A-570-894
Anticircumvention Inquiry
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Anticircumvention Inquiry of Certain Tissue Paper Products from the People's Republic of China ("PRC")

SUMMARY

We have analyzed the case and rebuttal briefs submitted by Petitioner[1] and Quijiang[2] in the circumvention inquiry of the antidumping duty order of certain tissue paper products from the PRC. See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China, 70 FR 16223 (March 30, 2005) ("Order"). The Department of Commerce ("Department") published a preliminary determination of circumvention on April 22, 2008. See Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination, 73 FR 21580 (April 22, 2008) ("Preliminary Determination"). Additionally, the Department published a correction to its preliminary circumvention determination on May 23, 2008. See Certain Tissue Paper Products from the People's Republic of China: Correction to Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 73 FR 30053 (May 23, 2008) ("Correction to Preliminary Determination"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments and rebuttal comments by parties:

Issues

Comment 1: Total Adverse Facts Available ("AFA") for Quijiang
Comment 2: Clerical Error in Value-Added Calculation
Comment 3: Cash Deposits and Suspension of Liquidation

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[1] Seaman Paper Company of Massachusetts, Inc. ("Petitioner").

[2] Vietnam Quijiang Paper Co., Ltd. ("Quijiang").

BACKGROUND:

The products covered by this circumvention inquiry are jumbo rolls of tissue paper that are exported from the PRC to the Socialist Republic of Vietnam ("Vietnam") where they are converted, possibly dyed and/or printed, into tissue paper products, as described in the "Scope of the Antidumping Duty Order" section in the Final Determination. This inquiry only covers such products that are produced and exported to the United States by Vietnam Quijiang Paper Co., Ltd. ("Quijiang").

In accordance with section 351.309(c)(i) of the Department's regulations, we invited parties to comment on our Preliminary Determination. On June 3, 2008, Petitioner filed its case brief. Quijiang did not file an affirmative case brief, but on June 5, 2008, Quijiang filed its rebuttal brief.

General Issues

Comment 1: Total Adverse Facts Available ("AFA") for Quijiang

Petitioner argues that the record evidence shows that Quijiang has continued to import large volumes of PRC-jumbo rolls from its PRC parent company, Guilin Qifeng Paper Co., Ltd. ("Guilin Qifeng"), for conversion into cut-to-length tissue paper ("tissue paper") after July 2006, the date Quijiang stated it ceased such importations. Petitioner contends that its February 4, 2008, submission conclusively demonstrates that Quijiang has continued to import PRC jumbo rolls from the PRC. See Petitioner's February 4, 2008, submission. According to Petitioner, the information contained in its February 4, 2008, submission shows that Quijiang has continued to import large quantities of PRC jumbo rolls long after the date that Quijiang stated it stopped importing this product from its parent company. Therefore, Petitioner argues that this information discredits Quijiang's representations that Quijiang stopped importing PRC-origin jumbo rolls in July 2006 and from July 2006 forward only produced tissue paper from Vietnamese-origin jumbo rolls. Accordingly, Petitioner contends that Quijiang has failed to accurately report its factors of production ("FOP") because Quijiang continued to import PRC-origin jumbo rolls after July 2006.

Additionally, Petitioner argues that Quijiang has failed to accurately report the full scope of its continued PRC imports that are converted into tissue paper, which is exported to the United States. Specifically, Petitioner argues that its February 4, 2008, submission shows that Quijiang has not disclosed all of its PRC imports, i.e., cut-to-length sheets of tissue paper, and that these imports show that Quijiang is engaged in transshipment or repackaging of subject merchandise. Petitioner states that the implications of this evidence are significant to this inquiry because the evidence calls into question the validity of Quijiang's claim that it has the full range tissue production in Vietnam, from jumbo rolls. Moreover, Petitioner contends that Quijiang's claims were not verified because Quijiang repeatedly attempted to delay verification. Therefore, Petitioner concludes that the record of this proceeding contains uncontested evidence that challenges Quijiang's claims about the timing of when it stopped importing tissue products from the PRC.

Because there is information on the record that directly contradicts Quijiang's claims regarding its tissue paper production, Petitioner submits that Quijiang's failure to rebut this information should be construed as an admission by Quijiang that its previous statements are incorrect. Petitioner contends that Quijiang's previous deficient submissions, including its continual changes in reporting its factors of production ("FOP") data, also show that Quijiang has failed to accurately report the scope of its imports of tissue products from the PRC. Based on Petitioner's information and Quijiang's contradictory statements and inaccurate data, Petitioner argues that the Department cannot conclude that Quijiang's submissions are complete and accurate. Petitioner argues that the Department should find that Quijiang's data are unreliable and that Quijiang has impeded this proceeding by not reporting that it has continued to import both tissue paper sheets and jumbo rolls from the PRC. Therefore, Petitioner concludes that the Department should apply either facts available ("FA") or adverse facts available ("AFA") to Quijiang by determining that all of Quijiang's shipments of tissue paper are of PRC-origin and should be included with the scope of the Order. Accordingly, Petitioner argues that the Department should reject Quijiang's data as unreliable.

Quijiang argues the Department was correct to conclude in the Preliminary Determination that record evidence establishes that Quijiang from July 2006 onward solely produced tissue paper from Vietnamese-origin jumbo rolls. Quijiang contends that the Department correctly found that merchandise that is produced from PRC-origin jumbo rolls is subject to this inquiry and that circumvention exists for this merchandise. Moreover, Quijiang states the Department also appropriately concluded that merchandise produced from Vietnamese-origin jumbo rolls is not subject to this inquiry and is not subject to a finding of circumvention of the Order.

Department's Position:

We find that the application of AFA for Quijiang is not appropriate because the evidence on the record of this proceeding does not show that Quijiang's statements and submitted data are inaccurate or unreliable.

Section 776(a)(2) of the Tariff Act of 1930, as amended ("the Act"), states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act of 1930, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue

difficulties.

Furthermore, section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also Statement of Administrative Action ("SAA"), URAA, H. Doc. 316, Vol. 1, 103rd Cong. (1994) at 870.

In this case, we find that the application of FA, much less AFA, is unwarranted. Quijiang submitted the requested information by the established deadlines, provided information in a timely manner and in the form or manner requested, and did not significantly impede this proceeding under the antidumping statute. Additionally, we find that while Quijiang requested that verification be rescheduled, it was the Department that ultimately chose not to conduct verification of Quijiang's information given the particular circumstances of this case. Accordingly, we find that Quijiang's information was not verified because of a Departmental decision and not because Quijiang delayed the scheduled verification. Thus, none of the provisions justifying the application of FA, pursuant to section 776(a) of Act, apply in this case.

While Petitioner contends that the record evidence shows that, contrary to Quijiang's statements, Quijiang continued importing semi-completed tissue paper products from the PRC after July 2006, we found in the Preliminary Determination that the allegations made in the affidavit submitted by Petitioner's market researcher were inconclusive because they were not accompanied by supporting documentation showing that Quijiang in fact continue to import semi-completed tissue paper products from the PRC after July 2006. See Preliminary Determination, 73 FR at 21586; Petitioner's February 4, 2008, submission, at Attachment 2. Without supporting documentation which demonstrates that Quijiang continued to import such products after July 2006, we found that there was insufficient evidence on the record to conclude that Quijiang's statements with respect to this issue were unreliable. See Preliminary Determination, 73 FR at 21586. Accordingly, we concluded in the Preliminary Determination that based on the facts of the record, there is insufficient factual basis for finding that all of Quijiang's exports of tissue paper were produced from PRC-origin semi-finished tissue paper products. Id.

Since the Preliminary Determination, no new information contradicting Quijiang's declarations that it ceased importing PRC-origin semi-completed tissue paper products after July 2006 has been placed on the record. Although Petitioner contends that Quijiang's failure to report the full scope of its imports and its continual changes in the reporting of its FOP data makes these data unreliable, we find that Quijiang reported the full scope of its imports of PRC-origin semi-completed tissue paper products. Additionally, we find that while Quijiang revised its reported data in the questionnaire phase, Quijiang also provided detailed explanations for the changes, which included data for the PRC-supplier of semi-completed tissue paper products. Moreover, we do not find that the inconsistencies in Quijiang's questionnaire responses impugn the accuracy and reliability of Quijiang's reported data because Quijiang was able to provide supporting documentation that explained these seeming inconsistencies. See Quijiang's January 4, 2008, Questionnaire Response, (January 4, 2008) at 21 and Appendix S6-24.Therefore, we find that Quijiang provided usable FOPs and U.S. sales data, in a timely manner and thus find

that, pursuant to section 776 of the Act, there is no basis for applying FA to Quijiang for the final determination.

Comment 2: Clerical Error in Value-Added Calculation

Petitioner argues that in the Preliminary Determination the Department incorrectly ranged the average value of the value added to the finished merchandise by Quijiang's processing. If the Department uses Quijiang's reported data in the final determination, Petitioner contends that the Department should correct the average value by ranging the value by plus or minus ten percent, pursuant to the Department's regulations.

Quijiang did not comment on this issue.

Department's Position:

We disagree with Petitioner that the Department incorrectly ranged the average value of the value added to the finished merchandise represented by Quijiang's processing. In the Preliminary Determination, the Department utilized a ranged average of value added to finished merchandise attributable to Quijiang's processing of approximately 34 percent, because the actual value was business proprietary information. See Preliminary Determination. While Petitioner argues that the Department's regulations provide that we are required to range the data by plus or minus ten percent of the actual value, the Department disagrees. Section 351.304(c) of the Department's regulations provide that "numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure." Because the average value of approximately 34 percent is within ten percent of the actual figure, pursuant to section 351.304(c) of the Department's regulations, we find that we correctly ranged the average of the value added to finished merchandise attributable to Quijiang's processing. Accordingly, we find this is not an error, and thus no correction needs to be made for the final determination.

Comment 3: Cash Deposits and Suspension of Liquidation

Petitioner argues that the Department must order U.S. Customs and Border Protection ("CBP") to suspend liquidation and collect cash deposits on all of Quijiang's entries for the final determination. Petitioner contends that allowing Quijiang to certify that individual shipments are not produced from PRC-origin tissue paper and not pay cash deposits on these entries is contrary to the antidumping statute. According to Petitioner, the antidumping statute requires that parties pay cash deposits on entries that are found to be subject to an antidumping duty order, via an antidumping duty investigation or review. Specifically, Petitioner contends that section 738 of the Act requires conditional payment of antidumping duties by importers on all entries of merchandise found to be subject to an antidumping duty order and thus does permit certification in lieu of cash deposits. Additionally, Petitioner argues that the separate antidumping provisions for investigations, reviews, and circumvention inquiries are consistent with the requirements of section 738 of the Act and thus do not permit certification as a means of avoiding payment of cash deposits. See sections 735, 751, and 781 of the Act. Accordingly, Petitioner argues that the antidumping statute underscores the propriety of requiring payment of cash deposits, subject to

retrospective review in the administrative review process, in this inquiry because it protects the efficacy of the antidumping duty order and gives the respondent incentive to participate in the review process.

Petitioner contends that the Department's regulations do not outline any provision that permits certification in lieu of payment of cash deposit of antidumping duties. Specifically, Petitioner contends that section 351.225 of the Department's regulations, which covers scope inquiries and anticircumvention inquiries, stipulates that if the Department issues an affirmative determination of circumvention, and where liquidation has not already been suspended, the Department will instruct CBP to require a cash deposit of "estimated duties." Accordingly, Petitioner argues that section 351.225 of the Department's regulations stipulates that cash deposits are required on entries of the merchandise found to be circumventing in this inquiry and concludes that a reading of this language shows that there is no provision for the use of certifications in lieu of payment of cash deposits. Therefore, Petitioner argues that the antidumping statute and the Department's regulations require collection of cash deposits on entries after the date of initiation of this inquiry for this final determination, and allowing Quijiang to file certifications is inconsistent with the statute and the Department's regulations.

Additionally, Petitioner contends that the Department's decision in Fish Fillets from Vietnam to implement a certification program does not demonstrate how a certification program is permissible under antidumping law. See Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry, 71 FR 38608 (July 7, 2006) ("Fish Fillets from Vietnam"), and accompanying Issues and Decision Memorandum at Comment 3. Specifically, Petitioner states that in Fish Fillets from Vietnam the Department did not identify any statutory or regulatory provision that provides the authority to implement a certification program. Additionally, Petitioner argues that the Fish Fillets from Vietnam decision did not provide a rationale for why the Department determined that it does not have the authority to suspend liquidation and collect cash deposits on all entries from an exporter that is circumventing the antidumping duty order. Moreover, unlike in this inquiry, Petitioner states that in Fish Fillets from Vietnam, the petitioner requested the use of certifications and thus the legal concept of certification was not fully examined.

Petitioner also argues that the Department's finding in Fish Fillets from Vietnam that a company can file certifications with CBP does not establish whether the representations made to CBP are correct. Petitioner argues that allowing certifications filed with CBP to be determinative of key issues, which are with the Department's exclusive purview, is inconsistent with the retrospective nature of the antidumping dumping statute and the Department's regulations. See 19 CFR 351.213(a). Additionally, Petitioner contends that allowing a respondent, like Quijiang, that has a history of inaccurate, even if certified, representations to avoid payment of antidumping duties by relying on factual representations that may never be tested is contrary to sound enforcement policy.

Petitioner contends that allowing certifications to be filed with CBP is contrary to the Department's obligation to determine country-of-origin for antidumping purposes, which is

independent of representations made to CBP. According to Petitioner, country-of-origin determinations made by CBP are different from country-of-origin determinations made by the Department for antidumping purposes. See Smith Corona Corp. v. United States, 811 F. Supp. 692, 695 (CIT 1993). Because it is the Department's obligation to determine the margin of dumping on entries, Petitioner states that the Department cannot delegate determinations, such as whether an entry is subject to an antidumping duty order, to CBP, whose role is limited to carrying out instructions issued by the Department. See Mukand Int'l, Ltd. v. United States, 412 F. Supp. 3D 1312, 1317 (CIT 2005). Petitioner argues that a certification program that relies on CBP to establish the country-of-origin for antidumping purposes jeopardizes the Department's ability to test the accuracy of the information presented to CBP and order collection of any duties found to be owed on these entries.

Petitioner argues that the CIT's findings in the Eurodif decisions demonstrate that the Department has the authority to suspend liquidation and collect cash deposits on merchandise that are not within the scope of an antidumping duty order. See Eurodif, S.A. v. United States, 411 F. 3D 1355, 1357 (Fed. Cir. 2005) ("Eurodif I"); Eurodif, S.A. v. United States, 423 F. 3d 1275 (Fed. Cir. 2005) ("Eurodif II"); Eurodif, S.A. v. United States, 414 F. Supp. 2D. 1263 (CIT 2006) ("Eurodif III"); Eurodif S.A. v. United States, 431 F. Supp. 2d 1351 (CIT 2006) ("Eurodif IV"); Eurodif S.A. v. United States, 442 F. Supp. 2d 1367 (CIT 2006) ("Eurodif V"); Eurodif S.A. v. United States, 506 F. 3d 1051 (Fed. Cir. 2007) ("Eurodif VI") (collectively known as "Eurodif decisions"). Petitioner states that the Eurodif decisions related to merchandise that the court had excluded from the antidumping duty order and in remand by the CIT, the Department sought to establish a system by which all entries, including entries excluded from the antidumping duty order, would be subject to suspension of liquidation and cash deposits and examination through an administrative review. See Low Enriched Uranium from France: Final Results of Redetermination Pursuant to Court Remand: Eurodif S.A., et al. v. United States, Consol. Ct. No. 02-00219 (March 3, 2006) at 4-5. However, in Eurodif IV, Petitioner contends that the CIT disagreed and noted that administrative reviews and scope inquiries are the proper context in which to determine the status of specific entries. See Eurodif IV, 431 F. Supp. 2d at 1356. On further remand, Petitioner states that the Department allowed for a scope exclusion based on filing a certification but that the Department also stated that it "has limited authority to instruct CBP to suspend liquidation on ostensibly out-of-scope merchandise." See Low Enrich Uranium from France: Final Results of Redetermination Pursuant to Court Remand, Eurodif S.A., et al. v. United States, Consol. Ct. no. 02-00219 (June 19, 2009) at 3 and 6 ("June 19, 2006, Remand Redetermination"). Petitioner contends that the statement made by the Department in the June 19, 2006, Remand Redetermination is compelling for this circumvention inquiry because it affirms that the Department has the authority to suspend liquidation of entries that at the very least are "ostensibly in-scope." Based on the Eurodif decisions and the Federal Circuit 's decision to not take issue with the Department's position that it has the authority to suspend liquidation of entries that are "out-of-scope merchandise," Petitioner argues that the Department has the authority to suspend liquidation of "out-of-scope merchandise" in order to protect the integrity of this inquiry. See Eurodif VI, 506 F. 3d at 1051.

Therefore, Petitioner concludes that, based on the Eurodif decisions and the absence of any statutory and regulatory provision denying such, the Department has the authority to instruct CBP to suspend liquidation and collect cash deposits on all of Quijiang's entries for the final

determination. Petitioner states that suspending liquidation on all of Quijiang's entries is supported by the record of this proceeding that shows that Quijiang has circumvented the Order and failed to fully report its circumvention activities. By suspending liquidation on all of Quijiang's entries, Petitioner contends that the Department is enforcing and protecting the Order to the maximum effect of preventing the intentional evasion and circumvention of the antidumping duty law. See Mitsubishi Elec. Corp. v. United States, 700 F. Supp. 538, 55 (CIT 1988); Tung Mung Dev. Co. v. United States, 219 F. Supp. 2d 1333, 1343 (CIT 2002). Additionally, Petitioner argues that Congress's intent to amend the anticircumvention provisions to "remedy the serious shortcomings in the 1988 Act" provide compelling reason for the Department to exercise its authority to instruct CBP to suspend liquidation and collect cash deposits on all of Quijiang's entries for the final determination. See SAA at 892 (1994). Accordingly, Petitioner concludes that the Department should suspend liquidation and collect cash deposits on all of Quijiang's entries, until Quijiang can show in an administrative review that its entries are not subject merchandise.

Quijiang argues that Petitioner's objection to the certification process that the Department implemented in the Preliminary Determination is not supported by the record evidence of this proceeding. Quijiang contends that the scope of this inquiry was expressly limited to tissue paper products processed by Quijiang from PRC-origin jumbo rolls and thus tissue paper products made from Vietnamese-origin jumbo rolls were excluded from the scope of this inquiry. Accordingly, Quijiang states that the Department was correct to recognize in the Preliminary Determination that it was inappropriate to suspend liquidation of non-subject merchandise. Quijiang argues that the antidumping statute grants the Department the authority to include within the scope of an antidumping duty order merchandise that is completed or assembled in a third country. However, Quijiang argues there is no statutory provision that grants the Department the authority to expand the scope of the tissue paper order to include products that are wholly manufactured in Vietnam. Quijiang states that Petitioner can only obtain relief against Vietnamese-origin tissue paper products through the affirmative finding in an antidumping duty investigation by the Department that these products are being sold at less-than-fair value. Therefore, Quijiang argues that Petitioner's request to impose antidumping duties on Vietnamese-origin tissue paper products through the statute's anticircumvention provision is impermissible.

Quijiang contends that the Department's finding in the Preliminary Determination to implement a certification program for merchandise not subject to this inquiry is also consistent with the Department's prior practice. In Fish Fillets from Vietnam, Quijiang argues that the Department determined that it would implement a certification program to exempt frozen fish fillets processed in Cambodia that were of Cambodian-origin fish. Accordingly, based on the Department's practice in Fish Fillets from Vietnam, Quijiang states that the Department's implementation of a certification program for Quijiang's Vietnamese-origin tissue products is appropriate.

Additionally, Quijiang argues that the Department's implementation of a certification program in lieu of cash deposits for Quijiang's Vietnamese-origin tissue paper products is supported by the record evidence of this proceeding. While Petitioner argues that Quijiang's exports are only made of PRC-origin jumbo rolls, Quijiang contends that the Department correctly noted in the

Preliminary Determination that Quijiang now produces and exports Vietnamese-origin tissue paper products. Therefore, Quijiang argues that the Department was correct to recognize that this merchandise is not subject to the circumvention inquiry, and, if accompanied by the appropriate certification, is not subject to suspension of liquidation and collection of cash deposits. Accordingly, Quijiang concludes that the Department should continue to implement this certification program for Quijiang's Vietnamese-origin tissue paper products in lieu of the payment of cash deposits for the final determination.

Department's Position:

We do not agree with Petitioner that we should instruct CBP to suspend liquidation and collect cash deposits on all of Quijiang's entries in this final determination. The Department's statutory authority to suspend entries is not as sweeping as portrayed by Petitioner. Moreover, the implementation of a certification program is derived from the Department's statutory and regulatory authority to prevent future evasion of the antidumping duty order.

As a rule, the Department does not have the statutory authority, pursuant to sections 733(d)(2) and 738 of the Act, to suspend liquidation and collect antidumping duties on non-subject merchandise when the evidence on the record does not support a conclusion that the merchandise at issue is subject to the order. Specifically, sections 733(d)(2) and 738 of the Act provide that we will instruct CBP to "suspend liquidation of merchandise subject to the determination" and "collect payment of antidumping duties" on "merchandise subject to the antidumping duty order." As the Federal Circuit concluded in Duferco Steel, "Congress made no provision for bringing other merchandise within the scope of antidumping and countervailing duty orders that was otherwise outside the language of those orders." See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1098 (Fed. Cir. 2002) ("Duferco Steel"). Additionally, the CIT found in Ugine that "if the merchandise is outside the scope of an AD or CVD order, i.e., not subject merchandise, then Commerce, per statute and per its own rules, may not impose duties on those goods." See Ugine & Alz Belg., N.V. v. United States, 517 F. Supp. 2d 1333, 1345 (CIT 2007) ("Ugine").

As the CIT explained in Allegheny Ludlum, we find that the definition of "subject merchandise," found at section 771(25) of the Act, "makes clear that subject merchandise is limited by both physical characteristics and time." See Allegheny Ludlum Corp. v. United States, 279 F. Supp. 2d 1344, 1357 (CIT 2003) ("Allegheny Ludlum"). In this case, the information on the record supports a conclusion that during the period, July 2004 to July 2006, some of the merchandise, but not all of the merchandise, exported by Quijiang to the United States was of PRC-origin. Thus, to apply the law in the manner argued by Petitioner would mean that the United States knowingly would order suspension of some merchandise which is declared to CBP to be non-subject, i.e. of Vietnamese-origin.

We do agree with Petitioner that the Department has discretion to administer the law in a manner that prevents evasion of the order. See Tung Mung Development v. United States, 219 F. Supp. 2d 1333, 1343 (CIT 2002) (upholding Commerce's application of middleman dumping, although such an application does not appear in the statute or in Commerce's regulations), aff'd Tung Mung, et al. v. United States, 354 F. 3d 1371 (Fed. Cir. 2004) ("Tung Mung"). As the Federal

Circuit articulated in Tung Mung, "The ITA has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, the ITA has (a) certain amount of discretion (to act) ... with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law." See Mitsubishi Elec. Corp. v. United States, 700 F. Supp. 538, 555 (1988), aff'd 898 F. 2d 1577 (Fed. Cir. 1990) (finding Commerce's scope ruling to be supported by substantial evidence on the record). Indeed, without such authority, the Department, despite being the administrative agency designated with the responsibility of enforcing the antidumping law, would be forced to accept information it knew to be false or inappropriate, and review sales which it knew were the result of potentially illegal or inappropriate arrangements. See Queen's Flowers De Colombia v. United States, 981 F. Supp. 617, 621 (CIT 1997) (determining that Commerce's decision to define the term "company" to include several closely related companies was a permissible application of the statute, given its "responsibility to prevent circumvention of the antidumping law."); Hontex Enterprises, Inc., et. al. v. United States, 248 F. Supp. 1323, 1343 (CIT 2003) (finding that Commerce's decision to increase the scope of its analysis to include NME exporters was reasonable in light of its "responsibility to prevent circumvention of the antidumping law"). It is a staple of federal administrative law that the "inherent power of an administrative agency to protect the integrity of its own proceedings" is without question. See Alberta Gas Chemicals Ltd. v. United States, 650 F. 2d 9 (2nd Cir. 1981).

Accordingly, it is the Department's responsibility to implement and enforce the antidumping duty law in a manner that takes into consideration the potential evasion of the payment of cash deposits while avoiding suspension of liquidation and collection of antidumping dumping cash deposits on non-subject merchandise. We disagree with Petitioner that the Department does not have the authority to implement a certification program to address both of these concerns, and in fact, the Department has used non-subject merchandise import certifications in several other proceedings. As Petitioner points out, the Department recently applied a certification program in Fish Fillets from Vietnam; however that was not the first time a certification program was instituted by the agency. See Fish Fillets from Vietnam, 71 FR 38608 at Comment 3. In Pasta from Italy, we implemented a certification program that allowed exporters to certify that its entries were not subject to the antidumping duty order. See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 68 FR 54888, 54890 (September 19, 2003) ("Pasta from Italy"). Moreover, in LNPPS from Japan, we also implemented a certification program allowing importers to certify for merchandise that was "imported for non-subject uses." See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139, 38165 (July 23, 1996) ("LNPPS from Japan"). Furthermore, in Gas Turbo Engines, we allowed importers to post a zero percent cash deposit rate with CBP and certify that its entries constituted less than 50 percent of the cost of manufacture of the complete engineered process gas turbo-compressor system of which they are a part. See Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan, 62 FR 24394, 24413 (May 5, 1997) ("Gas Turbo Engines"). Thus, the Department has concluded in several cases that if the facts warrant, the implementation of a certification program can successfully address both the "subject merchandise" and "potential of

evasion" issues that arise in circumstances such as the one now before the Department in this case.

In response to Petitioner's argument that the Department does not have the statutory or regulatory authority to implement a certification program, we note that the Act and our regulations are silent with respect to this issue.[3] To combat future circumvention of an order and prevent suspension of liquidation and collection of antidumping dumping cash deposits on non-subject merchandise, the Department believes exporter certification is an effective tool and nothing in the law, regulations, or Departmental practice prevents its utilization under the appropriate factual scenario. The CIT agreed with the Department in this regard in Mitsubshi, a case affirming our certification of "non-subject merchandise" in LNPP s from Japan. See Mitsubshi Heavy Industries, Ltd. v. United States, 986 F. Supp. 1428, 1436 (CIT 1997) ("Mitshubshi"); LNPPS from Japan, 61 FR at 38165. The CIT concluded that our certification mechanism prevented the "suspension of liquidation of non-subject merchandise" and thus was "in accordance with law." Id. Additionally, we find that even the primary case cited by Petitioner, the Eurodif decisions, does not support its claims on this point, because in the June 19, 2006, Remand Redetermination, which was upheld in Eurodif VI, the Department stated that "it would be inappropriate to attempt to suspend liquidation of entries certified as out of scope." See June 19, 2006, Remand Redetermination, at 7; Eurodif VI, 506 F. 3d at 1051. Thus, we find that Petitioner is incorrect when it argues that the Department does not have the authority to implement the certification program provided for in the Preliminary Determination.

Lastly, we find that Petitioner's understanding of the role that CBP and the Department play in determining the accuracy of country-of-origin declarations pursuant to a certification program is inaccurate. It is the Department, not CBP, which determines, via the administrative review process, whether an exporter's country-of-origin certifications are factually correct. Contrary to Petitioner's assumption, in the 3rd AR of Fish Fillets, the Department, and not CBP, examined the country-of-origin certifications and supporting documentation of the respondent to determine if the certifications were accurate. See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission**,** 73 FR 15479 (March 24, 2008) ("3rd AR of Fish Fillets"), and accompanying Issues and Decision Memorandum at Comment 9.

In sum, the Department has considered all of the facts on the administrative record and concluded that the application of the certification program to Quijiang's exports of merchandise continues to be an appropriate method of addressing this issue. As we have indicated in the Federal Register notice for this final determination, Quijiang's certifications and supporting

[3] With respect to Petitioner's arguments about the Department's regulations in particular, 19 CFR 351.225(l)(3), which applies to both scope rulings and circumvention proceedings, grants the Department the authority to prevent circumvention by suspending liquidation if "the product in question is included within the scope of the order." As the issue in this case comes down to whether or not the Department believes future entries of subject merchandise will circumvent the Order, we have the authority to determine if a certification program will adequately address the threat of future circumvention, or if the suspension of liquidation of all of Quijiang's merchandise is necessary to prevent future evasion of the Order.

documentation will be subject to review and verification in the third administrative review of the AD order. If the Department concludes at any point that Quijiang's certifications are inaccurate, or that it is unable to verify Quijiang's information due to Quijiang's failure to cooperate to the best of its ability, then, consistent with the terms of the certification, we will immediately revoke the certification program and instruct CBP to suspend liquidation and collect cash deposits at the PRC-wide rate of 112.64 percent on all of Quijiang's entries of tissue paper, regardless of country of origin. However, we disagree with Petitioners that the information on the record of this segment of the proceeding supports such action at this time.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, accordingly. If accepted, we will publish the final determination of this circumvention inquiry in the Federal Register.

AGREE_____ DISAGREE_____

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David Spooner
Assistant Secretary
for Import Administration

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Date