

69 FR 20859, April 19, 2004

A-583-830  
ARP 5/1/02-4/30/03  
Public Document  
IA/III/IX: LA

**MEMORANDUM TO:** James J. Jochum  
Assistant Secretary  
for Import Administration

**FROM:** Joseph A. Spetrini  
Deputy Assistant Secretary  
for Import Administration, Group III

**SUBJECT:** Issues and Decision Memorandum for the Final Rescission of  
Antidumping Administrative Review of Stainless Steel Plate in Coils  
from Taiwan

---

**SUMMARY:**

We have analyzed the petitioners<sup>1</sup> case brief in this administrative review of stainless steel plate in coils (“SSPC”) from Taiwan. As a result of our analysis, we have made no changes from the Notice of the Preliminary Rescission of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Taiwan, 68 FR 69998 (December 16, 2003) (“Preliminary Rescission”). Respondents Yieh United Steel Corporation (“YUSCO”) and Ta Chen Stainless Pipe Co., Ltd. (“Ta Chen”) did not submit case or rebuttal briefs. The merchandise covered by this order is stainless steel plate in coils as described in the “Scope of Review” section of the Federal Register notice. The period of review (“POR”) is May 1, 2002 through April 30, 2003.

We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this review for which we have received comment.

**LIST OF ISSUES FOR DISCUSSION**

**A. Issues with Respect to Ta Chen and YUSCO**

Comment 1: Section A Questionnaire from Ta Chen and YUSCO

---

<sup>1</sup>Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

**Comment 1: Section A Questionnaire from Ta Chen and YUSCO**

Petitioners contend that the burden to produce information in antidumping proceedings lies with the party in possession of the necessary information and that the burden of creating an adequate record rests with the respondents. Petitioners argue that in reviews with rescission at issue, the Department should obtain section A questionnaire responses from respondents. Petitioners claim that the information gained from section A questionnaire responses in this case would provide insight into YUSCO's and Ta Chen's operations and give guidance for the Department's inquiries with U.S. Customs and Border Protection ("CBP"). Petitioners claim that a complete list of affiliated parties and channels of distribution provided in such responses would also show evidence of shipments of subject merchandise to the United States through company affiliates. Petitioners also contend that section A responses would reveal how YUSCO and Ta Chen define the subject merchandise.

Petitioners argue that after the Department gathers information from such section A and supplemental responses, it should amend its customs inquiry to: (1) identify by name, not only the respondents, but also the affiliates reported in the section A responses; (2) request a narrative definition of the subject merchandise and relevant numbers of the Harmonized Tariff Schedule ("HTS"); (3) ask CBP to scrutinize whether any subject merchandise from the respondents and their affiliates has entered during the POR; (4) request from CBP a list of all exporters and importers that have entered subject merchandise from Taiwan during the POR; (5) ask CBP to provide sample documentation for entries made under HTS categories that cover both subject and non-subject merchandise, so that the Department can decide whether those entries were subject merchandise from the respondents and their affiliates; and (6) ask for written responses from CBP and each port of entry, whether the responses are affirmative or negative.

Petitioners state that without a complete section A response from each respondent seeking rescission, the Department will be left with an incomplete and unsubstantiated record that will lead to a partially informed and speculative decision.

None of the respondents submitted comments on this issue.

**Department's Position:**

We disagree with petitioners that the Department should obtain section A responses from respondents that made no entries of subject merchandise during the POR. In an appeal of the second review of SSPC from Taiwan, the Court of International Trade ("CIT") affirmed the Department's decision to rescind an administrative review on the grounds that the Department found there were no entries of subject merchandise during the POR, and because sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and are therefore

not subject to review. See Allegheny Ludlum Corp. v. United States, 240 F. Supp. 2d. 1374 (CIT 2003) (“Allegheny”). The facts of this case are no different from the previous review. Both respondents claimed that they made no shipments during the POR. CBP did not provide the Department with any information indicating that there were any entries of subject merchandise by respondents during the POR. As a result, there is sufficient information on the record to establish the lack of sales, entries, or shipments of respondents during the POR. Therefore, as the CIT stated in the second review of SSPC from Taiwan in Allegheny, requiring respondents “...to answer Commerce’s questionnaire and supplemental questions would have yielded information that was already established by the record.” See Allegheny. The CIT further stated that accepting the certified statements of a respondent that had no shipments during the POR and verifying those statements with a CBP inquiry is not contrary to the notion that the burden of creating the record rests with the respondent. See id. The CIT stated that it will defer to the Department’s “...sensitivity as to the depth of the inquiry needed...” and that the Department has “...wide latitude in its verification procedures.” See id. The CIT further stated that the Department can determine when it deems additional documentation unnecessary. See id. Accordingly, the Department has determined that requesting additional information from respondents is unnecessary since respondents have certified that they had no entries during the POR, and this information was confirmed by CBP.

Furthermore, to the extent that petitioners believe that affiliates of Ta Chen and YUSCO have exported subject merchandise to the United States, petitioners should have requested a review covering these companies. See Preliminary Rescission, at page 6. As we said in the Preliminary Rescission, in the future, if petitioners believe affiliated exporters are dumping subject merchandise, then petitioners should request a review of those companies. The issuance of a section A questionnaire is not a “fishing exercise” with a sole goal of finding out the commercial behavior of the affiliates of the reviewed exporters or producers.

With respect to petitioners’ “burden” argument, requiring a single allegation for purposes of initiation of an administrative review is not unreasonable and is consistent with section 751(a)(1) of the Act, Commerce’s regulations section 19 CFR 351.213(b)(1) and the decision of the Court of Appeals for the Federal Circuit in Floral Trade Council v. United States, 888 2d. 1366, 1369 (Fed. Cir. 1989). It is a limited burden, required by the Act. As a result, we have made no changes to the Preliminary Rescission with respect to this issue.

## **Comment 2: Review of the Affiliated Parties**

Petitioners argue that the Department’s decision to exclude affiliated parties from the review is incorrect. See Preliminary Rescission. Petitioners argue that the Department’s treatment of affiliated parties in antidumping duty proceedings requires respondents to prepare a single response that includes information for all affiliates involved with the production or sale of the products under review during the POR in the foreign or U.S. market. See the July 3, 2003 Original Questionnaire, at G-6. Petitioners

state that the Department's standard policy ensures that respondents consolidate their questionnaire responses with all of their affiliated parties regardless of whether the request for review named each affiliated company or not. Petitioners argue that the Department's requirement that petitioners request a review for each of the respondents' alleged affiliated parties contradicts the Department's policy.

Petitioners argue that if the Department continues to believe, as it stated in the Preliminary Rescission, that petitioners are responsible for naming respondents and all their affiliated parties in the request for review, then the Department should provide its legal authority for this proposition and reconcile its position with the Department's standard policy of requiring respondents to consolidate their responses with all affiliates that produce, sell, or export the subject merchandise during the POR.

Petitioners also maintain that limiting the names of the respondents to the current respondents entails the following problems: (1) YUSCO's statement of no shipments was limited solely to YUSCO and ignored affiliated parties disclosed by YUSCO; (2) Ta Chen's statement of no shipments referenced both Ta Chen and unidentified affiliated parties of Ta Chen. Petitioners argue that the Department should have issued a section A questionnaire to Ta Chen to identify these affiliated parties and then included this information in its CBP inquiry. Petitioners contend that the Department's policy described in the Preliminary Rescission poses certain problems for petitioners. For example, petitioners observe that when a respondent claims that it has no shipments, the Department considers it to be responsive. However, according to petitioners, if that company's affiliated party made sales of subject merchandise to the United States, those sales would not be reported to the Department or examined during the POR, even though the Department considered the respondent to be responsive. Therefore, petitioners argue that unless the Department holds the named respondent accountable for reporting all sales of subject merchandise made by its affiliated parties to the United States, the Department cannot ensure that it has fully and accurately reviewed all sales made by the respondent and its affiliates during the POR.

Consequently, petitioners argue that the Department should not place the burden on petitioners of identifying and naming each affiliated party of a respondent that petitioners seek to have reviewed. Petitioners contend that privately held companies such as YUSCO and Ta Chen do not submit public notification of affiliates, thus making such information unavailable to petitioners. Therefore, petitioners conclude that the Department should continue to follow its standard policy of placing the burden on respondents to identify the affiliated parties that are involved with the subject merchandise during the POR.

Finally, petitioners allege that while the Department substantiated its preliminary rescission on the ground of no evidence of any entries during the POR, this is incorrect. Petitioners challenge the Department's statement of "no entries," pointing to IM-146 reports. Petitioners state that there is no indication in the record that the Department considered or that CBP addressed the information in IM-146 reports. Petitioners contend that the presence of these imports should compel further review and scrutiny.

None of the respondents submitted comments on this issue.

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

We disagree with petitioners that a request to review one company automatically covers all affiliated parties. Section 351.213(b)(1) of the Department's regulations clearly state that a domestic party may request in writing that the Department review "specified individual exporters or producers covered by an order.....if the requesting party states why the person desires the Secretary to review those particular exporters or producers." Moreover, the courts have held that the party requesting the review, not the Department, bears the burden of naming and selecting the proper party to be reviewed. See e.g., Floral Trade Council v. United States, 888 F.2d 1366, 1369 (Fed. Cir. 1989) (where the Court of Appeals for the Federal Circuit held that a request for an administrative review must be for a review of "specified individual \* \* \* producers [ ] or exporters"). See, e.g. Potassium Permanganate From the People's Republic of China: Rescission of Antidumping Duty Administrative Review, 68 FR 58306, 58307 (Oct. 9, 2003).

Naming to one respondent in a request for an administrative review does not automatically cover all of its affiliates. Petitioners have an affirmative obligation under the regulation, which has been affirmed by the Court of Appeals for the Federal Circuit, to name the specific respondents it wishes to be covered by an administrative review, at a minimum. This is not what petitioners did in this case.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Neither the petitioners, nor any other party, requested an administrative review of respondents' alleged affiliates. Respondents have been found not to have exported subject merchandise to the United States during the POR. Therefore, absent entries from respondents, there is no reason for the Department to conduct an affiliation analysis. If petitioners believed other parties potentially affiliated with respondents are exporting subject merchandise to the United States, then a review request in subsequent periods for those companies should be made. Therefore, we have made no changes to the Preliminary Rescission with respect to this issue.

We disagree with petitioners that the Department should have further examined the affiliation issue in this review. **~~Neither the statute nor the regulations require a respondent to affirmatively demonstrate proof of entry of its resales in order to obtain a rescission, when substantial evidence indicates no entries of the subject merchandise entered the United States during the POR. See Stainless Steel Sheet and Strip From Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 6682 (February 13, 2002), and accompanying Issues and Decision Memorandum at Comment 1; and Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review, 68 FR 63067 (November 7, 2003), and accompanying Issues and Decision Memorandum at Comment 2.~~**

As we explained in the preliminary results of this review, Ta Chen and YUSCO, in their letters of August 19, 2003, and August 20, 2003, respectively, informed the Department that they had no shipments of subject merchandise to the United States during the POR. We confirmed this information through a CBP data inquiry. See No Shipments Inquiry for Stainless Steel Plate in Coils from Taiwan, dated September 8, 2004. Therefore, we have made no changes to the Preliminary Rescission with respect to this issue.

## RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final rescission of the review and the final weighted-average dumping margins in the Federal Register.

AGREE\_\_\_\_\_ DISAGREE\_\_\_\_\_

---

Jeffrey A. May  
Acting Assistant Secretary  
for Import Administration

---

Date