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Administrative Review
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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for AD/CVD Enforcement II

DATE: January 6, 2004

RE: Issues and Decision Memorandum: Final Results of the Administrative Review of the Countervailing Duty Order (CVD) on Certain Cut-to-Length Carbon Steel Plate from Mexico - Calendar Year 2001

Summary

On September 8, 2003, the Department of Commerce (the Department) published the preliminary results of the above-mentioned administrative review. See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico, (68 FR 52895) (Preliminary Results). Altos Hornos de Mexico S.A. de C.V. (AHMSA) is the sole respondent company covered by this review.

The “Analysis of Programs” and “Methodology and Background Information” sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s responses to the issues raised in the briefs. As a result of our analysis, we have not made changes to the net subsidy rate calculations from the Preliminary Results. We recommend that you approve the positions we developed in this memorandum.

Methodology and Background Information

I. Subsidies Valuation Information

A. Allocation Period

The Department used the Internal Revenue Service (IRS) Tables for the industry-specific average useful life (AUL) of assets in determining the allocation period for non-recurring subsidies, which is 15 years for the steel industry. See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico, 58 FR 37352, at 37355 (July 9, 1993) (Certain Steel from Mexico Investigation). Parties did not contest the Department's use of a 15-year AUL in this review.

B. Creditworthiness and Calculation of Discount Rate

In the Preliminary Results, we found AHMSA to be uncreditworthy for calendar year 2000. See the “Calculation of Discount Rate and Creditworthiness” section of the Preliminary Results. The comments received from interested parties did not warrant reconsideration of these findings. For further discussion of our creditworthy analysis, see Comment 3 below. Therefore, as in the Preliminary Results, we have constructed a benchmark interest rate for uncreditworthy companies, using the methodology described at 19 CFR 351.505(a)(3)(iii). We applied this benchmark to countervailable loans outstanding during the period of review (POR) that were issued during calendar year 2000.

II. Change-in-Ownership

In November 1991, the Government of Mexico (GOM) sold all of its ownership interest in AHMSA. Prior to privatization, AHMSA was almost entirely owned by the GOM. Since November 1991, the GOM has held no stock in AHMSA. We note that we are applying the Department's change-in-ownership methodology described below, which was in place prior to the Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125, 37138 (June 23, 2003) (Final Modification of Agency Practice Under Section 123). For further discussion of our decision, see Comment 7 in the “Analysis of Comments” section of these final results.

In accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in Delverde Srl v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g en banc denied (June 20, 2000) (Delverde III), the Department addresses this fact pattern by first determining whether the person who received the subsidies is, in fact, distinct from the person that produced the subject

merchandise exported to the United States during the POR. If the two are distinct, the original subsidies may not be attributed to the new producer/exporter. On the other hand, if the original subsidy recipient and the current producer/exporter are considered to be the same person, that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, in the latter case, we will determine that a “financial contribution” has been made by a government and a “benefit” has been conferred upon the “person” that is the firm under investigation. Assuming that the original subsidy had not been fully amortized under the Department’s allocation methodology as of the POR, the Department would continue to countervail the remaining benefits of that subsidy. See e.g., the “Change-in-Ownership” section of the Decision Memorandum that accompanied the Final Results of the Administrative Review of the Countervailing Duty Order (CVD) on Certain Cut-to-Length Carbon Steel Plate from Mexico - Calendar Year 1998, 66 FR 14549 (March 13, 2001) (1998 Review of CTL Plate).

In making the “same person” determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale entity to be the same person as the pre-sale entity if, based on the totality of the factors considered, we determine that the entity sold in the change-in-ownership transaction can be considered a continuous business entity because it was operated in substantially the same manner before and after the change-in-ownership. See the “Change-in-Ownership” Section of the Decision Memorandum that accompanied the 1998 Review of CTL Plate.

In the 1998 Review of CTL Plate, we found that the privatized AHMSA was essentially the same person as that which existed prior to the privatization as a separately-incorporated, GOM-owned steel producer of the same name. As a result of our analysis, we found the subsidies received by the pre-privatized AHMSA to be attributable to post-privatized AHMSA. See the “Application of Methodology” section of the Decision Memorandum that accompanied the 1998 Review of CTL Plate. No new information or evidence of changed circumstances has been submitted requiring us to reconsider our finding in this segment of the proceeding (i.e., calendar year 2001). Therefore, for purposes of these final results, we continue to find that the privatized AHMSA is essentially the same person as that which existed prior to the privatization. We further determine that allocable subsidies bestowed prior to AHMSA’s privatization continue to benefit AHMSA, to the extent that the benefit stream extends into the POR of this segment of the proceeding.¹

¹ On June 23, 2003, the Department published a notice stating that our practice regarding the “same person test” would be modified. See Final Modification of Agency Practice Under Section 123, 68 FR 37125. In that notice, we announced the prospective application of a new privatization methodology that would supercede the “same person test.” We further stated that the new methodology would only apply to segments of proceedings initiated on or after June 30, 2003. We note that this administrative review covering AHMSA’s entries during calendar year 2001 was initiated on September 25, 2002.

III. Inflation Methodology

In the underlying investigation, we determined, based on information from the GOM, that Mexico experienced significant inflation from 1983 through 1988. See Certain Steel from Mexico Investigation. Furthermore, in the administrative review covering calendar year 1997, we determined that Mexico, again, experienced significant, intermittent inflation during the period 1991 through 1997. See the “Inflation Methodology” section of the Issues and Decision Memorandum that accompanied Certain Cut-to-Length Carbon Steel Plate Final Results of Countervailing Duty Administrative Review, 65 FR 13368 (March 13, 2000) (1997 Review of CTL Plate). The findings for these years continued to be applied in the 1998 Review of CTL Plate. In accordance with past practice, because we found significant inflation in Mexico and because AHMSA adjusted for inflation in its financial statements, we made adjustments, where necessary, to account for inflation in the benefit calculations.

Because Mexico experienced significant inflation during only a portion of the 15-year allocation period, indexing for the entire period or converting the non-recurring benefits into U.S. dollars at the time of receipt (i.e., dollarization) for use in our calculations would have inflated the benefit from these infusions by adjusting for inflationary as well as non-inflationary periods. Thus, in the Certain Steel from Mexico Investigation, 58 FR at 37355, we used a loan-based methodology to reflect the effects of intermittent high inflation. The methodology we used in the Certain Steel from Mexico Investigation assumed that, in lieu of a government equity infusion/grant, a company would have had to take out a 15-year loan that was rolled over each year at the prevailing nominal interest rate. The benefit in each year of the 15-year period equaled the principal plus interest payments associated with the loan at the nominal interest rate prevailing in that year.

Because we assumed that an equity infusion/grant given was equivalent to a 15-year loan at the current rate in the first year, a 14-year loan at current rates in the second year and so on, the benefit after the 15-year period would be zero, just as with the Department's grant amortization methodology. Because nominal interest rates were used, the effects of inflation were already incorporated into the benefit. The use of this methodology was upheld in British Steel plc v. United States, 127 F.3d 1471 (Fed. Cir. 1997) (British Steel III).

In the Preliminary Results, we used the loan-based methodology from the Certain Steel from Mexico Investigation, described above, for all non-recurring, peso-denominated grants received since 1987. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of these findings. Thus, for the purposes of these final results, we have continued to use the benefit calculation methodology from the Certain Steel from Mexico Investigation for all non-recurring, peso-denominated grants received since 1987.

IV. Analysis of Programs

A. Programs Conferring Subsidies

1. GOM Equity Infusions

In the Preliminary Results, we found that this program conferred countervailable benefits on the subject merchandise. The comments received from interested parties did not warrant reconsideration of these findings. Accordingly, the net subsidy rate for this program, which is 0.96 percent ad valorem, remains unchanged from the Preliminary Results.

2. 1988 and 1990 Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructured Debt Owed to the GOM

In the Preliminary Results, we found that this program conferred countervailable benefits on the subject merchandise. The comments received from interested parties did not warrant reconsideration of these findings. Accordingly, the net subsidy for this program, which is 0.52 percent ad valorem, remains unchanged from the Preliminary Results.

3. Grants from the Mexican Institute for Steel Research (IMIS)

In the Preliminary Results, we found that this program conferred countervailable benefits on the subject merchandise. The comments received from interested parties did not warrant reconsideration of these findings. Accordingly, the net subsidy rate, which is 0.04 percent ad valorem, remains unchanged from the Preliminary Results.

4. Lay-off Financing from the GOM Bestowed in 1994

In the Preliminary Results, we found that this program conferred countervailable benefits on the subject merchandise. The comments received from interested parties did not warrant reconsideration of these findings. Accordingly, the net subsidy for this program, which is 0.52 percent ad valorem, remains unchanged from the Preliminary Results.

5. Bancomext Export Loans

In the Preliminary Results, we found that this program conferred countervailable benefits on the subject merchandise. In its brief, AHMSA has contested certain aspects of the Department's treatment of this program. After consideration of these comments by the Department, we recommend determining that the net subsidy for this program, which is 6.55 percent ad valorem, remain unchanged from the Preliminary Results. For further discussion, see Comments 4 through 6 in the "Analysis of Comments" section of these final results.

6. Committed Investment

In the Preliminary Results, we found that this program conferred countervailable benefits on the subject merchandise. Following the Preliminary Results, petitioners argued that the Department should select a different discount rate to calculate the benefit attributable to this program.² After consideration of these comments, we recommend that the Department determine that the net subsidy for this program, which is 2.21 percent ad valorem, remain unchanged from the Preliminary Results. For further discussion, see Comment 1 in the "Analysis of Comments" section of these final results.

7. Immediate Deduction

In the Preliminary Results, we determined that this program conferred countervailable benefits on the subject merchandise during the POR. In its brief, the GOM has contested the Department's decision to find this program countervailable. After consideration of these comments, we recommend that the Department determine that the net subsidy for this program, which is 2.57 percent ad valorem, remain unchanged from the Preliminary Results. For further discussion, see Comment 2 in the "Analysis of Comments" section of these final results.

B. Programs Determined Not to Confer Subsidies

In the Preliminary Results, we found that the following programs did not confer subsidies during the POR. See the "Programs Preliminarily Determined Not to Confer Subsidies" section of the Preliminary Results. The comments received from interested parties did not warrant reconsideration of these findings. Accordingly, our findings regarding these programs remains unchanged from the

² The petitioners in this review are International Steel Group, Inc. and United States Steel Corporation.

Preliminary Results.

1. Petroleos Mexicanos (PEMEX) Guaranteed Provision of Natural Gas for Less Than Adequate Remuneration
2. PITEX Duty-Free Imports for Companies That Export
3. GOM Assumption of AHMSA Debt in 1986

C. Program Determined Not to Exist

In the Preliminary Results, we found that the following program did not exist. See the “Program Preliminarily Determined Not to Exist” section of the Preliminary Results. No comments were received from interested parties. Accordingly, our finding regarding this program remains unchanged from the Preliminary Results.

1. NAFIN/Coahuila State Government Supplier Relief

D. Programs Determined To Be Not Used

In the Preliminary Results, we found that the following programs were not used during the POR. See the “Programs Preliminarily Determined to Be Not Used” section of the Preliminary Results. No comments were received from interested parties. Accordingly, our findings regarding these programs remain unchanged from the Preliminary Results.

1. FONEI Long-Term Financing
2. Export Financing Restructuring
3. Bancomext Trade Promotion Services and Technical Support
4. Empresas de Comercio Exterior or Foreign Trade Companies Program
5. Article 15 and Article 94 Loans
6. NAFIN Long-Term Loans

V. Total Ad Valorem Rate

The net subsidy rate for AHMSA is 13.37 percent ad valorem.

VI. Analysis of Comments

Comment 1: Whether the Department Correctly Countervailed the Benefit Attributable to Committed Investment in AHMSA by the Grupo Acerero del Norte (GAN)

Petitioners argue that the Department, in its Preliminary Results, correctly followed the approach it established in the 1998 administrative review and found that the committed investment portion of GAN's bid was a financial contribution in the form of revenue foregone by the GOM within the meaning of 19 U.S.C. § 1677(5)(D)(ii). See the 1998 Review of CTL Plate and accompanying Decision Memorandum at Comment 1. Because the valuation methodology of the GOM's bid "considered one-half of GAN's committed investment to be equivalent of the payment of cash," petitioners argue that the Department's Preliminary Results reasonably used that amount as a "proxy for the amount of revenue foregone by the GOM in its sale of AHMSA." See the 1998 Review of CTL Plate, 66 FR at 14549. Furthermore, because the transaction involved only the sale of AHMSA, petitioners assert that the Department correctly found that the benefit was specific to a single enterprise within the meaning of 19 U.S.C. § 1677(5A)(D)(iii)(I). See 1998 Review of CTL Plate, at Comment 1. Therefore, petitioners contend that the Department should continue to treat GAN's committed investment program as a non-recurring grant from the GOM and continue to allocate a portion of the benefit to the POR using the standard grant formula.

Petitioners further argue that the Department should use a different discount rate to calculate the non-recurring subsidy. Petitioners argue that, in the Preliminary Results, the Department selected the correct year, 1991, from which to establish a discount rate consistent with the Department's regulations. See 19 CFR 351.524(d)(3); see also, Preliminary Results Calculation Memorandum of Certain Cut-to-Length Plate from Mexico, dated September 2, 2003 (Preliminary Calculation Memorandum). However, petitioners assert that, instead of relying on a lending rate, as preferred under the regulations, the Department incorrectly selected a long-term government bond yield as a discount rate. See Preliminary Calculation Memorandum. Therefore, they contend that the Department should use the 1991 U.S. dollar-denominated lending rate of 8.46 percent as the discount rate for the committed investment program, rather than the 7.86 percent government bond yield that was used as the discount rate in the Preliminary Results. Both rates are reported in the International Financial Statistics, an International Monetary Fund publication. See Preliminary Calculation Memorandum, at 4.

AHMSA disagrees with petitioners, and states that the Department should not change the

discount rate used to calculate the subsidy attributable to GAN's 1991 committed investment. In the Preliminary Results of this review, the Department used the U.S. dollar-denominated long-term government bond yield rate as reported in International Financial Statistics. See Preliminary Calculation Memorandum, at 4. This is the same rate used by the Department in prior reviews. See 1998 Review of CTL Plate. Thus, AHMSA argues that the Department should continue to apply the same discount rate with respect to GAN's committed investment, for these final results.

Department Position:

We agree with petitioners in part. In these final results, we have determined that GAN's commitment to invest into AHMSA conferred a countervailable benefit upon AHMSA in the form of a grant. In the 1998 review of CTL Plate, we found that, because the transaction in question involved only the sale of AHMSA, the actions of the GOM were specific to a single enterprise within the meaning of section 771(5A)(D)(iii)(I) of the Tariff Act of 1930, as amended (the Act). See 1998 Review of CTL Plate and accompanying Decision Memorandum at Comment 1. We further found that the record reflected that the GOM, in accepting GAN's bid, considered one-half of GAN's committed investment to be equivalent to the payment of cash. Therefore, we used this amount as a proxy for the amount of revenue foregone by the GOM in its sale of AHMSA, within the meaning of section 771(5)(D)(ii) of the Act. Id. No new information or evidence of changed circumstances has been presented in this review to warrant any reconsideration of these findings. Therefore, for purposes of these final results, we continue to find that GAN's committed investment into AHMSA was specific and constituted a government financial contribution within the meaning of the Act. Furthermore, we continue to find that this program conferred a benefit under section 771(5)(E) of the Act. Accordingly, we have treated this benefit as a non-recurring grant in the amount of the revenue foregone and allocated the benefit over time using our standard grant formula.

We disagree with petitioners' arguments regarding the discount rate used in the benefit calculation. Pursuant to 19 CFR 351.524(d)(3), the Department will select a discount rate based upon data for the year in which the government agreed to provide the subsidy. The Secretary will use as a discount rate the following, in order of preference:

- (A) The cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Secretary has determined to be countervailable subsidies;
- (B) The average cost of long-term, fixed-rate loans in the country in question;
- (C) A rate that the Secretary considers to be most appropriate.

As explained in the "Analysis of Programs" section of the Preliminary Results, we have determined that GAN's commitment to invest into AHMSA conferred a countervailable benefit upon AHMSA in the form of a grant. Because the terms of the committed investment were established in 1991, the year of AHMSA's privatization, we used 1991 as the date of approval and year for which we identified a discount rate. See Exhibit 11 of AHMSA's November 25, 2002 questionnaire

response. Based on the methodology described at 19 CFR 351.524(d)(3), the preferred options call for the Department to use, as the discount rate, the long-term fixed rate of a loan of the firm in question or the average cost of a long-term fixed-rate loan of the country in question. This information, however, was not available for 1991. See Exhibit 11 of AHMSA's November 25, 2002 questionnaire response.

Because the data on the discount rates described in paragraphs (A) and (B) of 19 CFR 351.524(d)(3) were not available and the committed investment was denominated in U.S. dollars, we used—pursuant to paragraph (C)—the U.S. dollar-denominated long-term government bond yield for 1991, as reported in International Financial Statistics. See Exhibit 11 of AHMSA's November 25, 2002 questionnaire response. Although petitioners recommend that we use the 1991 U.S. dollar-denominated lending rate of 8.46 percent, we note that this lending rate was based on private investors' short and medium term financing. We further note that we are allocating benefits conferred under the committed investment program over a 15-year period. See Attachment I of Exhibit 11 of AHMSA's November 25, 2002 questionnaire response. Additionally, it is evident in the hierarchy listed in paragraphs A through C of 19 CFR 351.524(d)(3) that interest rates on long-term debt should be used as the basis for the discount rate when allocating grants over time. Thus, while the Department prefers to use average interest rates from actual private investors rather than government bond yields for purposes of the benchmark discount rate, such lending rates are not suitable when they are based on time periods vastly different from the allocation period, which in this case is 15 years. Therefore, for these final results we have continued to use the 1991 government bond yield of 7.86 percent, as reported in International Financial Statistics, because it is a long-term interest rate.

Comment 2: Whether the Department Correctly Investigated and Countervailed Benefits Conferred Under the Immediate Deduction Program

Petitioners state that the Department correctly considered the asset tax credit as part of the Immediate Deduction program to be the same as the Immediate Deduction program examined in prior reviews. According to petitioners, as with the Immediate Deduction program in past reviews, the asset tax credit is provided pursuant to a program administered by the same Mexican authorities, employing the same approval process in which a company claims an immediate deduction through a line item on the corporate tax form, with the same objective of encouraging investment in fixed assets outside the metropolitan and surrounding areas. See the Department's Verification of the Government of Mexico, dated September 2, 2003 (GOM Verification Report), at 12. Petitioners state that, by using the Immediate Deduction program, AHMSA was able to reduce its tax liability by carrying forward tax credits earned prior to and during 1998 to tax year 2000. See GOM Verification Report, at 12. Thus, petitioners contend that the Department correctly based the amount of asset tax that AHMSA would have paid absent the program on AHMSA's tax return filed during the POR. Therefore, petitioners argue that, for these final results, the Department should continue to countervail benefits conferred by the Immediate Deduction program with respect to AHMSA.

The GOM disagrees with petitioners and argues that the Immediate Deduction program does not confer a benefit. According to the GOM, the immediate deduction is simply a deduction from the tax base and cannot be credited against the income tax, as the Department determined in the Preliminary Results. As a result, the GOM argues that companies with accounting losses which can be carried forward during ten years may have no interest in applying such a program, since its application may increase the losses even more. Likewise, the GOM contends that enterprises that generate profits might make use of this program in order to postpone their tax payment. Therefore, the GOM argues that, for these final results, the Department should not find that a benefit exists with respect to the Immediate Deduction program.

Department Position:

We disagree with the GOM. We have found that the program constitutes a financial contribution, because the GOM is not collecting tax revenue that is otherwise due, and that it confers a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. See, e.g., the “Immediate Deduction” section of the Decision Memorandum that accompanied the 1998 Review of CTL Plate. Contrary to the GOM’s statement, the amount of asset tax that AHMSA would have paid absent the program was clearly indicated on the tax return that AHMSA filed during the POR, at line 121010 . See Exhibit 1 of AHMSA’s July 8, 2003 supplemental questionnaire response. Because this amount is higher than the amount AHMSA did pay because of the existence of this program, it is clear that AHMSA did benefit from this program.

Furthermore, as explained in the “Analysis of Programs” section of the Preliminary Results, we have found the Immediate Deduction program specific to a region, pursuant to section 771(5A)(D)(iv) of the Act. GOM officials confirmed during verification that the immediate deduction option only applied to property used permanently within Mexico but outside the metropolitan areas of Mexico City, Guadalajara, and Monterrey. See the “Immediate Deduction” section of the GOM Verification Report. Thus, for purposes of these final results, we continue to find this program countervailable.

In accordance with 19 CFR 351.509(a), we have calculated the benefit under this program by determining the amount of asset tax that AHMSA would have paid, absent the program, in the tax return it filed during the POR. The amount by which this value exceeds the amount AHMSA did, in fact, pay in asset tax for the relevant period is the benefit we have countervailed.

Comment 3: Whether the Department Should Have Found AHMSA Uncreditworthy in 2000

Petitioners state that the Department correctly found that AHMSA was uncreditworthy in the year 2000. According to petitioners, the Department repeatedly requested information concerning AHMSA’s creditworthy status for the year 2000, but AHMSA failed to respond to the Department’s

questionnaires. See AHMSA's Response to the Department's Third Supplemental Questionnaire, dated July 8, 2003, at 2. Because AHMSA failed to respond to the Department's questionnaires, petitioners contend that the Department correctly applied facts available, relying on AHMSA's primary source information. See section 776(a) of the Act. Petitioners state that the Department correctly interpreted this evidence, which shows that AHMSA was in dire financial circumstances, entering in a suspension of payments in May 1999, and declining to meet its outstanding commercial debt in 2000. As a result, AHMSA's severe financial difficulties as of 2000 supported the conclusion that its future financial outlook was bleak. Therefore, petitioners argue that the Department should continue to find AHMSA un-creditworthy in 2000.

AHMSA and the GOM did not comment on this issue.

Department Position:

We agree with petitioners. During the course of this proceeding, we repeatedly sought information from AHMSA concerning its creditworthiness status during calendar year 2000. See questions C.1 through C.7 of the Department's June 3, 2003 supplemental questionnaire. See also question B.1 of the Department's June 30, 2003 supplemental questionnaire. In both instances, AHMSA responded that it was "unable to respond to the Department's questions on creditworthiness at this time."³

Lacking a questionnaire response from AHMSA on the issue of its creditworthiness in 2000, we relied for this decision on primary source information from AHMSA that was submitted onto the record of this review prior to our initiation of our creditworthy investigation. Specifically, we used AHMSA's financial statements for years 1997 through 2000, as well as information obtained during verification concerning AHMSA's financial standing in 2000. See the Department's Memo to the File Regarding AHMSA's Creditworthy Determination, dated September 2, 2003. We agree with petitioners that a review of these documents indicates that AHMSA's future financial outlook, as of 2000, was bleak. This was indicated, for example, by the fact that AHMSA was unable meet payments on its outstanding commercial debt in 2000. Therefore, for these final results, we continue to find AHMSA uncreditworthy for 2000.

Comment 4: Whether AHMSA's May 2, 2000 Renegotiated Bancomext Loans And the Corresponding Renegotiated Penalty Rate Are Countervailable

³ See AHMSA's Response to the Department's Second Supplemental Questionnaire, dated June 24, 2003, at 6; see also AHMSA's Response to the Department's Third Supplemental Questionnaire, dated July 8, 2003, at 2. We note that, at AHMSA's request, we extended the due date of the June 3, 2003 questionnaire by 10 days. See the June 10, 2003 letter, "Extension Request on Behalf of Altos Hornos de Mexico, S.A. de C.V."

Petitioners claim that the Department correctly countervailed benefits from renegotiated Bancomext export loans. According to petitioners, the Department correctly determined AHMSA received a benefit from the Bancomext export loan program, by comparing the interest rate charged during the POR to an uncreditworthy benchmark interest rate. Preliminary Calculation Memorandum, at 4. Petitioners state that the Department determined that the renegotiated penalty rate was 25 percent lower than that established under the original terms of the loan and, thus, also conferred a benefit. Because AHMSA, GOM, and local bank officials did not provide the Department with penalty interest information for un-creditworthy companies during calendar year 2000, petitioners conclude that the Department correctly applied a facts available rate. Preliminary Calculation Memorandum, at 5. Petitioners argue that the Department should continue to countervail both the Bancomext export loans and the negotiated penalty interest for these final results.

AHMSA and the GOM disagree that the renegotiated Bancomext loans conferred a countervailable benefit. They argue that the May 2, 2000, repayment agreement between AHMSA and Bancomext occurred while AHMSA was under the protection of a court-sanctioned suspension of payments. According to AHMSA, the suspension of payment is analogous to Chapter 11 reorganization bankruptcy under U.S. law, and allows a company experiencing financial difficulties to freeze its debt and suspend payments on that debt pending renegotiation of the payment terms and obligations with its creditors. The GOM claims that, contrary to statements made by the Department in the Preliminary Results, the suspension of payment protection under Mexican law covers all debt and not merely non-governmental debt. See the GOM's Response to the Department's Second Supplemental Questionnaire, dated June 23, 2003, at 27. AHMSA states that there are no exceptions within the Mexican bankruptcy or suspension of payment laws that require the payment of monies owed to a government entity to continue while those to commercial entities are frozen. Furthermore, in the numerous proceedings involving bankrupt companies, AHMSA is unable to identify a single case where loans from a government bank are given precedence over commercial lending under the law. Moreover, AHMSA contends that it is the Department's long-established policy that debt forgiveness in the context of bankruptcy is not countervailable. See Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 68 FR 53116, 53126 (September 9, 2003). Because any repayment arrangement with one creditor potentially impacts other creditors, any agreement such as that which it reached with the GOM would require notification to the court, and could be terminated by the bankruptcy court if good cause for repayment of a particular creditor did not exist.

AHMSA also argues that, based on the record evidence in the current administrative review, it is clear that Bancomext's actions in renegotiating the loans on more favorable terms were completely consistent with those of a commercial bank. Although in prior administrative reviews the Department found that the terms of the original 1995 Bancomext loan were made on terms more favorable than AHMSA could have obtained through a private bank, the record in the ongoing proceeding demonstrates that Bancomext aggressively enforced its rights to receive repayment, and indeed was more successful than AHMSA's private creditors at actually obtaining repayment. See GOM Verification Report, at 5. Had Bancomext wished to provide an actual benefit to AHMSA, the GOM

argues, the bank would not have been so aggressive about ensuring repayment. Furthermore, because there is no evidence that AHMSA received preferential treatment from the GOM following AHMSA's decision to enter into suspension of payments, the Department must reassess its determination that the May 2, 2000 repayment schedule constituted a new loan that gives rise to a countervailable subsidy. See GOM Verification Report, at 6.

Finally, AHMSA argues that the Department is wrong when it states that the renegotiation of the Bancomext loans, during a time when AHMSA was un-creditworthy, confers a countervailable benefit. Citing the Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring from Canada, 62 FR 5201 (February 4, 1997) (Hardwood Trailer Flooring from Canada), AHMSA states that such a finding is inconsistent with the Department's past practices. AHMSA claims that, in Hardwood Trailer Flooring from Canada, the Department stated that because, "commercial lenders also typically have the freedom to change the terms when dealing with a distressed borrower," the fact that a governmental lender modifies payment terms for a distressed company does not necessarily give rise to a countervailable subsidy. See Hardwood Trailer Flooring from Canada, 62 FR at 5213. While it is appropriate that AHMSA make restitution to Bancomext, AHMSA argues that the Department should not force AHMSA into the position of both having to repay Bancomext and having the repayment countervailed by the Department. As a result, AHMSA argues, the Department should not countervail the renegotiated Bancomext loans.

Petitioners agree with the Department that the renegotiated Bancomext loans should be treated as a new loan. Citing the Notice of Final Affirmative Countervailing Duty Determination: Certain Steel Products from France, 58 FR 37304, 37308 (July 9, 1993) (Certain Steel Products from France), petitioners state that the Department has consistently treated any material change to an outstanding loan as a new loan in its analysis. Moreover, AHMSA concedes that the May 2, 2000 Repayment Agreement was a "modification in repayment terms" and AHMSA and Bancomext agreed to a revised loan agreement, interest rate, penalty rate, and other terms. See GOM Verification Report, at 6.

Petitioners further argue that AHMSA's citation of the Department's past determinations concerning companies involved in bankruptcy proceedings is not relevant in this administrative review. First, petitioners argue that the Bancomext loans do not fall within the category of the suspension of payments. Petitioners claim that the repayment and collection terms covering the Bancomext loans distinguish them from the other loans covered by the suspension of payments. Specifically, petitioners point out that the Bancomext loans were not covered by the suspension of payments because, unlike other AHMSA debts, these loans were secured by AHMSA's accounts receivable. See AHMSA's Response to the Department's Questionnaire (November 26, 2002), at III-16. Petitioners contend that Bancomext's legal entitlement to AHMSA's accounts receivable was what enabled it to secure payments at a time when no other lending institutions received repayment from AHMSA. See AHMSA's Response to the Department's Third Supplemental Questionnaire, dated July 9, 2003, at 11. Second, petitioners assert that, even if the Bancomext funds were covered by the suspension of payments, a suspension of payments is not equivalent to bankruptcy and, thus, should not be grounds for failing to countervail benefits stemming from interest payments made on a government loan.

Petitioners further argue that the Department has rejected the notion that debt forgiveness provided through non-formal or out-of-court bankruptcy proceedings should not be countervailed. See Notice of Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR 40474, 40494 (July 29, 1998).

Finally, petitioners argue that the Department has never determined that the forgiveness of obligations or modification in payment terms are not countervailable when the forgiveness or amendment is merely tied to bankruptcy proceedings and the government acted in a manner consistent with other commercial banks. Instead, petitioners argue, the Department's practice has recognized formal bankruptcy proceedings that eliminate debt or renegotiations are not countervailable only when the benefits stemming from such proceedings are not specific. See Notice of Final Affirmative Countervailing Duty Determination: Certain Steel Products from Spain, 47 FR 51453, 51454 (November 15, 1982). In this administrative review, however, petitioners claim, there is no question that the Bancomext loans were provided only to exporters and that the renegotiation was provided only to AHMSA, thereby rendering the renegotiation of the loans specific to AHMSA.

Lastly, petitioners take issue with AHMSA's claim that Bancomext's behavior was consistent with that of other commercial lenders. Petitioners point out that, after Bancomext revoked AHMSA's ability to collect sales revenue on Bancomext's behalf, the bank became legally entitled to receive payment directly from AHMSA's customers. Although Bancomext sought to collect the monies owed it directly from AHMSA's customers, it was unable to because it had difficulty finding the contact information for AHMSA's customers. During this time, AHMSA did not turn over payments to Bancomext, although it was legally obligated to do so. See the GOM Verification Report, at 5. Petitioners explain that, despite this situation, Bancomext agreed to terms in which the penalty rate was more favorable to AHMSA than under the original loan agreement. Petitioners claim that none of the evidence described above leads to the conclusion that Bancomext was acting as a commercial lender would. Therefore, for purposes of these final results, the Department should continue to treat the renegotiated Bancomext loans as a countervailable subsidy.

Department Position:

We agree with petitioners that the renegotiated May 2, 2002 Bancomex export loans constitute a countervailable subsidy. In the underlying investigation, we determined that, because the loans issued by Bancomext are available only to exporters, this program is specific within the meaning of section 771(5A)(B) of the Act. We further found that loans under this program conferred a benefit and constituted a government financial contribution under sections 771(5)(E)(ii) and 771(5)(D)(i) of the Act, respectively, to the extent that they are provided at rates below those prevailing on comparable commercial loans. See CTL Plate Investigation, 58 FR at 37357. We used the same approach in the previous segment of this proceeding. See the "Bancomext Export Loans" section of the Decision Memorandum that accompanied the 1998 Review of CTL Plate.

We also agree with petitioners that the renegotiated Bancomext loans constitute a new loan. The Department has consistently treated any material change to an outstanding loan as a new loan in its analysis. See e.g., Certain Steel Products from France, 58 FR at 37308. In addition, we note that the GOM itself concedes that the May 2, 2000 Repayment Agreement was a “modification in repayment terms” and that AHMSA and Bancomext agreed to a revised loan agreement, interest rate, penalty rate, and other terms. See GOM Verification Report, at 6.

With respect to AHMSA’s argument that the renegotiated export loans should be treated as if they were part of a bankruptcy proceeding, we disagree. First, the Bancomext loans did not fall within the category of those loans covered by AHMSA’s suspension of payments, because the Bancomext loans were secured by AHMSA’s accounts receivable/invoices. See AHMSA’s Response to the Department’s Questionnaire, dated November 26, 2002, at III-16; see also the GOM Verification Report, at 5. Thus, unlike AHMSA’s other creditors, Bancomext was able to receive payments, because the bank was legally entitled to collect the remaining balances on the invoices AHMSA issued to its customers. See AHMSA’s Response to the Department’s Third Supplemental Questionnaire, dated July 9, 2003, at 11; see also the GOM Verification Report, at 5. Furthermore, AHMSA’s contention that the terms of the Bancomext loan repayments were part of the bankruptcy proceeding are contradicted by statements made by GOM and Bancomext officials during verification. See GOM Verification Report, at 6 (GOM and Bancomext officials explain why it took a year for AHMSA to turn over revenues, which were legally endorsed to Bancomext, and why Bancomext sought to keep the matter between Bancomext and AHMSA).⁴

Contrary to AHMSA’s assertions, the test for determining whether the renegotiated loan was consistent with the behavior of a commercial lender is not based on an analysis of the GOM’s intentions or on the costs incurred by the GOM under the Bancomext loan renegotiation. Rather, in keeping with the Department’s longstanding practice, we determine whether loans issued by a foreign government have conferred a benefit by comparing the actual interest payments made on the government-provided loan to the interest payments that would have been paid on a comparable commercial loan that the firm could actually obtain on the market. As explained in the Preliminary Results, our comparison of the actual and benchmark interest payments indicates that the interest payments made by AHMSA under the program were less than what would have been paid on a comparable commercial loan.

Regarding AHMSA’s citation to Hardwood Trailer Flooring from Canada, we agree that changes in the terms of a government loan to a distressed borrower do not necessarily give rise to a countervailable subsidy. Accordingly, the Department did not automatically assume that the changes in the terms of the Bancomext loan conferred a countervailable benefit on AHMSA. Rather, as explained above, to determine whether a benefit was provided, we compared the actual interest payments made on the renegotiated loan to those that would have been made on a comparable commercial loan. Therefore, for these final results, we continue to find the Bancomext loans countervailable.

⁴ The facts surrounding this issue involve business proprietary information and cannot be specifically addressed in this decision memorandum.

Finally, we do not agree with AHMSA's claim that it is somehow inequitable for it to be both required to repay Bancomext and subject to countervailing duties on the renegotiated loan. We have not treated the renegotiated Bancomext loan as a grant. Instead, the amount to be repaid to Bancomext is the amount of the loan, and the countervailing duty associated with the renegotiated loan is the additional amount AHMSA would have had to repay as interest on comparable commercial loans AHMSA could have obtained on the market. Thus, there was no double-counting in the Department's calculations of the benefit associated with the renegotiated Bancomext loans.

Comment 5: Whether the Department Used an Appropriate Benchmark Interest Rate When Calculating the Benefit Attributable to the May 2, 2000 Renegotiated Bancomext Loans

Petitioners state that the Department should use a different discount rate in determining the benefit from the Bancomext loan than it did in the Preliminary Results. Petitioners agree that the Department should use a U.S. dollar-denominated discount rate. However, they contend that the statute requires the benefit to be measured according to the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market. See 19 U.S.C. § 1677(5)(E)(ii). Petitioners state that the Department, in deriving the uncreditworthy benchmark rate, chose for the underlying interest rate the U.S. prime rate for calendar year 2000. See Preliminary Calculation Memorandum, at 5. Instead of using the prime rate, they argue, the Department should estimate the highest rate paid by the riskiest creditworthy borrowers in the relevant economy and add a risk premium to account for the added risk associated with AHMSA's uncreditworthiness. In support of this contention, petitioners cite to Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Belgium, 64 FR 15567, 15574 (March 31, 1999) (Stainless Steel Plate from Belgium), in which they claim the Department concluded that the use of a prime rate as the base rate, before application of a risk premium, does not meet the Department's statutory requirements. Moreover, petitioners contend that, even if the Department finds it appropriate to use a prime rate as a starting point, the Department cannot simply select a U.S. prime rate, because a creditworthy company in Mexico would not be able to obtain a dollar denominated loan at the same interest rate as a creditworthy company in the United States. Therefore, petitioners argue that the Department should, at a minimum, adjust the U.S. prime rate used in the Preliminary Results. Because AHMSA and the GOM failed to provide requested benchmark information pertaining to U.S. dollar lending in Mexico, petitioners argue that the Department should add a facts available rate of 2 percent to the prime rate.

AHMSA argues that the Department should not re-calculate the interest rate with respect to the Bancomext loans. AHMSA argues that, in the Preliminary Results, the Department used the U.S. prime rate as the starting point in the calculation of a benchmark rate for the Bancomext loan and then added a risk premium to reflect AHMSA's difficult financial situation in the uncreditworthy calculation. AHMSA contends that petitioners' approach of starting with the highest rate paid by the riskiest creditworthy borrowers in Mexico and then adding a risk premium to reflect AHMSA's uncreditworthy

status is inconsistent with Department practice and would result in an overstatement of the countervailable benefit. Therefore, AHMSA argues that, if the Department continues to view the Bancomext loans as giving rise to a countervailable benefit, it should continue to apply the methodology used in the Preliminary Results.

Department Position:

We agree with AHMSA. In accordance with 19 CFR 351.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). According to 19 CFR 351.505(a)(3)(iii), to calculate this rate, the Department must specify values for four variables: (1) the probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of debt. For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920-1997." For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Services: "Statistical Tables of Default Rates and Recovery Rates." For the term of the debt, we used 2 years (24 months), the term of the countervailable Bancomext loans. For the commercial interest rate charged to creditworthy borrowers, we used the U.S. prime rate from the IMF from the Preliminary Results. This is the same type of lending rate the Department has used in prior reviews of this order. See 1998 Review of CTL Plate; see also 1997 Review of CTL Plate. To factor an additional risk premium to reflect AHMSA's uncreditworthy status into the calculation of the discount rate would double count this element, because the Department's uncreditworthy formula already takes into account AHMSA's likelihood to default on principal and interest payments.

Also, we find that petitioners' citation to Stainless Steel Plate from Belgium is off point. The issue at hand in Stainless Steel Plate from Belgium dealt with whether the Department should apply a spread to a prime interest rate that was being used as a benchmark. This issue is different than the one encountered in the instant review. In this review, the prime rate is merely one of several variables in a formula that the Department used to derive a benchmark for AHMSA, an uncreditworthy company. Thus, the prime rate is not, by itself, being used as the benchmark, which was the issue in Stainless Steel Plate from Belgium. See Stainless Steel Plate from Belgium 64 FR at 15574.

In addition, we agree in principle with petitioners that the Department should first try to use a U.S. dollar lending rate from a bank in Mexico. However, such information is not available on the record of this administrative review. Thus, in keeping with the Department's practice, we have used U.S. dollar denominated interest rates, as reported by the IMF's International Financial Statistics. See, e.g., the "Benchmarks for Loans and Discount Rate" section of the Decision Memorandum that accompanied the Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 49635 (September 28, 2001).

Furthermore, we note that the U.S. dollar-denominated lending rate used in the derivation of AHMSA's uncreditworthy benchmark interest rate is based on a survey of short to medium term interest rates. Although we would prefer to have derived AHMSA's uncreditworthy benchmark interest rate using a long-term lending rate, such a rate was not available on the record of this administrative review. For this reason, and because the countervailable Bancomext loans have a duration of only 24 months, we find that the use of a short to medium term benchmark interest rate is appropriate in this particular instance.

Comment 6: Whether the Department Used an Appropriate Benchmark Penalty Rate When Calculating the Benefit Attributable to AHMSA's May 2, 2000 Renegotiated Bancomext Loans

Petitioners argue that the Department should adjust the benchmark rate applied in calculating the penalty interest payments AHMSA made on its Bancomext loans. According to petitioners, the benchmark selected by the Department was overly favorable to the respondent, because AHMSA failed to provide the Department with a penalty interest rate. Petitioners further argue that the fact that Bancomext held legal title to the remaining balances on AHMSA's invoices as well as AHMSA's inability to adhere to the contractual agreements it established with Bancomext would have compelled a commercial lender to charge a penalty that was higher than the one used by the Department in the Preliminary Results. Therefore, petitioners recommend that the Department revise its benchmark rate with respect to the penalty interest rate used in the benefit calculations of this program.

AHMSA states that the Department should not adjust the benchmark rate applied in calculating AHMSA's penalty interest rate with respect to the Bancomext loan. AHMSA argues that, in the absence of information from commercial banks, the Department, as facts available, applied an uncreditworthy benchmark rate and doubled it whenever AHMSA failed to make interest payments. See Preliminary Results, 68 FR at 52902. AHMSA argues that to apply any penalty rate higher than the one already used would be unreasonable and inappropriate. Therefore AHMSA contends that the Department should not adjust the benchmark rate applied in calculating AHMSA's penalty interest rate with respect to the Bancomext export loans.

Department Position:

We disagree with petitioners. On several occasions during the 2001 POR, AHMSA was unable to make timely interest payments pursuant to the terms of its loan agreement and was forced to make penalty interest payments. As explained in the Preliminary Results, we attempted to obtain information from AHMSA and the GOM regarding penalty interest rates charged in Mexico during 2000 when the loan was renegotiated. AHMSA explained that, although it was late making payments on several loans prior to 2000, it did not make any penalty interest payments to commercial institutions immediately prior to or during the 2001 POR. See AHMSA's May 22, 2003 supplemental

questionnaire response at 11. In its supplemental questionnaire response, the GOM stated that it was, “. . . unable to provide such information . . .” on the grounds that, “. . . Mexican bank secrecy laws prohibit the disclosure of company-specific repayment information.” See the GOM’s Response to the Department’s Questionnaire, at 1 (May 21, 2003). During verification, we attempted to meet with a commercial lending institution in Mexico to discuss, among other things, the typical practices of Mexican banks, as they apply to the establishment of penalty interest payments. However, the officials at the commercial lending institution refused to answer our questions. See the September 2, 2003 report entitled, “Meeting with Banking Officials from Banamex,” a public document on file in the Central Records Unit, room B-099 of the main Commerce building.

In the Preliminary Results, we found that, given that AHMSA defaulted on its commercial debt in 1999, its uncreditworthy status at the time of the 2000 renegotiation process, and its history of failing to adhere to its contractual obligations with Bancomext, the terms of the renegotiated Bancomext loans did not reflect the amount of penalty interest that AHMSA would have paid on a comparable commercial loan.⁵ Therefore, we used as facts available the penalty interest rate that was established between Bancomext and AHMSA pursuant to the original terms of the 1995 Bancomext loan agreement. See Exhibit 4 of AHMSA’s July 8, 2003 supplemental questionnaire response. Because, this rate is 25 percent higher than the penalty terms established during the renegotiation, and no other information was placed on the record, we find that this is an adequate benchmark for penalty interest payments with respect to these loans. We do not agree with petitioners that applying an even higher benchmark penalty interest rate is warranted. Therefore, for these final results, we will not adjust the benchmark rate applied in calculating AHMSA’s penalty interest rate with respect to the Bancomext export loans.

Comment 7: Whether the Department Should Continue to Use the Same Person Test in Determining Whether Non-Recurring Pre-Privatization Subsidies Continue to Provide a Countervailable Benefit to AHMSA

AHMSA argues that the Department should not use the “same person” test in the ongoing review to determine whether any benefit from pre-privatization non-recurring subsidies passed through to the privatized AHMSA. In a letter to the Department dated April 29, 2003, AHMSA claimed that, if the Department continues to use its same-person test, the Department would be in violation of the Agreement on Subsidies and Countervailing Measures of the World Trade Organization (WTO). See Letter from O’Melveny & Myers to the Department of Commerce Regarding Objection to Use of the “Same Person” Test. AHMSA contends that, although the Department has indicated that the revised policy would not apply to merchandise entering the United States prior to June 30, 2003, the Department has failed to consider whether non-recurring pre-privatization subsidies conferred a

⁵ Regarding AHMSA’s history of failing to adhere to its contractual obligations with Bancomext, see the “Bancomext Loan” section of the AHMSA Verification Report.

countervailable benefit as part of the current administrative review. See Final Modification of Agency Practice Under Section 123, 68 FR 37125, 37138. Therefore, for these final results, AHMSA argues that the Department should not consider pre-privatization non-recurring subsidies to be attributable to the post-privatization AHMSA.

Petitioners disagree with AHMSA, and argue that the Department should continue to apply the “same person” test in this ongoing review. Petitioners claim that, in response to the WTO decision, the Department stated that it would implement the new methodology with respect to all investigations and reviews initiated on or after June 30, 2003, a week after the publication of the Section 123 Federal Register notice. See Id. They point out that this review was initiated on September 25, 2002, well before the June 30, 2003 date established by the Department. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 67 FR 60210 (September 25, 2002). Petitioners further argue that it does not appear that AHMSA filed public comments on this issue in response to the Department’s March 21, 2003, notice concerning proposed modifications to its privatization methodology. See Notice of Proposed Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act and Request for Public Comment, 68 FR 13897 (March 21, 2003). Therefore, petitioners contend, it is unclear why the Department should reconsider the application date for its modified methodology given that AHMSA waived its earlier opportunity to object to that date. Additionally, petitioners argue that it would have been difficult for the Department to collect and verify any additional information relevant to its modified privatization methodology. Thus, petitioners contend that the Department should continue to use the “same person” test it used in the Preliminary Results for the final results.

Department Position:

We disagree with AHMSA. As outlined in the “Change In Ownership” section above, the Department has determined that AHMSA is essentially the same “person” pre- and post-privatization, that the new privatization methodology does not apply retroactively, and that the new methodology will be used only in proceedings initiated on or after June 30, 2003. See Final Modification of Agency Practice Under Section 123, 68 FR at 37138. This review was initiated on September 25, 2002. Therefore, the Department has continued to apply the “same person” test in this review, and finds that AHMSA benefitted from subsidies received prior to its privatization.

The Department’s timetable for applying its new privatization methodology is legally permissible and appropriate. Changes in agency practice made in connection with an adverse WTO Panel or Appellate Body Report are governed by section 123 of the URAA. The “effective date of modification” provision, section 123(g)(2), sets only one limitation on the Department’s choice of effective date:

the final rule or other modification may not go into effect before the end of the 60-day period beginning on the date on which consultations [with the appropriate congressional committee on the proposed content of the modification] begin [unless the President determines that an earlier effective date is in the national interest].

Because the new methodology will go into effect after that point, the timetable for the implementation is lawful. See Id., citing Antidumping Proceeding: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69197 (November 15, 2002) (Section 123 notice arising out of a case on hot-rolled steel from Japan). As noted therein, the Department's practice has normally been to begin application of a new methodology with respect to segments of a proceeding (requested or) initiated after a given date. Thereby, the Department provides adequate notice to potentially affected parties, and avoids having to apply different methodologies within the same segment of the proceeding. Thus, the Department has continued to apply the "same person" test in this review for these final results.

Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review.

Agree

Disagree

James J. Jochum
Assistant Secretary
for Import Administration

Date