews, paralleling the WTO-consistent methodology that the Department applies in original investigations.²² In these section 129 proceedings, the Department is recalculating the current cash deposit rates for the companies listed above, using the revised calculation methodology described in *Final Modification for Reviews*.

Section 129 of the URAA provides for determinations issued by the Department to implement the findings of WTO dispute settlement panels or the Appellate Body. Specifically, section 129(b)(2) 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 USC 3538(b)(2). The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (“SAA”) refers variously to such a determination by the Department as a “new,” “second,” and “different” determination.²³ This determination may be subject to judicial review separate and apart from judicial review of the Department’s original determination.²⁴

In addition, section 129(c)(1)(B) of the URAA provides that an implemented determination pursuant to 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. Thus, such determinations have prospective effect only.

²⁰ *US-Zeroing (EC)*, WT/DS294/R, WT/DS294/AB/R, para. 263 (a)(i); *US-Zeroing (Japan)*, WT/DS322/R, WT/DS322/AB/R, para. 190 (c) & 190(e); *US-Continued Zeroing (EC)*, WT/DS350/R, para. 8.1(e), WT/DS350/AB/R, paras. 395 (a)(v), 395 (d) & 395 (e)(ii).

²¹ *See* WT/DSB/M/213 at para. 2 (minutes of U.S. statement at May 30, 2006 DSB meeting), WT/DSB/M/226 at para. 34 (minutes of U.S. statement at Feb. 20, 2007 DSB meeting), WT/DSB/M/251 at para. 9 (minutes of U.S. statement at June 2, 2008 DSB meeting), WT/DSB/M/266 at para. 57 (minutes of U.S. statement at March 20, 2009 DSB meeting).

²² *Final Modification for Reviews* at 8102.

²³ *See* SAA at 1025, 1027.

²⁴ *See* 19 USC 1516a(a)(2)(B)(vii).

Results of Preliminary Recalculation

We have preliminarily recalculated the cash deposit rates in effect for the companies listed below by applying the methodology described in *Final Modification for Reviews*. For each company listed below, the Department has placed on the record of these proceedings the final margin calculation program(s) from the underlying administrative reviews, along with the original final sales and, where applicable, cost databases. Additionally, the Department has placed on the record the margin calculation program(s) for the recalculations made in these proceedings and calculation memoranda. In order to recalculate the cash deposit rate, the Department made monthly average-to-average comparisons of normal value with either export prices or constructed export prices, as determined in the results of the underlying review. For these proceedings, the Department only changed the program to the extent necessary to properly implement the use of the new methodology described in *Final Modification for Reviews*.

For certain companies listed below, the current cash deposit rate in effect for those companies is based on a simple average of the cash deposit rates calculated for the mandatory respondents selected in the identified administrative review. For those companies, we continue to follow the same approach in these section 129 proceedings, and have determined a new cash deposit rate based on the simple average of the recalculated cash deposit rates for the mandatory respondents. Accordingly, for the 2007-2008 antidumping administrative review of Pasta from Italy, the recalculated cash deposit rates for IAPC/Pasta Lensi and Pagani (non-selected respondents) were based on the simple average of the recalculated cash deposit rates for the selected mandatory respondents in that administrative review, PAM and Garofalo. We note that the Department recalculated the 2007-2008 cash deposit rates for PAM and Garofalo only for the purposes of recalculating the cash deposit rate for the two non-selected companies in that review period. The recalculated cash deposit rates for PAM and Garofalo are based on the results of this section 129 proceeding for the underlying 2009-2010 administrative review

As a result of applying the methodology announced in the *Final Modification for Reviews*, we have determined that the following prospective cash deposit rates exist for these companies:

Antidumping Order (Review Period)	Manufacturer/ Exporter	Cash Deposit Rate ²⁵	
		Underlying Administrative Review	129 Proceeding Preliminary Results
Stainless Steel Plate in Coils from Belgium (2007/08)	ArcelorMittal Stainless Belgium N.V.	6.57%	0.00%

²⁵ The recalculations for the cash deposit rates are detailed in separate calculation memoranda and computer programs on the record of each 129 proceeding segment.

Antidumping Order (Review Period)	Manufacturer/ Exporter	Cash Deposit Rate²⁵	
		Underlying Administrative Review	129 Proceeding Preliminary Results
Steel Concrete Reinforcing Bars from Latvia (2004/05)	Joint Stock Company Liepajas Metalurgs	5.94%	4.87%
Purified Carboxymethylcellulose from Finland (2008/09)	CP Kelco Oy	6.10%	0.00%
Certain Pasta from Italy (2009/10)	Pastificio Lucio Garofalo S.p.A.	3.20%	0.00%
	Molino e Pastificio Tomasello S.p.A.	4.18%	0.00%
	Agritalia S.r.L.	3.57%	0.00%
	Domenico Paone fu Erasmus S.p.A.	3.57%	0.00%
	Industria Alimentare Colavita, S.p.A.	3.57%	0.00%
	Labor S.r.L.	3.57%	0.00%
	PAM S.p.A. and Liguori Pastificio dal 1820 S.p.A.	3.57%	0.00%
	P.A.P. SNC Di Pazienza G.B. & C.	3.57%	0.00%
	Premiato Pastificio Afeltra S.r.L.	3.57%	0.00%
	Pastificio Fabianelli S.p.A.	3.57%	0.00%
	Pastificio Riscossa F.lli Mastromauro S.p.A.	3.57%	0.00%
	Rustichella d' Abruzzo S.p.A.	3.57%	0.00%
	Certain Pasta from Italy (2007/08)	PAM S.p.A. and Liguori Pastificio dal 1820 S.p.A.	8.54%
Pastificio Lucio Garofalo S.p.A.		15.87%	14.63%
Pasta Lensi S.r.L.		12.21%	10.06%

Antidumping Order (Review Period)	Manufacturer/ Exporter	Cash Deposit Rate ²⁵	
		Underlying Administrative Review	129 Proceeding Preliminary Results
	Pastificio Fratelli Pagani S.p.A.	12.21%	10.06%
Certain Pasta from Italy (2006/07)	F. Divella S.p.A.	2.83%	0.00%
	Pasta Zara S.p.A. 1 and Pasta Zara S.p.A. 2	9.71%	0.00%
	Pastificio Di Martino Gaetano & F.lli S.r.L.	6.27%	0.00%
	Pastificio Felicetti S.r.L.	6.27%	0.00%
Certain Pasta from Italy (2004/05)	Atar, S.r.L.	18.18%	18.13%
	Corticella Molini e Pastifici S.p.A. and Pasta Combattenti S.p.A.	1.95%	0.00%
Certain Pasta from Italy (2003/04)	Barilla G.e.R. Fratelli S.p.A.	20.68%	19.55%
Certain Pasta from Italy (2002/03)	Pastificio Carmine Russo S.p.A. and Pastificio Di Nola S.p.A.	7.36%	0.00%
Certain Pasta from Italy (1998/99)	La Molisana Industrie Alimentari S.p.A.	5.26%	0.00%
Purified Carboxymethylcellulose from the Netherlands (2009/10)	Akzo Nobel Functional Chemicals B.V.	3.57%	0.00%
Purified Carboxymethylcellulose from the Netherlands (2009/10)	CP Kelco B.V.	2.64%	0.00%
Stainless Steel Wire Rod from Spain (1998/99)	Roldan S.A.	0.80%	0.00%
Granular Polytetrafluoroethylene Resin from Italy (2006/07)	Solvay Solexis S.p.A.	79.45%	79.45%

Antidumping Order (Review Period)	Manufacturer/ Exporter	Cash Deposit Rate ²⁵	
		Underlying Administrative Review	129 Proceeding Preliminary Results
Stainless Steel Sheet and Strip in Coils from Japan (2007/08)	Nippon Kinzoku Co., Ltd.	0.54%	0.00%

Interested Party Comments

We invite interested parties to submit case briefs and/or written comments no later than April 9, 2012, and to submit rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than April 16, 2012. We request parties who submit arguments to provide a statement of the issue and a brief summary of the argument. Interested parties may request a hearing on the issues discussed in the case and rebuttal briefs no later than April 9, 2012.^{26 27} A general-issues hearing, if requested, and any hearings regarding issues related solely to specific companies and products, if requested, will be held at the main Department building at a time and location to be determined.

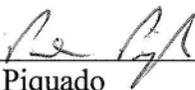
²⁶ All comments and submissions to the Department must be filed electronically using Import Administration's Antidumping Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the times and dates noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

²⁷ See <http://www.gpo.gov/fdsys/pkg/FR-2011-07-06/pdf/2011-16352.pdf> for details of the Department's Electronic Filing Requirements, which went into effect on August 5, 2011. Information on help using IAACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

RECOMMENDATION

In light of the dispute settlement panel and Appellate Body findings adopted by the DSB, we recommend applying the methodology in the *Final Modification for Reviews* and adopting the recalculated cash deposit rates listed above as not inconsistent with those findings for purposes of the preliminary results, pursuant to Section 129 of the URAA, in these proceedings.

Agree Disagree



Paul Piquado
Assistant Secretary
for Import Administration

23 MARCH 2012
(Date)