

ruling is not appealed, or if appealed and upheld by the CAFC.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-427-815]

Stainless Steel Sheet and Strip in Coils from France: Notice of Court Decision and Suspension of Liquidation

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

SUMMARY: On September 24, 2002, in *Allegheny Ludlum Corp. v. United States*, Consol. Court No. 99-09-00566, Slip Op. 02-114, a lawsuit challenging the Department of Commerce's ("the Department's") *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30774 (June 8, 1999) ("*French Stainless*"), the Court of International Trade ("CIT") affirmed the Department's second remand redetermination and entered a judgment order. In this redetermination, the Department reviewed the record evidence regarding the facts and circumstances of the privatization of Usinor, Ugine S.A., and Uginox Sales Corporation (collectively "Usinor"), including the terms of the sale, and concluded that Usinor received no countervailable subsidies as a result of the privatization transaction.

As a result of the redetermination, the countervailable subsidy rate for the subject merchandise produced and sold by Usinor during the period of investigation ("POI") was reduced from 5.38 percent to 0.00 percent *ad valorem*.

This redetermination was not in harmony with the Department's original final determination in *French Stainless*. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation for all entries of stainless steel sheet and strip in coils from France.

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-3986.

SUPPLEMENTARY INFORMATION:

Background

In *French Stainless*, using the change-in-ownership methodology in place at that time, the Department determined that countervailable subsidies were being provided to producers and exporters of stainless steel sheet and strip in coils from France. Usinor challenged this determination before the CIT.

On February 2, 2000, the CAFC ruled in *Delverde SRL v. United States*, 202 F.3d 1360 (Fed. Cir. 2000), *reh'g granted in part*, (June 20, 2000) ("*Delverde III*"), that: the Tariff Act as amended does not allow Commerce to presume conclusively, pursuant to a per se rule, that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.

202 F.3d at 1364. The methodology analyzing Delverde's change in ownership and struck down by the CAFC in *Delverde III* was similar to that employed in *French Stainless*. Accordingly, the Department asked the CIT to remand the *French Stainless* proceeding for reconsideration in light of *Delverde III*. The parties consented to this remand.

On August 15, 2000, the CIT remanded the *French Stainless* proceeding to the Department with instructions to issue a determination consistent with United States law, interpreted pursuant to all relevant authority, including the CAFC decision in *Delverde III*. *Allegheny Ludlum Corp., et al v. United States*, Court No. 99-09-00566, Remand Order dated August 15, 2000.

On December 20, 2000, following a comment period, the Department issued the *Final Results of Redetermination Pursuant to Court Remand*. In that redetermination, in light of *Delverde III*, the Department analyzed the facts and circumstances of Usinor's privatization

transaction to determine whether the person to whom countervailable subsidies had been given in the past was essentially the same person after privatization. Among the facts and circumstances considered, the Department examined the continuity of general business operations, the continuity of production facilities, continuity of assets and liabilities, and retention of personnel before and after the privatization. Based on these factors, the Department determined that post-privatization Usinor was essentially the same person as pre-privatization Usinor. Consequently, the pre-privatization subsidies remained attributable to Usinor following its privatization.

After briefing and a hearing, the CIT, on January 4, 2002¹, again remanded the *French Stainless* proceeding to the Department. *Allegheny Ludlum Corp. v. United States*, 182 F. Supp. 2d 1357 (CIT 2002). The court explained that the central question was whether the Department's remand redetermination was consistent with the statute, as interpreted by the CAFC in *Delverde III*. The court found that *Delverde III*'s requirements were as follows:

1. Section 1677(5) prohibits the Department from adopting any per se rule that a subsidy passes through, or is eliminated, as a result of a change in ownership. *Id.* at 1377.
2. The statute requires that the Department must look at the facts and circumstances of the entire transaction, including the terms of the sale, to determine if the purchaser/new owner received, directly or indirectly, a subsidy for which it did not pay adequate compensation. In other words, the Department must find that the purchaser/new owner indirectly received a subsidy from the government. *Id.* at 1377-1380.

The Court specifically rejected, as contrary to *Delverde III*, the Department's argument that, if the pre- and post-privatization companies are, in substance, the same legal person, the Department is not required to determine anew whether that same person has received a subsidy.

On June 3, 2002, following a comment period, the Department issued its *Results of Redetermination Pursuant to Court Remand*. In this second redetermination, the Department re-analyzed certain facts and circumstances of the privatization of Usinor, including the terms of the sale. The Department determined that: 1)

¹ The Court's Memorandum Opinion and Order is dated January 4, 2002, however, the order establishing the time frame for the remand is dated January 7, 2002.

some purchasers of Usinor's shares paid full, fair-market value for those shares and, thus, received no subsidy from the privatization transaction; and 2) other purchasers that did not pay full, fair-market value did receive a subsidy from the privatization transaction. However, regarding the purchasers that did not pay full, fair-market value, while they did receive a subsidy, the Department determined that this subsidy was not countervailable because it was conferred on the owners of the company, and not on the company itself. Consequently, the Department concluded that Usinor received no countervailable subsidies as a result of the privatization transaction, and recalculated a subsidy rate of 0.00 percent *ad valorem* for Usinor for the POI.

The CIT affirmed the *Results of Redetermination Pursuant to Court Remand* on September 24, 2002. See *Allegheny Ludlum Corp., et al. v. United States*, Consol. Court No. 99-09-00566, Slip. Op. 02-114 (CIT 2002).

Suspension of Liquidation

The CAFC, in *Timken*, held that the Department must publish notice of a decision of the CIT or the CAFC which is not "in harmony" with the Department's final determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's September 24, 2002, decision or, if that decision is appealed, pending a final decision by the CAFC. The Department will instruct the Customs Service to liquidate relevant entries covering the subject merchandise effective October 30, 2002, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the CAFC.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Notice With Respect to Modification of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce hereby provides notice that it has received no requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2003 tariff rate quotas established by the Trade and Development Act of 2000, as amended by the Trade Act of 2002. The Department therefore will not consider modification of these limitations.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (the Act of 2000) creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty was limited by the Act of 2000 to 2,500,000 square meter equivalents per year. This limitation was amended by Section 5102 of the Trade Act of 2002 to 3,500,000 square meters equivalents in calendar year 2002 and 4,500,000 square meter equivalents in calendar years 2003 through 2005. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction was limited by the Act of 2000 to 1,500,000 square meter equivalents per year. This limitation was amended by Section 5102 of the Trade Act of 2002 to 2,500,000 square meters equivalents in calendar year 2002 and 3,500,000 square meter equivalents in calendar years 2003 through 2005.

The Act requires the annual consideration of requests by U.S. manufacturers of men's or boys' worsted wool suits, suit-type jackets and trousers for modification of the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations not to exceed 1,000,000 square meter equivalents per year for each tariff rate quota. Authority to consider such requests was delegated to the Secretary of Commerce in Presidential Proclamation 7383 (December 1, 2000). On January 22, 2001, the Department published regulations establishing procedures for considering requests for

modification of the limitations (66 FR 6459, 15 CFR 340).

On September 25, 2002, the Department published a notice in the Federal Register soliciting requests for modification of the limitation on the quantity of imports under the 2003 tariff rate quotas (67 FR 60224). No requests were received in response to this solicitation. As a result, the Department will not consider modification of these limits.

Dated: October 24, 2002.

D. Michael Hutchinson,

Acting Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries.

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DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724218-2233-04]

Solicitation of Applications for the Native American Business Development Center (NABDC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Subject to the availability of fiscal year 2003 funds, the Minority Business Development Agency (MBDA) is soliciting competitive applications, under its Native American Business Development Center (NABDC) Program, from organizations to operate a NABDC in the State of New Mexico. After reviewing the performance of the current operator of the New Mexico NABDC, MBDA has elected not to continue funding in 2003 for the operator and to re-compete this geographic service area.

DATES: The closing date for applications for the NABDC project is November 29, 2002. MBDA anticipates that the award for the NABDC program will be made with a start date of January 1, 2003. Completed applications for the NABDC program must be (1) mailed (USPS postmark) to the NABDC Program Office (see: **ADDRESSES**); or (2) received by MBDA (see: **ADDRESSES**) no later than 5 p.m. Eastern Time.

ADDRESSES: If the applicant or its representative mails the application, it must be mailed to: Native American Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.