



A-570-900  
Section 129 Determination  
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MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Gary Taverman  
Senior Advisor  
for Antidumping and Countervailing Duty Operations

SUBJECT: Final Results of the Proceeding under Section 129 of the Uruguay  
Round Agreements Act: Antidumping Measures on Diamond  
Sawblades and Parts Thereof from the People's Republic of China

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### Summary

This memorandum addresses issues briefed in the proceeding being conducted under section 129 of the Uruguay Round Agreements Act ("URAA"), with respect to the antidumping duty ("AD") investigation on diamond sawblades and parts thereof from the People's Republic of China ("PRC"), in response to the World Trade Organization ("WTO") panel report in United States - Anti-Dumping Measures on Certain Shrimp and Diamond Saw Blades from China (DS422) ("Panel Report"), dated June 8, 2012. In the "Discussion of the Issues" section below, the Department of Commerce ("Department") has addressed the issues in this proceeding for which we received comments from interested parties.

### Background

On May 22, 2006, the Department issued a final determination of sales at less than fair value in the AD investigation on diamond sawblades and parts thereof from the PRC.<sup>1</sup> On June 22, 2006, the Department issued an amended final determination.<sup>2</sup> On November 4, 2009, in response to a mandamus order from the U.S. Court of International Trade ("CIT" or "the Court"), the Department published an AD order on diamond sawblades and parts thereof from the PRC.<sup>3</sup>

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<sup>1</sup> See Final Determination of Sales at Less than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) ("Final Determination").

<sup>2</sup> See Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 35864 (June 22, 2006) ("Amended Final Determination").

<sup>3</sup> See Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders, 74 FR 57145 (November 4, 2009) ("Order").



## *Section 129 Determination*

On October 13, 2011, the PRC government requested the establishment of a WTO dispute settlement panel (“Panel”) to consider the issue of zeroing in the Department’s Final Determination. The Panel circulated its report on June 8, 2012. The Panel found that the Department acted inconsistently with the first sentence of Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“Antidumping Agreement”) by using zeroing in its calculation of certain margins of dumping in two investigations involving PRC products, including the investigation of diamond sawblades and parts thereof.<sup>4</sup> On July 23, 2012, the WTO Dispute Settlement Body (“DSB”) adopted the Panel Report.

Section 129 of the URAA allows the Department to amend, rescind, or modify a determination found by a WTO dispute settlement panel or the Appellate Body to be inconsistent with U.S. obligations under the Antidumping Agreement. Specifically, section 129(b)(2) provides that, “notwithstanding any provision of the Tariff Act of 1930 . . .,” within 180 days after receipt of a written request from the U.S. Trade Representative (“USTR”), the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (“SAA”) refers variously to such a determination by the Department as a “new,” “second,” and “different” determination. This determination may be subject to judicial review separate and apart from judicial review of the Department’s original determination. In addition, section 129(c)(1)(B) of the URAA provides expressly that a determination under section 129 applies only with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which USTR directs the Department to implement that determination. Thus, such determinations have prospective effect only.

At the request of USTR, the Department initiated this proceeding pursuant to section 129 of the URAA on September 5, 2012. The Department issued its preliminary results in this proceeding on December 17, 2012.<sup>5</sup> Since the issuance of the Preliminary 129 Results, the Department received case and rebuttal briefs from Petitioner<sup>6</sup> and Advanced Technology & Materials Co., Ltd. (“Advanced Technology”)<sup>7</sup> on January 4 and January 11, 2013, respectively.

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<sup>4</sup> See Panel Report, at para. 8.1.

<sup>5</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration “Preliminary Results under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Diamond Sawblades and Parts Thereof from the People’s Republic of China,” dated December 17, 2012 (“Preliminary 129 Results”).

<sup>6</sup> Diamond Sawblades Manufacturers’ Coalition.

<sup>7</sup> Collectively with Beijing Gang Yan Diamond Product Company and Yichang HXF Circular Saw Industrial Co., Ltd, a single entity.

## Discussion of Issues

### **Comment 1: Whether the Order Should Be Revoked with Respect to Advanced Technology**

#### *Petitioner's Views:*

- Although the Department has not stated what steps it would take should this zero margin prevail for the final results, the Department's regulations state that respondents with zero or *de minimis* margins in investigations are to be excluded from the AD order. The Department should not take this position with respect to Advanced Technology here, because the calculation of Advanced Technology's margin is currently under appeal.
- The Department should limit any actions implementing Advanced Technology's zero margin to those that would not interfere with the CIT's jurisdiction. For example, if the Department continues to find in the final results that Advanced Technology's margin is zero, it could order the revision of the company's cash deposit rate to zero. However, it should neither lift the suspension of liquidation for Advanced Technology, nor exclude the entity from the order outright. Either action stands to impair the CIT's jurisdiction over the ongoing appeals.

#### *Advanced Technology's Views:*

- The Department is required under the statute, regulations and its own precedent to exclude from an AD order any company receiving a zero or *de minimis* margin in the investigation.

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

Section 129 of the URAA provides that:

{n}otwithstanding any provision of the Tariff Act of 1930..., 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...not inconsistent with the findings of the panel or the Appellate Body.<sup>8</sup>

The authority granted by this provision may be invoked based on a report by a dispute settlement panel or the Appellate Body of the WTO finding that the Department's action was not in conformity with the terms of the Antidumping Agreement. The Panel found that the Department acted inconsistently with the first sentence of Article 2.4.2 of the Antidumping Agreement by using zeroing in its calculation of certain margins of dumping in two investigations involving PRC products, including the investigation of diamond sawblades and parts thereof.<sup>9</sup> Subsequently, USTR submitted a written request to the Department to issue determinations to render the determinations in these investigations not inconsistent with the DSB recommendations and rulings.<sup>10</sup> Therefore, the Department has the authority, pursuant to section 129(b)(2) of the URAA, to issue a determination that would bring the Department's less than fair value determinations into conformity with the findings of the WTO Panel. Accordingly, in its

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<sup>8</sup> See section 129(b)(2) of the URAA.

<sup>9</sup> See Panel Report, at para. 8.1.

<sup>10</sup> See Letter from the USTR, dated September 5, 2012.

Preliminary 129 Results, the Department preliminarily determined to recalculate the weighted-average dumping margin at issue by applying the calculation methodology described in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (“Final Modification for Investigations”).

The Preliminary 129 Results contained the preliminary re-calculations necessary to bring the determination into conformity with the findings in the Panel Report. Specifically, USTR directed the Department to “issue determinations as necessary to render the original investigation determinations not inconsistent with the DSB recommendations and rulings in this dispute.”<sup>11</sup> While the Department agrees with Petitioner that we did not make any preliminary declarations of company-specific revocation in the Preliminary 129 Results, the Department made the changes, as requested by USTR, to the company-specific margin calculation programs. The Department’s practice has been to revoke or partially revoke an order where recalculations pursuant to section 129 have resulted in zero or de minimis margins.<sup>12</sup> As in prior cases, here the Department is addressing a company-specific revocation in this final results memorandum.

We disagree with Petitioner’s argument that the Department should not partially revoke the Order with respect to Advanced Technology. The Department has re-calculated Advanced Technology’s weighted-average dumping margin from the investigation, without the use of zeroing, resulting in a de minimis margin. Section 735(a)(4) of the Tariff Act of 1930, as amended (“Act”) provides that, in making a determination in an investigation, the Department “shall disregard any weighted average dumping margin that is de minimis as defined in section 1673b(b)(3),” or less than two percent. Consequently, the Department has no statutory authority with which to maintain Advanced Technology as subject to the Order. Because the re-calculated dumping margin for the period of investigation is now de minimis for Advanced Technology, there is no basis to sustain this company under the Order should USTR direct the Department to implement its finding. Moreover, partial revocation has been consistent with the Department’s practice in previous section 129 determinations that involved revised investigation weighted-average dumping margins of zero or de minimis.<sup>13</sup> Ordinarily, a company that receives a zero or de minimis weighted-average dumping margin in the context of an antidumping investigation is excluded from any antidumping duty order that may otherwise be issued as a result of the investigation.

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<sup>11</sup> See id.

<sup>12</sup> See, e.g., Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Stainless Steel Plate in Coils From the Republic of Korea; and Partial Revocation of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 76 FR 74771, 74772 (December 1, 2011) (“2011 Korean 129 Determination”), and accompanying Issues and Decision Memorandum at 9; Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand, 75 FR 48940, 48941 (August 12, 2010) (“Thai Bags 129 Determination”), and accompanying Issues and Decision Memorandum at 8.

<sup>13</sup> See, e.g., Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Ecuador: Notice of Determination Under section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Ecuador, 72 FR 48257, 48258 (August 23, 2007); Thai Bags 129 Determination, 75 FR at 48941; 2011 Korean 129 Determination, 76 FR at 74772.

Furthermore, this section 129 determination will have prospective effect only, *i.e.*, it will apply to unliquidated entries of diamond sawblades and parts thereof from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date on which USTR directs us to implement the determination. Partial revocation of the Order with respect to Advanced Technology would not in any way interfere with the court's jurisdiction over the final determination from the investigation. The SAA provides that, if USTR directs the Department to implement the section 129 determination, we "may do so even if litigation is pending with respect to the initial agency determination."<sup>14</sup> Moreover, a section 129 determination is considered a "new," "second," and "different" determination, which is subject to judicial review separate and apart from judicial review of our final determination in the investigation.<sup>15</sup> Under the applicable standard of review, as set forth in statute and case law, multiple permissible interpretations of the law and the facts may be legally permissible in any particular case, and the issuance of a different determination under section 129 does not signify that the initial determination was unlawful.<sup>16</sup>

Moreover, implementation of this determination would not deprive the CIT of jurisdiction over unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption prior to the date on which USTR directs us to implement the determination, should it so direct. Should this determination be implemented at the direction of USTR, it would only affect the existence of the order going forward as of the date USTR directs implementation. The CIT's disposition of the ongoing litigation, not this determination if implemented, would affect imports that occurred between the effective date of the order and the date of implementation of this determination. Consequently, the Court's jurisdiction over the Department's initial determination is not undermined by this determination and any resulting partial revocation. This situation analogous to a revocation resulting from a five-year sunset review, which would apply "with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the {Department}."<sup>17</sup> Because any revocation of an order would be prospective, in the event of outstanding litigation at the CIT, the Court would retain jurisdiction over unliquidated entries pre-dating the effective date of revocation.

## **Comment 2: Whether We Should Permit Petitioner to Submit a Targeted Dumping Allegation**

### *Petitioner's Views:*

- The Department should allow Petitioner an opportunity to submit a targeted dumping allegation. Now that the Department has recalculated Advanced Technology's margin without zeroing, a targeted dumping allegation is the only method by which to reveal masked dumping.

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<sup>14</sup> See SAA, at 1025.

<sup>15</sup> See SAA, at 1025 and 1027 and section 516A(a)(2)(B)(vii) of the Act.

<sup>16</sup> See SAA, at 1027.

<sup>17</sup> See section 751(d)(3) of the Act (emphasis added) (mirroring the "on or after" language of section 129(c)(1) of the URAA).

*Advanced Technology's Views:*

- This section 129 proceeding was instituted for the sole purpose of recalculating the margin without the use of zeroing and cannot be expanded.
- Petitioner's insinuation that the targeted dumping laws are somehow an alternative to the practice of zeroing that made a targeted dumping allegation unnecessary in the underlying investigation is incorrect.
- The targeted dumping laws were on the books at the same time that the Department was using zeroing and during the course of the underlying investigation. Petitioner had the option of making a targeted dumping allegation in the investigation and should not be afforded a second opportunity to do so.

**Department's Position:**

We agree with Advanced Technology. The Department has not expanded the scope of the prior section 129 proceedings beyond that directed by the WTO, including situations where petitioners have requested that the Department consider targeted dumping allegations.<sup>18</sup> The courts have upheld our decision in a prior 129 determination to limit the scope of the 129 to addressing solely the issues of removing zeroing to comply with a WTO finding against zeroing and not expand the scope to encompass other issues not necessary to comply with the WTO findings.<sup>19</sup> The targeted dumping regulations were in effect during the original investigation and Petitioner had the opportunity to submit such an allegation then.

**Final Antidumping Duty Margin**

<b>Manufacturer/Exporter</b>	<b>Amended Final Determination</b>	<b>Section 129 Final Determination</b>
Advanced Technology	2.82 %	0% <sup>20</sup>

**Partial Revocation**

The Department has re-calculated the dumping margin for Advanced Technology, absent the zeroing methodology, resulting in a *de minimis* margin for this company. This re-calculation has not changed since the Preliminary 129 Results. Therefore, if directed to implement this section 129 determination, the Department will revoke the Order, in part, with respect to Advanced Technology effective for entries made on or after the date upon which USTR directs the

<sup>18</sup> See, e.g., Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act: 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, 77 FR 36257 (June 18, 2012), and accompanying Issues and Decision Memorandum at 10-12.

<sup>19</sup> See United States Steel Corp. v. United States, 621 F.3d 1351 (Fed. Cir. 2010).

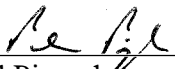
<sup>20</sup> See Memorandum to the File "Calculations for the Preliminary Results under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Diamond Sawblades and Parts Thereof from the People's Republic of China," dated December 17, 2012, and which is hereby adopted for this Section 129 final determination.

Department to implement these final 129 results. Accordingly, if USTR directs us to implement this section 129 determination, the Department will instruct CBP to liquidate without regard to ADs, Advanced Technology's entries of subject merchandise which were entered, or withdrawn from warehouse, for consumption on or after that date and to discontinue the collection of cash deposits for estimated ADs from these companies. Accordingly, if USTR directs us to implement this section 129 determination, the Department determines that the Order, as a whole, will not be revoked as a result of implementation because no other margin for any other entity is affected by this section 129 Determination for diamond sawblades and parts thereof from the PRC.

**Recommendation**

In light of the Panel's findings, we recommend issuing this determination which, if implemented, would render our original determination not inconsistent with the recommendations and rulings of the DSB by applying the methodology in Final Modification for Investigations, and adopting the recalculated weighted-average dumping margins as outlined above.

Agree  Disagree

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

9 MARCH 2013  
Date