



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**

Washington, D.C. 20230

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

June 6, 2012

**MEMORANDUM**

**TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

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

**SUBJECT:** Final Results of Proceedings Under Section 129: 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

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**Summary**

On March 23, 2012, the Department of Commerce (“Department”) issued the Preliminary Results<sup>1</sup> for these section 129<sup>2</sup> proceedings in which it recalculated the cash deposit rates for certain companies as requested by the U.S. Trade Representative (“USTR”) in response to

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<sup>1</sup> Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, 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 (“Preliminary Results”).

<sup>2</sup> Citation to “section 129” refers to section 129 of the Uruguay Round Agreements Act (“URAA”), codified at 19 U.S.C. 3538. Section 129 provides for determinations by the Department of Commerce to address the findings of World Trade Organization (“WTO”) dispute settlement panels and the Appellate Body as adopted by the WTO Dispute Settlement Body (“DSB”).



findings adopted by the WTO DSB in *US-Zeroing (EC)*<sup>3</sup>, *US-Continued Zeroing (EC)*<sup>4</sup>, and *US-Zeroing (Japan)*<sup>5</sup>. This memorandum addresses the issues briefed to the Department in the above-referenced section 129 proceedings. Below is a complete list of these issues:

Comment 1: Targeted Dumping

Comment 2: Cash Deposit Rate for Non-Selected Respondents

## Background

On February 13, 2012, the USTR requested, pursuant to section 129 of the URAA, that the Department render the cash deposit rates currently in effect for certain companies not inconsistent with the WTO DSB’s recommendations and rulings in *US – Zeroing (EC)*, *US – Continued Zeroing (EC)*, and *US – Zeroing (Japan)*.<sup>6</sup> Accordingly, the Department is conducting these section 129 proceedings to recalculate current cash deposit rates for the specified companies listed below:

<b>Companies</b>	<b>Proceeding</b>	<b>Basis of Current Cash Deposit Rate</b>
ArcelorMittal Stainless Belgium N.V. <sup>7</sup>	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)

<sup>3</sup> *United States-Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”)*, 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 (collectively “*US-Zeroing (EC)*”).

<sup>4</sup> *United States-Continued Existence and Application of Zeroing Methodology*, WT/DS350/R, WT/DS350/AB/R, adopted February 19, 2009 (“*US-Continued Zeroing (EC)*”).

<sup>5</sup> *United States-Measures Related to Zeroing and Sunset Reviews*, WT/DS322/R, WT/DS322/AB/R, adopted January 23, 2007; *United States-Measures Related to Zeroing and Sunset Reviews, Recourse to Article 21.5 of the DSU by Japan*, adopted August 31, 2009 (collectively “*US-Zeroing (Japan)*”).

<sup>6</sup> See letter from Ambassador Ron Kirk to The Honorable John Bryson, Secretary of Commerce, dated February 13, 2012 (“USTR letter”).

<sup>7</sup> On April 12, 2012, the Department 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 Final Results of Antidumping Duty Changed Circumstances Review*, 77 Fed. Reg. 66,271 (April 12, 2012). Therefore, although the request from USTR identified ArcelorMittal Stainless Belgium N.V. as the respondent from the underlying final results, the recalculated cash deposit rate will be applied to Aperam Stainless Belgium N.V. (“ASB”).

<b>Companies</b>	<b>Proceeding</b>	<b>Basis of Current Cash Deposit Rate</b>
CP Kelco <sup>8</sup>	Purified Carboxymethylcellulose from Finland A-405-803	<i>Purified Carboxymethylcellulose From Finland; Notice of Final Results of Antidumping Duty Administrative Review, 75 FR 73035 (November 29, 2010).</i>
Garofalo <sup>9</sup> 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, 76 FR 76937 (December 9, 2011).</i>
PAM (for non-selected rate) Garofalo (for non-selected rate) IAPC/Pasta Lenzi <sup>10</sup> Pagani <sup>11</sup>		<i>Certain Pasta from Italy: Notice of Amended Final Results of the Twelfth Antidumping Duty Administrative Review, 75 FR 11116 (March 10, 2010).</i>
Divella <sup>12</sup> Pasta Zara Gaetano Felicetti		<i>Certain Pasta From Italy: Notice of Final Results of the Eleventh Administrative Review and Partial Rescission of Review, 73 FR 75400 (December 11, 2008).</i>

<sup>8</sup> The full name of the company concerning this review is CP Kelco Oy.

<sup>9</sup> 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”).

<sup>10</sup> Pasta Lenzi S.r.l. (“Pasta Lenzi”) 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).

<sup>11</sup> The full name of this company is Pastificio Fratelli Pagani S.p.A. (“Pagani”).

<sup>12</sup> 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”).

<b>Companies</b>	<b>Proceeding</b>	<b>Basis of Current Cash Deposit Rate</b>
Atar <sup>13</sup> 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 <sup>14</sup>		<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 <sup>15</sup>		<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 <sup>16</sup>		<i>Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (December 13, 2000).</i>
Akzo Nobel BV <sup>17</sup>	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>

<sup>13</sup> 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”).

<sup>14</sup> The full name of this company is G.e.R. Barilla Fratelli, S.p.A.

<sup>15</sup> The full names of this collapsed entity is Pastificio Carmine Russo S.p.A./Pastificio De Nola S.p.A.

<sup>16</sup> The full name of this company is La Molisana Industrie Alimentari S.p.A.

<sup>17</sup> 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 is spelled “Azko” instead of “Akzo.”

<b>Companies</b>	<b>Proceeding</b>	<b>Basis of Current Cash Deposit Rate</b>
Solvay Solexis SpA (formerly Ausimont SpA) <sup>18</sup>	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 cash deposit rates currently being applied to imports from the companies listed above have been 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 the normal value of comparable merchandise with either the export price or constructed export price, as determined in the results of the relevant underlying review.<sup>19</sup> As was its practice prior to the modification adopted in the *Final Modification for Reviews*,<sup>20</sup> the Department compared normal value with export price using the average-to-transaction method, which involved a comparison of the weighted-average normal value for comparable merchandise<sup>21</sup> to the export price of individual transactions. 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 was less than normal value by the results of comparisons for which export price exceeded normal value.<sup>22</sup>

This methodology was challenged as inconsistent with 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 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.<sup>23</sup> The DSB adopted the dispute settlement panel reports, as

<sup>18</sup> See *Granular Polytetrafluoroethylene Resin From Italy: Final Results of Changed Circumstances Review*, 68 FR 25327 (May 12, 2003).

<sup>19</sup> For ease of reference, the Department refers only to export prices hereafter.

<sup>20</sup> *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*”).

<sup>21</sup> 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.

<sup>22</sup> Section 771(35)(A) of the Tariff Act of 1930 (the “Act”) defines the dumping margin as the amount by which normal value “exceeds” export price (or constructed export price). Section 771(35)(B) 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.

<sup>23</sup> *US-Zeroing (EC)*, WT/DS294/R, WT/DS294/AB/R, para. 263 (a)(i); *US-Zeroing (Japan)*, WT/DS322/R,

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.<sup>24</sup>

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 and antidumping duty assessment rates 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.<sup>25</sup> In these section 129 proceedings, the Department is calculating prospective cash deposit rates for the companies listed above, using the revised calculation methodology described in the *Final Modification for Reviews*.

On March 23, 2012, the Department issued the Preliminary Results for these section 129 proceedings. In the Preliminary Results, the Department preliminarily recalculated the cash deposit rates in effect for the companies listed above by applying the methodology described in *Final Modification for Reviews*.

The Department received case briefs from the following parties:

- American Italian Pasta Company with regard to the 2002-2003, 2004-2005, 2006-2007, and 2009-2010 review periods of Certain Pasta from Italy (“pasta petitioner”).
- Aqualon Company with regard to the 2008-2009 review period of Purified Carboxymethylcellulose from Finland (“CMC petitioner”).
- Allegheny Ludlum Corporation and North American Stainless with regard to the 2007-2008 review period of Stainless Steel Plate in Coils from Belgium (“steel petitioners”).

The Department received rebuttal briefs from the following parties:

- For Certain Pasta from Italy: Felicetti with regard to the 2006-2007 review period; Garofalo with regard to the 2009-2010 review period; and Agritalia and P.A.P. with regard to the 2009-2010 review period (collectively “pasta respondents”).
- CP Kelco with regard to 2008-2009 review period of Purified Carboxymethylcellulose

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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).

<sup>24</sup> 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).

<sup>25</sup> *Final Modification for Reviews* at 8102.

from Finland

- ASB with regard to the 2007-2008 review period of Stainless Steel Plate in Coils from Belgium

No hearings were requested.

## **DISCUSSION OF ISSUES**

### **Comment 1: Targeted Dumping**

#### Discussion of Case Briefs

All domestic interested parties filing case briefs argued that the Department should use, in recalculating the cash deposit rates for certain respondents, the alternative average-to-transaction methodology that the Department has used in certain antidumping investigations when the criteria set forth in section 777A(d)(1)(B) of the Act, are satisfied. The Department examines these criteria using a test sometimes referred to as the “targeted dumping” test. The following parties have alleged in their case briefs that the listed respondent parties engaged in targeted dumping by customer, by region, and/or by time period:

- 1) The pasta petitioner has alleged targeted dumping:
  - by customer and time period for Garofalo for the 2009-2010 review period;
  - by customer, region and time period for Tomasello for the 2009-2010 review period;
  - by time period for Pasta Zara for the 2006-2007 review period;
  - by customer and time period for Corticella/Combattenti for the 2004-2005 review period;
  - by time period for Russo/Di Nola for the 2002-2003 review period.
- 2) The CMC petitioner has alleged targeted dumping by purchaser, region and time period for CP Kelco.
- 3) The steel petitioners have alleged targeted dumping by customer, region and time period for ASB.

All domestic interested parties argue that the average-to-average methodology preliminarily used by the Department to recalculate cash deposit rates in these proceedings, cannot take into account the pattern of significant differences by customer, region and/or time period. All domestic interested parties further contend that the Department should not allow offsets for non-dumped sales when it applies the targeted dumping methodology.

The pasta and steel petitioners argue that their targeted dumping allegations should be accepted as timely. Petitioners note that, in contrast to the Department's practice in investigations, the Department has provided no guidance on deadlines for filing targeted dumping allegations in administrative reviews. Moreover, the pasta and steel petitioners explain that the Department released its *Final Modification for Reviews*, which sets forth the revised methodologies for calculating weighted-average dumping margins in administrative reviews, just prior to the release of these Preliminary Results, and assert that parties could not have filed targeted dumping allegations prior to the release of the *Final Modification for Reviews*. The pasta and steel petitioners finally argue that it was unnecessary to file targeted dumping allegations during the underlying administrative reviews because the Department used the average-to-transaction methodology during these reviews. Consequently, the pasta and steel petitioners contend that the Department should accept as timely the targeted dumping allegations that they have filed in these proceedings.

The CMC petitioner asserts that although the Department claims to have preliminarily recalculated the cash deposit rate by applying the revised methodology described in the *Final Modification for Reviews*, the agency has not applied the revised methodology in full. Specifically, the CMC petitioner explains that the revised methodology in the *Final Modification for Reviews* provides that the Department will decide on a case-by-case basis whether it is appropriate to use an alternative comparison methodology, examining the criteria set forth in section 777A(d)(1)(B) of the Act. The CMC petitioner argues that the Department did not undertake this analysis for these proceedings, and, thus, did not fully apply the revised methodology set forth in the *Final Modification for Reviews*. The CMC petitioner maintains that if the Department were to consider the criteria set forth in the targeted dumping provision in section 777A(d)(1)(B), the agency would find that the evidence demonstrates patterns of export prices for CP Kelco that differ significantly among purchasers, regions, and time periods. Thus, the CMC petitioner argues that the Department failed to undertake an analysis regarding whether an alternative calculation methodology should have been used to recalculate CP Kelco's cash deposit rate.

#### Discussion of Rebuttal Briefs

All respondents argue in their rebuttal briefs that the Department should not initiate targeted dumping analyses in these proceedings. Garofalo and ASB argue that targeted dumping allegations are beyond the scope of these section 129 proceedings. Specifically, Garofalo and ASB explain that the scope of these proceedings was limited by the instructions from the USTR to the Secretary of Commerce, which did not instruct the agency to consider any issue beyond recalculating cash deposit rates for certain companies without the use of zeroing. Garofalo argues because these instructions do not mention opening up the record for a targeted dumping analysis, such an analysis is beyond the scope of these proceedings.

Garofalo maintains that the situation here is no different from that in the section 129 final results



in *Certain Stainless Steel Sheet and Strip in Coils from Italy*<sup>26</sup>, where the Department declined to consider certain clerical errors in the underlying investigation because the agency determined that they were outside the scope of that section 129 proceeding. Garofalo argues that the pasta petitioner's targeted dumping allegations are similarly beyond the scope of these proceedings because these allegations were never raised in the underlying administrative review, or before the WTO dispute settlement panel and Appellate Body. Moreover, ASB maintains that petitioners' targeted dumping allegations are outside the scope of these proceedings because they do not relate to rendering the final results of this case consistent with the DSB's recommendations and rulings in *US – Zeroing (EC)*, *US – Continued Zeroing (EC)*, and *US – Zeroing (Japan)*. ASB notes that the Department has addressed this situation in *Activated Carbon from the PRC*, where the agency explained that the targeted dumping provision is a separate provision of the statute, unrelated to the agency's modification of the methodology it uses to calculate the weighted-average dumping margin.<sup>27</sup>

Garofalo and CP Kelco further assert that because the pasta petitioner requested that the Department continue to zero when calculating cash deposit rates using the average-to-transaction comparison methodology, this would lead to the same resulting cash deposit rate as was calculated in the underlying administrative review. Garofalo and CP Kelco argue that this result would negate the understanding between the United States and the European Union, pursuant to which the USTR instructed the agency to conduct these section 129 proceedings. CP Kelco contends that the Department's preliminary recalculation of CP Kelco's cash deposit rate was consistent with instructions from the USTR and with the United States' international trade obligations.

Garofalo argues that the Department should find the pasta petitioner's targeted dumping allegation to be untimely because it was not raised in the underlying administrative review, or even before the Preliminary Results in these section 129 proceedings. ASB asserts that the rules for applying the targeted dumping methodology in administrative reviews outlined in the *Final Modification for Reviews*, only apply to administrative reviews pending before the Department for which the preliminary results are issued after April 16, 2012, the effective date for the *Final Modification for Reviews*. ASB argues that, contrary to steel petitioners' assertions, the rules for applying the targeted dumping methodology in administrative reviews are not applicable to these proceedings, because the preliminary results for the underlying administrative reviews, as well as the Preliminary Results for these section 129 proceedings, were issued prior to April 16, 2012.

Further, Garofalo and ASB contend that if the Department were to accept these untimely allegations, the agency would have to reopen the record and allow respondents to comment on the petitioners' allegations, and that this would lead to a full reopening of the underlying

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<sup>26</sup> *Implementation of the Findings of the WTO Panel in US-Zeroing (EC); Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From Italy*, 72 FR 54640 (September 26, 2007).

<sup>27</sup> *Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Activated Carbon from the People's Republic of China* at 10, 72 Fed. Reg. 9508 (Mar. 2, 2007), available at <http://ia.ita.doc.gov/frn/2007/0703frn/E7-3693.txt>.

administrative reviews. Agritalia and Felicetti additionally argue that were the Department to use the targeted dumping methodology, the methodology should only be applied to those sales that the Department has found to be “targeted.”

CP Kelco contends that the recalculations done for the Preliminary Results of these section 129 proceedings comply with the methodology set forth in the *Final Modification for Reviews*. CP Kelco notes that in the *Final Modification for Reviews*, the Department explained that it would use the average-to-average methodology in administrative reviews, unless the agency determines that it is appropriate to use another comparison methodology. CP Kelco argues that the Department did not determine that it was appropriate to use another comparison methodology in these section 129 proceedings, and, therefore, the agency properly used the average-to-average comparison methodology. Moreover, CP Kelco asserts that although the Department explained in the *Final Modification for Reviews* that it would determine on a case-by-case basis whether it is appropriate to use an alternative comparison methodology in a particular administrative review, these section 129 proceedings are not administrative reviews. Accordingly, CP Kelco argues that the agency should decline to conduct such an analysis in these section 129 proceedings.

Finally, the pasta respondents argue that the targeted dumping provision in section 777A(d)(1)(B) of the Act only applies to antidumping duty investigations and not to reviews. Garofalo explains that antidumping administrative reviews are governed by section 777A(d)(2), which does not provide for the use of an alternative calculation methodology, as is provided for in section 777A(d)(1)(B). Accordingly, Garofalo contends that the Department has no statutory basis to apply the targeted dumping methodology in the context of an administrative review.

### **Department’s Position:**

The Department determines that it will not undertake a targeted dumping analysis for these section 129 proceedings.

Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports.<sup>28</sup> Section 129 of the URAA is the applicable provision governing the nature and effect of determinations issued by the Department to implement findings by WTO panels and the Appellate Body. Specifically, section 129(b)(2) provides that, “the administering authority shall, within 180 days after receipt of a written request from the Trade Representative, issue a determination in connection with the particular proceeding that would render the administering authority’s action described in paragraph (1) not inconsistent with the findings of the panel or the Appellate Body.”<sup>29</sup>

On February 13, 2012, the Department received such a written request and was instructed by the USTR to render certain actions not inconsistent with the DSB’s recommendations and rulings in

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<sup>28</sup> See 19 U.S.C. § 3538.

<sup>29</sup> 19 U.S.C. § 3538(b)(2).

*US – Zeroing (EC)*, *US – Continued Zeroing (EC)*, and *US – Zeroing (Japan)*, by recalculating the cash deposit rates for certain companies relating to certain specified administrative review determinations. The Department issued its Preliminary Results in conformity with the USTR’s request, recalculating the cash deposit rates for these companies using monthly average-to-average comparisons and granting offsets for non-dumped comparisons. All other aspects of the underlying administrative review proceedings remain final and conclusive.

The Department has determined that it is appropriate to limit these section 129 proceedings to applying the methodology adopted in the *Final Modification for Reviews* only to the extent necessary to render the cash deposit rates currently in effect not inconsistent with the relevant dispute findings. Consideration of the petitioners’ targeted dumping allegations would require a broader examination of the underlying administrative reviews. In revising the relevant cash deposit rates using average-to-average comparisons and granting offsets for non-dumped comparisons, the Department has determined cash deposit rates that would, if implemented, fully address the findings of inconsistency at issue in the WTO disputes.

In contrast to the CMC petitioner’s assertions, the Department’s recalculations in these proceedings are entirely consistent with the methodology outlined in the *Final Modification for Reviews*, in which the Department explained that it will calculate weighted-average dumping margins and antidumping duty assessment rates in a manner which provides offsets for non-dumped comparisons while using monthly average-to-average comparisons in reviews. Accordingly, for these section 129 proceedings, the Department recalculated cash deposit rates in a manner which provided offsets for non-dumped comparisons while using monthly average-to-average comparisons. While the agency did state in the *Final Modification for Reviews* that in administrative reviews it would “determine on a case-by-case basis whether it is appropriate to use an alternative comparison methodology by examining the same criteria that the Department examines in original investigations, pursuant to sections 777A(d)(1)(A) and (B) of the Act,”<sup>30</sup> the Department notes that these proceedings are not antidumping duty administrative reviews, initiated pursuant to section 751 of the Act.<sup>31</sup> Unlike an administrative review, these section 129 proceedings will not determine assessment rates for entries of subject merchandise made during the period of review in question. Rather, these section 129 proceedings have been initiated pursuant to 19 U.S.C. § 3538, with the limited purpose of rendering certain actions, *i.e.*, specific cash deposit rates currently in effect, not inconsistent with the DSB’s recommendations and rulings in *US – Zeroing (EC)*, *US – Continued Zeroing (EC)*, and *US – Zeroing (Japan)*. If the USTR directs the Department to implement these section 129 final results, the affected companies’ cash deposit rates would be changed for entries made on or after “the date on which the Trade Representative directs the administering authority ... to implement that determination.”<sup>32</sup> Accordingly, all entries that would be affected by implementation of these section 129 final results will be, upon request, subject to an administrative review under section 751(a) of the Act in due course. If an administrative review is requested, the Department will

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<sup>30</sup> *Final Modification for Reviews* at 8102.

<sup>31</sup> 19 U.S.C. § 1675.

<sup>32</sup> 19 U.S.C. 3538(c)(1)(B).

determine the appropriate amount of antidumping duty for such entries and, under appropriate circumstances, may determine that application of an alternative methodology is warranted. By recalculating each company's cash deposit rate using monthly average-to-average comparisons and granting offsets for non-dumped comparisons, the current cash deposit rates for certain companies are rendered not inconsistent with the dispute settlement findings at issue. The Department need not conduct targeted dumping analyses to do so. Moreover, as explained above, the Department has declined to broaden the scope of these section 129 proceedings and conduct such analyses in the context of these section 129 proceedings.

Having determined not to undertake targeted dumping analyses in the context of these section 129 proceedings, the Department need not reach the remaining targeted dumping questions raised in the parties' briefs.

## **Comment 2: Cash Deposit Rate for Non-Selected Respondents**

### Discussion of Case Briefs

The pasta petitioner argues that the Department incorrectly calculated the cash deposit rate for respondents that were subject to review but were not selected as mandatory respondents pursuant to 777A(c)(2) of the Act.<sup>33</sup> Specifically, the pasta petitioner maintains that for the 2006-2007 and 2009-2010 review periods, the Department erred in including in these calculations the cash deposit rates of zero which have been recalculated for the mandatory respondents in these section 129 proceedings.

The pasta petitioner notes that section 735(c)(5)(A) of the Act articulates a preference for excluding from this calculation any dumping margins that are zero, *de minimis*, or based entirely on facts available, and that the Department has normally excluded these three types of dumping margins from its calculations.<sup>34</sup> Further, the pasta petitioner highlights that where all the dumping margins established for mandatory respondents are zero, *de minimis*, or based on facts available, section 735(c)(5)(B) provides that the Department may use "any reasonable method" for assigning a rate to non-selected respondents. Citing the Department's prior determinations, the pasta petitioner maintains that the Department's normal practice under these circumstances is to assign the non-selected respondents the most recently calculated dumping margin from a prior completed segment of the proceeding that is not zero, *de minimis*, or based entirely on facts available. Thus, the pasta petitioner argues that the Department has no basis for altering this practice with regard to calculating cash deposit rates for non-selected respondents in these section 129 proceedings, which only deal with the issue of zeroing.

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<sup>33</sup> 19 U.S.C. § 1677f-1(c)(1-2). Section 777A(c)(1) of the Act provides that "the administering authority shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise." However, section 777A(c)(2) allows the Department to review a limited number of respondents in an administrative review, where it is not practicable to examine all known producers and exporters of the subject merchandise.

<sup>34</sup> 19 U.S.C. § 1673d(c)(5)(A-B).

The pasta petitioner notes that although the Department determined the cash deposit rates for non-selected respondents in the 2006-2007 and 2009-2010 review periods by relying on a simple average of the rates for the mandatory respondents, the agency may not do so in these section 129 proceedings, because mandatory respondents now have recalculated cash deposit rates of zero. Accordingly, the pasta petitioner argues that, for the 2007-2008 review period the non-selected respondents should be assigned a cash deposit rate of 18.13 percent, which is the recalculated cash deposit rate for Atar for the 2004-2005 review period. Further, the pasta petitioner argues that, for the 2009-2010 review period, the non-selected respondents should be assigned a cash deposit rate of 10.06 percent, which is the recalculated cash deposit rate for IAPC/Pasta Lensi for the 2007-2008 review period. The pasta petitioner asserts that these recalculated cash deposit rates are appropriate to use in these proceedings because they were calculated without the use of zeroing.

### Discussion of Rebuttal Briefs

Agritalia and Felicetti argue in their rebuttal briefs that the Department properly assigned a cash deposit rate of zero to the non-selected respondents in the 2006-2007 and 2009-2010 review periods. Agritalia and Felicetti contend that nearly all of the recalculations in these proceedings have resulted in cash deposit rates of zero. They argue that this demonstrates that if the non-selected respondents in these proceedings had been selected for individual review, they would also likely have received a cash deposit rate of zero. Agritalia and Felicetti maintain that the statute gives the Department discretion to take this into account and assign the cash deposit rates of zero to the non-selected respondents in the 2006-2007 and 2009-2010 review periods.

### **Department's Position:**

The Department determines that it is appropriate to use the same methodology for calculating cash deposit rates for non-selected respondents for these section 129 proceedings as was employed in the underlying administrative reviews. For the 2006-2007 and 2009-2010 review periods in Certain Pasta from Italy, the Department assigned to the non-selected respondents an average of the weighted-average dumping margins of the mandatory respondents.<sup>35</sup> As explained in Comment 1 above, the Department determines it appropriate to limit these section 129 proceedings to recalculating the cash deposit rates for certain companies from certain specified administrative reviews in a manner which provides offsets for non-dumped comparisons while using average-to-average comparisons. The Department declines to broaden its examination to any other aspect of the original final results of the underlying administrative reviews. Accordingly, the Department continues to apply the same methodology for calculating the cash deposit rates for non-selected respondents as was used in the underlying administrative reviews. Specifically, for these final results of the section 129 proceedings, the Department

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<sup>35</sup> For the 2006-2007 administrative review, the cash deposit rate for the non-selected respondents was calculated as the simple average of the weighted-average dumping margins for the mandatory respondents. For the 2009-2010 administrative review, the cash deposit rate for the non-selected respondents was calculated as the weighted average of the weighted-average dumping margins for the mandatory respondents, weighted by the publicly-ranged U.S. sales value of each mandatory respondents.

continues to assign to the non-selected respondents an average of the recalculated weighted-average dumping margins of the mandatory respondents. Neither the statute nor the Department's regulations address the establishment of a rate to be applied to individual companies not selected for individual examination in an administrative review or in these section 129 proceedings. The Department's practice, generally, has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not examined in an administrative review.

Section 735(c)(5) of the Act provides (emphasis added):

(A) General rule. For purposes of this subsection and section 733(d), the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776.

(B) Exception. If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.

Section 735(c)(5)(B) indicates that the Department has the discretion to “use any reasonable method” to establish the cash deposit rate for non-selected respondents. The Department determines that it is appropriate to continue to use the average of the weighted-average dumping margins calculated for the respondents selected for individual review, following the calculation methodologies from the underlying administrative reviews.

The pasta petitioner contends that it is contrary to the agency's practice to calculate the cash deposit rates for non-selected respondents in administrative reviews by including in the average calculated rates of zero. The Department notes that these are not administrative reviews. Rather, as noted above, these are section 129 proceedings in which the Department is requested to render certain actions not inconsistent with WTO dispute settlement findings. Consequently, the Department finds that it may reasonably limit its examination of the underlying administrative reviews for the purpose of these section 129 proceedings to only those aspects of the Department's original analysis found to be inconsistent with the WTO Agreements. In doing so, the Department declines to implement any other modifications to the analysis used in the underlying administrative reviews. The DSB's recommendations and rulings in *US – Zeroing (EC)*, *US – Continued Zeroing (EC)* and *US – Zeroing (Japan)* did not address the calculation of

the cash deposit rate for the non-selected respondents. Moreover, as indicated in connection with the Department's position on the targeted dumping issue, the final results for these section 129 proceedings, if implemented, will establish cash deposit rates which will be implemented prospectively, and will not result in the liquidation of past entries of subject merchandise. The pasta petitioners will have the opportunity to request administrative reviews of all entries subject to the cash deposit rates if implemented as a result of these section 129 proceedings, and to raise any methodological issues during such reviews. Accordingly, the Department continues to calculate the cash deposit rates for the non-selected respondents using the same methodology used in the underlying administrative review.

### Cash Deposit Rates

The recalculated cash deposit rates<sup>36</sup>, unchanged from the Preliminary Results, are as follows:

<b>Antidumping Order (Review Period)</b>	<b>Manufacturer/ Exporter</b>	<b>Cash Deposit Rate</b>	
		<b>Underlying Administrative Review</b>	<b>Section 129 Proceedings Final Results</b>
Stainless Steel Plate in Coils from Belgium (2007/08)	Amperam Stainless Belgium N.V.	6.57%	0.00%
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%

<sup>36</sup> The recalculations for the cash deposit rates are detailed in separate calculation memoranda and computer programs on the record of the 129 proceeding relating to each of the underlying administrative reviews.

Antidumping Order (Review Period)	Manufacturer/ Exporter	Cash Deposit Rate	
		Underlying Administrative Review	Section 129 Proceedings Final Results
	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%	5.49%
	Pastificio Lucio Garofalo S.p.A.	15.87%	14.63%
	Pasta Lensi S.r.L.	12.21%	10.06%
	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%	0.00%
	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%



<b>Antidumping Order (Review Period)</b>	<b>Manufacturer/ Exporter</b>	<b>Cash Deposit Rate</b>	
		<b>Underlying Administrative Review</b>	<b>Section 129 Proceedings Final Results</b>
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 Alimerntari 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%
Stainless Steel Sheet and Strip in Coils from Japan (2007/08)	Nippon Kinzoku Co., Ltd.	0.54%	0.00%

**RECOMMENDATION**

In light of the dispute settlement findings, we recommend applying the methodology from the *Final Modification for Reviews* to establish the above-referenced recalculated cash deposit rates. These cash deposit rates, if implemented, would render the cash deposit rates applied to entries made on or after the effective date of such implementation not inconsistent with the recommendations and rulings of the DSB in *US – Zeroing (EC)*, *US – Zeroing (Japan)* and *US – Continued Zeroing (EC)*. Consistent with section 129 of the URAA, these new cash deposit rates will only become effective if the USTR, following congressional consultations, instructs the Department to implement these final results.

Agree   ✓   Disagree \_\_\_\_\_

  *Paul Piquado*    
Paul Piquado  
Assistant Secretary  
for Import Administration

  6 JUNE 2012    
Date