

*Comment 31:* Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates, and on Domestic Sales of Finished Products Manufactured from Imported Raw Materials

*Comment 32:* Import Duty Reduction for Cutting Edge Products

*Comment 33:* Permission for Hynix and SEC to Build in Restricted Area

*Comment 34:* Exemption of Value-Added Tax ("VAT") on Imports Used for Bonded Factories Under Construction [FR Doc. 03-15793 Filed 6-20-03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act

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

**ACTION:** Modification of agency practice regarding privatizations.

**SUMMARY:** On January 8, 2003, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) adopted the report of the WTO Appellate Body in *United States-Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/AB/R (December 9, 2002) (*Certain Products*), that recommends that the United States bring its administrative practice regarding privatization, both as such and as applied in twelve challenged administrative determinations, into conformity with its obligations under the WTO Subsidies and Countervailing Measures Agreement (Subsidies Agreement). Section 123 of the Uruguay Round Agreements Act (URAA) governs changes in the Department of Commerce's (Department's) practice when a dispute settlement panel or the Appellate Body of the World Trade Organization finds such practice to be inconsistent with any of the Uruguay Round agreements. Consistent with section 123(1)(g)(C), we published a proposed modification of the Department's privatization methodology, together with an explanation thereof, and provided opportunity for public comment. *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). We received numerous affirmative and rebuttal

comments submitted pursuant to this notice, as discussed below.

**FOR FURTHER INFORMATION CONTACT:** Greg Campbell, Office of Policy, Import Administration, U.S. Department of Commerce, Room 3712, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2239.

#### SUPPLEMENTARY INFORMATION:

##### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). Citation to "section 123" refers to section 123 of the URAA.

##### Background

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit in *Delverde Srl v. United States*, 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g granted in part* (June 20, 2000) (Delverde III), rejected the Department's application of its change-in-ownership methodology, as explained in the *General Issues Appendix*, to the facts before it in that case.<sup>1</sup> The Federal Circuit held that the Act, as amended, did not allow the Department to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically "passed through" to Delverde following the sale. Rather, where a subsidized company has sold assets to another company, the Court held that the Act requires the Department to examine the particular facts and circumstances of the sale and determine whether the purchasing company directly or indirectly received both a financial contribution and benefit from the government. Delverde III, 202 F.3d at 1364-1368.

Pursuant to the Federal Circuit's finding, the Department developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000, following the Federal Circuit's decision in *Delverde III*, and also applied in *Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review*, 66 FR 2885 (January 12, 2001). The first step under this methodology was to determine whether the legal person to which the subsidies were given was, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determined that the two persons were distinct, we then analyzed whether a subsidy was provided to the purchasing

entity as a result of the change-in-ownership transaction. If we found, however, that the original subsidy recipient and the current producer/exporter were the same person, then that person continued to benefit from the original subsidies, and its exports were subject to countervailing duties to offset those subsidies.

This "same-person" privatization methodology is currently the subject of appeals to the Federal Circuit in three cases: *Acciai Speciali Terni S.p.A. v. United States*, Ct. No. 01-00051; *Allegheny Ludlum Corp. v. United States*, Ct. Nos. 03-1189 and 03-1248; and *GTS Industries, S.A. v. United States*, Ct. Nos. 03-1175 and 03-1191.

On August 8, 2001, the European Communities requested that the DSB establish a dispute settlement panel to examine the practice of the United States of imposing countervailing duties on certain products exported from the European Communities by privatized companies. A panel was established, the case was briefed and argued, and the Panel circulated its final report on July 31, 2002. *United States-Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/R (July 31, 2002) (Panel Report). The United States appealed certain findings and conclusions in the Panel Report, and the Appellate Body circulated its report on December 9, 2002. *United States-Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/AB/R (December 9, 2002) (AB Report). The AB Report, and the Panel Report as modified by the AB Report, were adopted by the DSB on January 8, 2003. On January 27, 2003, the United States informed the DSB that it would implement the recommendations and rulings of the DSB in a manner consistent with its WTO obligations.

Section 123 of the URAA is the applicable provision governing the actions of the Department when a WTO dispute settlement panel or the Appellate Body finds that a regulation or practice of the Department is inconsistent with any of the Uruguay Round agreements. Specifically, section 123(g)(1) provides that, "[i]n any case in which a dispute settlement panel or the Appellate Body finds in its report that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements, that regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until \* \* \* (C) the head of the relevant department or agency has provided an opportunity for public

<sup>1</sup> Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37225 (July 9, 1993).