

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review on Stainless Steel Plate in Coils from
Taiwan – May 1, 2003, through April 30, 2004

Summary

On June 7, 2005, the Department published a notice in the Federal Register, in which we determined that it was appropriate to rescind the initiation of the above-referenced administrative review based on a finding of no imports of subject merchandise during the period under consideration. On July 7, 2005, the petitioners (Allegheny Ludlum Corp., United Auto Workers Local 3303, Zanesville Armco Independent Organization, the United Steelworkers of America, and AFL-CIO/CLC) objected to this decision and requested that the Department solicit additional information from respondents regarding imports by their affiliated parties.

On October 31, 2005, we placed information on the record of this case regarding affiliated parties of the sole entity to have commercial entries of subject merchandise into the United States during the period of review (POR) (*i.e.*, Chia Farr Industrial Factory Co., Ltd.). Although the petitioners submitted additional comments, we returned them to the petitioners because we found that these comments were not responsive regarding Chia Farr's affiliation and thus constituted untimely filed new factual information and argument. After analyzing the petitioners' July 7 comments, we recommend continuing to rescind this administrative review.

Background

On June 7, 2005, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel plate in coils from Taiwan. See Stainless Steel Plate in Coils from Taiwan; Preliminary Rescission of Antidumping Duty Administrative Review, 70 FR 33083 (June 7, 2005) (Preliminary Results). The POR is May 1, 2003, through April 30, 2004.

We invited parties to comment on our Preliminary Results. On July 7, 2005, we received comments from the petitioners. We did not receive rebuttal comments from any interested party.

Discussion of the Issue

Comment 1: Entries by Affiliated Parties

On June 7, 2005, the Department of Commerce published its preliminary intent to rescind this administrative review based on a finding that none of the respondents had shipments of subject merchandise to the United States during the POR. See Preliminary Results.

The petitioners assert that the Department's decision was premature, primarily because a claim of no entries by a respondent is not a sufficient basis for the Department to rescind an administrative review. The petitioners contend that the courts have held that not only is it the respondent's burden to develop a record fully, accurately and in a timely manner (See Ta Chen Stainless Steel Pipe, Ltd. v. United States, 24 CIT 841, 843-844 (CIT 2000)), but the respondent must provide the data the Department requests before the respondent may make legal arguments regarding that data. (See Ta Chen Stainless Steel Pipe, Ltd. v. United States, Slip Op. 01-143 at 9 (CIT 2001), where the Court found that Ta Chen was making legal arguments to avoid submitting requested data.) Thus, the petitioners believe that it is proper to require that a respondent who claims it had no entries of subject merchandise during the POR to submit a Section A questionnaire response.

Specifically, the petitioners argue that without the general information reported in a Section A response: 1) the respondent has not proven its claim of no shipments; 2) there is no factual basis to prove the respondent's assertion that the review should be rescinded; and 3) the respondent will have made its legal arguments without first having submitted the requested information. The petitioners emphasize that a Section A response is essential because it identifies the respondent's affiliates. According to the petitioners, information on a respondent's affiliates is necessary for the Department to determine a respondent's dumping margin accurately, especially when the affiliates are involved in the exportation of subject merchandise. As support for this assertion, the petitioners cite Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 1339, 1348 n.13 (CIT 2005), where the Court found that there was no way for the Department to calculate the respondent's dumping margin given certain inconsistencies between U.S. Customs Service data and the respondent's questionnaire response regarding suppliers.

According to the petitioners, the Department should query the Customs and Border Protection (CBP) entry database to determine whether the respondent and its affiliated parties: 1) exported and/or imported subject merchandise during the POR; 2) were named as the manufacturer on the 7501 entry form for any import of subject merchandise; 3) transhipped the subject merchandise from another country to the United States; and 4) exported and/or imported products similar to the merchandise subject to the antidumping duty order, which might indicate the entry of misclassified subject merchandise.

The petitioners contend that, based on these queries, the Department should obtain complete entry documentation from both CBP and the respondents in question and place this information on the record of the administrative review for comment. The petitioners maintain that the Department can only determine whether a respondent's claim of no entries is accurate after the record is fully developed in this manner.

In addition, the petitioners assert that the Department should perform additional queries of the CBP entry database and request documentation on any entries found from both CBP and the applicable respondent. Only then, according to the petitioners, should the Department be satisfied that these respondents did not have entries during the POR.

The petitioners also contend that because they do not have access to the proprietary CBP data needed to confirm the accuracy of a respondent's claim of no shipments, the burden should not be placed on them to find out whether merchandise has been transshipped or misclassified.

We did not receive comments on this issue from any other parties.

Department's Position:

As stated in the Preliminary Results, we confirmed with CBP data that none of the companies named by the petitioners in their request for review had entries of subject merchandise during the POR. While initial CBP data showed that one respondent, Ta Chen, had potential entries of subject merchandise, we ultimately concluded Ta Chen's shipments were not in fact subject to this review. Because none of the companies for which we initiated this administrative review had shipments of subject merchandise during the POR, and we confirmed this with CBP, we are rescinding this review in accordance with 19 CFR 351.213(d)(3) and consistent with our practice.

We disagree with the petitioners that we should require respondents to respond to Section A of the Department's questionnaire in order to determine that they had no shipments. If a respondent had no entries of subject merchandise and the Department confirms this with CBP data, that satisfies the requirements of 19 CFR 351.213(d)(3). Moreover, requesting a Section A response would be against the Department's longstanding practice. See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 70 FR 67665, 67666, (Nov. 8, 2005); and Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review and Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69938 (Nov. 18, 2005). Unless an interested party provides a significant reason to suspect respondents have made shipments in the period under review (despite certified assertions to the contrary), it is not appropriate to require respondents to provide a Section A questionnaire response. We find that such a requirement not only is unnecessary, but also would impose an unreasonable burden on non-exporting interested parties. Thus, we have not required the respondents in this administrative review to provide a response to Section A of the Department's questionnaire.

We recognize the petitioners' concern with affiliation in the instant administrative review. However, we find that this concern is unfounded here, given that only one company made entries of subject merchandise in commercial quantities during the POR, and this entity is not affiliated with any of the named respondents in this review. See the October 31, 2005, Memorandum to the File from Nichole Zink, "Placing Information Regarding Chia Farr on the Record of the 2003-2004 Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Taiwan."

Based on this information, we determine that the companies under administrative review had no imports of subject merchandise during the POR. The petitioners have not raised any further allegations since the Preliminary Results regarding misclassified or misreported entries by the companies involved in this administrative review. Consequently, we are rescinding this administrative review for all named companies.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final rescission of this administrative review in the Federal Register.

Agree _____

Disagree _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)