

because, *inter alia*, the transaction was not at arm's length and for fair market value or because there were severe market distortions, we will find that the company continues to benefit from the prior subsidies in the full amount of the remaining unallocated balance of the subsidy benefit. This is fully consistent with the logic of our baseline presumption, *i.e.*, that subsidy recipients can benefit from subsidies over a period of time unless the intervening event of an arm's-length, fair-market-value sale extinguishes such subsidies.

This approach is also fully consistent with the WTO findings.<sup>27</sup> As we have noted elsewhere in this notice, neither the Panel nor the Appellate Body elaborated on the issue of how to determine fair market value. Likewise, neither body opined or ruled on how payment of less-than-fair-market-value would bear on existing subsidy benefits; in fact, they explicitly refrained from making any decision on this issue. *AB Report* at footnote 177.

We also note that there are practical reasons for finding that subsidy benefits continue in their entirety under such circumstances. For example, some commenters suggested that we determine that the amount of continuing benefit is the difference between the actual transaction price and the (higher) fair market value. However, in circumstances where our analysis is focused on the *process* through which the company or its assets were privatized, such a "shortfall" approach could be impossible because there may not be any precise "fair market value" available for such a calculation.

Moreover, the shortfall approach resembles more an analysis of a new subsidy, with an identification of financial contribution (*e.g.*, government provision of a good or service), and a new identification and quantification of a new benefit (*e.g.*, in the amount of the shortfall). Though we do not preclude the possibility of the privatization transaction giving rise to a new subsidy, we address above whether the privatized company continues to benefit from prior subsidies, not from new subsidies starting at the beginning of their allocation stream.

## 12. Previous Remand Determinations

Several commenters note that the Department made arm's-length, fair-market-value findings in certain recent CIT remands involving some of the same privatizations currently before the WTO. Many commenters raise case-

specific facts and analysis, arguing for a particular result in a specific case when this new methodology is applied to the case facts. Other commenters object to the argument that any earlier determinations by the Department are now binding on the Department's implementation of the new methodology.

*Department's Position:* In the proposed modification we noted that, in the context of several recent remand redeterminations in privatization cases before the CIT, the Department has applied a process-oriented approach to analyzing the facts and circumstances of particular privatizations and the resulting value paid.<sup>28</sup> Our approach and findings in those remand redeterminations, however, may or may not reflect the full extent of the analysis of the transaction appropriate under this new methodology. Moreover, our position with regard to those redeterminations is unaffected by this notice.

As to commenters' arguments regarding the application of this new methodology to the particular facts of specific cases, we do not believe that this notice is the appropriate context for considering and responding to particular claims regarding particular determinations. Rather, as noted elsewhere in this notice, we intend to apply this new methodology in separate "section 129" proceedings for each case before the WTO. In the context of those proceedings, we will provide all interested parties opportunity to present evidence and argument as to the appropriate determination in each case given the case-specific facts and the application of this methodology.

## 13. Timetable for Application

One commenter urged that the final modification clarify that, as a general matter, the new privatization methodology would apply immediately to any pending investigations and reviews, except to the extent that the privatization issues have already been resolved by court decisions interpreting the current U.S. statutory provisions. In addition, in order to ensure that countervailing measures are not improperly imposed on merchandise that is not benefitting from subsidies, this commenter urged the Department to consider self-initiation of changed circumstance reviews of any countervailing duty orders in which the

alleged subsidy recipient had been privatized after the subsidies were received.

*Department's Response:* We intend to implement this final modification according to the timetable discussed below. Our approach to implementation here is consistent with the approach we took in implementing the WTO's findings in *U.S. Antidumping Measures on Certain Hot-Rolled Steel Products from Japan*. See *Antidumping Proceedings: Affiliated Part Sales in the Ordinary Course of Trade*, 67 FR 69186, 69197 (November 15, 2002) (*Japan Hot Rolled Implementation*). Our reasons for why this approach to implementation is fully consistent with the statute and our WTO obligations are fully explained in that notice.

## Implementation Timetable

This methodology will be used in implementing the WTO's findings in *European Certain Steel Products* pursuant to section 129 of the URAA. The Department intends to make such "section 129" determinations in the relevant segments of each of the 12 proceedings before the WTO on or before November 8, 2003. To the extent that the relevant segment of such proceeding establishes a cash deposit rate going forward, in accordance with section 129(c)(1) of the URAA, these section 129 determinations will establish new cash deposit rates for all producers for whom the rates from the relevant segments of the proceedings are still applicable and will apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date on which the United States Trade Representative directs the Department to implement that determination. With respect to other proceedings, as well as other segments of the *Certain Products* proceedings that are not included in the dispute, the new methodology will be applied in all investigations and reviews initiated on or after June 30, 2003.

Dated: June 17, 2003.

**Joseph Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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<sup>28</sup> See, *e.g.*, *Results of Redetermination Pursuant to Remand, Allegheny Ludlum Corp. v. United States*, CIT No. 99-09-00566 (January 4, 2002); *Results of Redetermination Pursuant to Remand, GTS Industries, S.A. v. United States*, CIT No. 00-03-00118 (January 4, 2002).

<sup>27</sup> The baseline presumption was upheld by the Appellate Body. See, *e.g.*, *AB Report* at para. 84.