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Administrative Review
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MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review on Stainless Steel Sheet and Strip in Coils
from Taiwan—July 1, 2008, through June 30, 2009

Summary

We have analyzed the comments of the interested parties in the 2008-2009 administrative review of the antidumping duty order covering stainless steel sheet and strip in coils (SSSSC) from Taiwan. After analyzing the comments received from interested parties, we have made no changes to our preliminary results.

We recommend that you approve the position described in the “Discussion of the Issue” section of this memorandum. The only issue on which we received comments from the parties is whether we should rescind this review with respect to Yieh United Steel Corporation (YUSCO).

Background

On August 13, 2010, the Department published in the Federal Register the preliminary results of administrative review of the antidumping duty order on SSSSC from Taiwan. See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 75 FR 49467 (Aug. 13, 2010) (Preliminary Results). The period of review (POR) is July 1, 2008, through June 30, 2009.

We invited parties to comment on our preliminary results of review. In September 2010, we received a case brief from YUSCO. The only issue raised by YUSCO in its case brief is whether the Department should rescind the review with respect to it based upon its purported lack of shipments. No other party submitted a case brief or rebuttal comments. Based on our analysis of

YUSCO's case brief, we have not changed the results from those presented in the preliminary results.

Discussion of the Issue

Comment: *Whether the Department Should Rescind the Review with Respect to YUSCO*

In August 2009, the Department initiated this administrative review with respect to 23 Taiwan producers/exporters of SSSSC, one of which was YUSCO. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 74 FR 42873, 42875 (Aug. 25, 2009) (Initiation Notice). In our Initiation Notice, we notified respondents of their obligation to submit a certified statement of no shipments. Id., 74 FR at 42874. YUSCO did not file a no-shipment certification in accordance with the Department's instructions. Consequently, having received no correspondence from YUSCO, in our August 13, 2010, Preliminary Results we preliminarily assigned the review-specific all-others rate of 4.30 percent to YUSCO. See Preliminary Results, 75 FR at 49474.

Subsequently, on September 2, 2010, we received a no-shipment letter from YUSCO. On September 23, 2010, we rejected this letter as untimely filed new factual information, noting that the 30-day deadline for no-shipment letters expired on September 24, 2009. See the September 23, 2010, letter from the Department to YUSCO (rejection letter). Moreover, in our rejection letter we noted that the deadline for all other new factual information not specifically requested by the Department was December 18, 2009. Id. See also 19 CFR 351.301(b)(2). Following the Department's rejection of YUSCO's initial no-shipment letter, YUSCO requested that the Department reconsider its rejection. See YUSCO's October 4, 2010, submission. On October 5, 2010, we notified YUSCO that the Department would not reconsider its rejection of YUSCO's September 2, 2010, letter.

In its case brief, YUSCO takes issue with the Department's authority to maintain this administrative review with respect to YUSCO, and it argues that the Department should rescind the review with respect to YUSCO for these final results. First, YUSCO contends that nothing in the Tariff Act of 1930, as amended (the Act), or the Department's regulations permit the review of a non-shipping respondent. Here, YUSCO points to section 751(a)(2)(A) of the Act which directs the Department to calculate normal value and export price (or constructed export price), as well as dumping margins, for each "entry" of subject merchandise. YUSCO construes this reference to "entries" in the Act as a limit on the Department's jurisdiction which, as YUSCO interprets the Act, prohibits the Department from maintaining an administrative review on a respondent without any entries of subject merchandise during the relevant period. YUSCO further maintains that this interpretation of the Act is supported by the Department's regulations at 19 CFR 351.212 (a)-(b), which discuss duty assessment in terms of "imports" and "entered value." Therefore, YUSCO argues that the Department's power to review an exporter and to assess duties must be based on record evidence that the exporter in question did, in fact, have shipments of subject merchandise to the United States during the period of review.

Next, YUSCO contends that rescinding the review with respect to YUSCO is consistent with the Department's practice. In support of this claim, YUSCO points to several administrative reviews which were rescinded, either in whole or in part, based on a lack of shipments without any accompanying no-shipment certifications.¹ YUSCO further asserts that the Department's practice of rescinding reviews without documentation from a respondent has been upheld by the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC). In support of this assertion, YUSCO cites Chia Far Industrial Factory Co., Ltd. v. United States, 343 F. Supp. 2d 1344, 1374 (CIT 2004) (Chia Far v. U.S.) and Allegheny Ludlum Corp. v. United States, 346 F. 3d 1368, 1372 (CAFC 2003) (Allegheny Ludlum v. U.S.) YUSCO also cites Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review, 74 FR 28665 (June 17, 2009) (Shrimp from Brazil), where it contends that the Department rescinded an entire review because information from U.S. Customs and Border Protection (CBP) established that there were no subject shipments whatsoever (without requiring any statements from respondents). Thus, YUSCO argues that continuing to include it in this administrative review would be arbitrary, unreasonable, and contrary to the Department's practice.

Moreover, YUSCO argues that there is no evidence on the record indicating that it had shipments during the period, nor is there any authority in the Act, regulations, or the Department's practice which would permit the Department to presume that a respondent has shipments if a respondent's shipment status is in doubt. Thus, YUSCO maintains that continuing this administrative review with respect to it is not supported by substantial record evidence. In support of its assertion that the Department's decision to maintain the review of YUSCO must be supported by substantial evidence of shipments during the period, YUSCO cites Atlantic Sugar v. United States, 744 F. 2d 1556, 1562 (CAFC 1984) and Universal Camera Corp. v. N.L.R.B., 340 U.S. 474.

Regarding the evidence on the record, YUSCO contends that the CBP data that the Department relied on for respondent selection is complete and accurate and that the Department should accept it as substantial evidence of YUSCO's shipment status. YUSCO maintains that the

¹ The cases cited by YUSCO in support of this assertion are: Sixth Administrative Review of Honey From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 66221, 66222-23 (Nov. 7, 2008) (Honey from the PRC), unchanged in Honey From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 796 (Jan. 8, 2009); Polyethylene Retail Carrier Bags from Malaysia: Notice of Partial Rescission of the Administrative Review and Intent to Rescind the Administrative Review, 73 FR 24941, 24942 (May 6, 2008) (Bags from Malaysia), unchanged in Polyethylene Retail Carrier Bags from Malaysia: Notice of Rescission of Administrative Review, 73 FR 40499 (July 15, 2008); Carbazole Violet Pigment 23 from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review, 72 FR 71354, 71354-55 (Dec. 17, 2007) (CVP from the PRC); Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review, 70 FR 44088 (Aug. 1, 2005) (PTFE Resin from Japan); Stainless Steel Wire Rods From India: Notice of Rescission of Antidumping Duty Administrative Review, 71 FR 40696 (July 18, 2006) (SSWR from India), 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, 63068 (Nov. 7, 2003) (SSPC from Taiwan).

Department has placed CBP entry data on the record of this review, and that the Department has relied on similar CBP data in prior reviews to confirm no-shipment statements. In support of this claim, YUSCO cites Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Rescission, in Part, of Antidumping Duty Administrative Review, 74 FR 7394 (Feb. 17, 2009) (Pipe and Tube from Turkey). Moreover, YUSCO maintains that the Department relied on CBP data in preliminarily rescinding this review with respect to China Steel Corporation. In support of this assertion, YUSCO cites the Preliminary Results, 75 FR at 49470. Therefore, YUSCO argues, because the Department has relied on CBP data in prior cases to determine whether rescission was appropriate, and because the Department has relied on CBP data in this review for respondent selection purposes, it would be unreasonable and illogical for the Department to decline to use the CBP data to evaluate whether YUSCO had shipments.

Moreover, YUSCO contends that the 30-day deadline for filing no-shipment statements is arbitrary and not mandated by the law. Further, YUSCO maintains that its failure to timely file a no-shipment statement does not alter the fact that the Department lacks the requisite substantial record evidence of shipments necessary to maintain its review of YUSCO. YUSCO also contends that the Department has only required no-shipment certifications within 30 days since the publication of its initiation notice for reviews initiated in September 2008,² and that this 30-day deadline has recently been extended to 60 days.³ With respect to these deadlines YUSCO argues that the Department's practice appears to be in flux, and in any event, YUSCO argues that the Department has not explained its rationale for the deadlines or any statutory or regulatory provisions mandating them, nor has it justified its requirement that parties file no-shipment statements before rescinding a review. Consequently, YUSCO contends that these deadlines are arbitrary and unreasonable, and the Department should not allow a failure to abide by these deadlines to result in a situation where a respondent with no reviewable entries is nonetheless still subject to an administrative review. YUSCO argues that the Department's use of CBP data, rather than the responses to quantity and value questionnaires, to select respondents is a departure from the Department's practice, and its use of CBP data to select respondents indicates that the Department believes that CBP data are "sufficiently complete." YUSCO also notes that the Department did not issue any questionnaires or inquire to YUSCO in this administrative review, unlike prior administrative reviews (where YUSCO submitted no-shipment certifications in response to the Department's questionnaires) and thus YUSCO implies that it did not have the same opportunity here to notify the Department of its no-shipment status.

In any event, YUSCO argues that the Department had ample time to further investigate and evaluate whether YUSCO did in fact have shipments during the POR. Here, YUSCO notes that the only evidence on the record regarding YUSCO's shipment status is contained in the CBP data

² In support of this assertion, YUSCO cites Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 75 FR 56795 (Sept. 30, 2008).

³ In support of this assertion, YUSCO cites Initiation of Antidumping and Countervailing Duty Administrative Reviews, 75 FR 29976 (May 28, 2010).

release and the petitioners' review request, which YUSCO notes indicates that the petitioners⁴ believe that YUSCO may have had shipments during the POR.⁵ YUSCO contends that, if the Department deems this evidence insufficient to rescind the review for YUSCO, the Department has approximately three months from its submission of its case brief in which to issue the final results, and that this deadline can be extended by an additional 60 days. Therefore, YUSCO maintains that if the Department wishes to solicit further information from YUSCO or confirm YUSCO's shipment status with CBP, then the Department has time in which to do so.

Department's Position:

After considering YUSCO's arguments, we find there is an insufficient basis for rescinding this review with respect to YUSCO. The Department's practice with respect to the no-shipment certification requirement is outlined in our Initiation Notice, which states:

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review ('POR') listed below. If a producer or exporter named in this initiation notice had no exports, sales, or entries during the POR, it should notify the Department within 30 days of publication of this notice in the Federal Register. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended ('the Act').

See Initiation Notice, 74 FR at 42874.

Contrary to YUSCO's claims, the Department is not required to make an affirmative finding of shipments in order to maintain a review with respect to a given respondent; rather, the evidentiary burden is on the non-selected respondent to certify that it had no POR shipments or otherwise demonstrate that it had no reviewable transactions during the review period. See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review, 75 FR 34976 (June 21, 2010) (Garlic from the PRC), and accompanying Issues and Decision Memorandum at Comment 3, citing Zenith Electronics Corp. v. United States, 988 F.2d 1573, 1583 (CAFC 1993) (stating that the burden of evidentiary production belongs to the party that possesses the necessary information). Pursuant to 19 CFR 351.213(d)(3), once a respondent provides information regarding its shipment status, the

⁴ The petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, North American Stainless, United Auto Workers Local 3303, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

⁵ See the petitioners' July 31, 2009, request for administrative review.

Department will then engage in a factual determination as to whether the respondent did not in fact have reviewable shipments. Moreover, YUSCO's contention that the Department should rely solely on the CBP data on the record of this review to conclude that rescission is appropriate for YUSCO is misplaced, as the CBP data was placed on the record for the limited purpose of ranking respondents to select the respondent with the largest volume of shipments. The Department has previously found that CBP entry data alone is not a sufficient basis to support the conclusion that a respondent had no shipments. See Garlic from the PRC at Comment 2 (where we stated that "information from the CBP data queries alone is not sufficient to reliably conclude that there were no entries of subject merchandise from a company under review during the POR").

Although YUSCO correctly notes that the Act and the Department's regulations frame the Department's mandate with respect to "entries," "imports," and "entered value," this does not lead to the necessary conclusion that the Act requires the Department to make an affirmative finding of shipments in order to maintain an administrative review with respect to a particular respondent. The regulations indicate the contrary: if the Department makes a finding that the respondent has no entries, exports, or sales, the Department may rescind the review. The Department's regulations at 19 CFR 351.213(d)(3) state that:

The Secretary may rescind an administrative review, in whole or only 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, as the case may be.

Therefore, YUSCO's interpretation, which would force the Department to make an affirmative finding of shipments in order to continue a review, is clearly at odds with 19 CFR 351.213(d)(3) which provides that the Department may rescind a review if it makes an affirmative finding of no shipments.

In order to make the required finding of no shipments pursuant to 19 CFR 351.213(d)(3), the Department has consistently required that respondents submit no-shipment certifications. This requirement is evidenced by the monthly notice of initiation of administrative reviews issued by the Department over the last two years, each of which contains similar language to that quoted at the outset of our position. See, e.g., Initiation of Antidumping and Countervailing Duty Administrative Reviews, 75 FR 66349 (Oct. 28, 2010). YUSCO, having failed to timely file a no-shipments certification, has not provided the Department with the substantial record evidence required for the Department to conclude that it had no shipments. Although YUSCO complains that this is the first time the Department required YUSCO to submit a no-shipment certification without being prompted by a questionnaire or other inquiry, we note that nothing in the Department's standard practice requires the Department to afford companies multiple opportunities to submit no-shipment certifications. See Garlic from the PRC at Comment 3 ("if an exporter subject to a review does not believe that it had any entries, exports or sales of the

subject merchandise during the POR, it is incumbent on the exporter to so inform the Department’).

Regarding YUSCO’s claim that the CBP data placed on the record of this review for respondent selection purposes provides sufficient evidence of a party’s shipment status for purposes of 19 CFR 351.213(d)(3), we disagree. As we stated in Garlic from the PRC, “{t}he company’s own certification is considered a necessary piece of evidence of no shipments, to be considered along with the CBP data.” See Garlic from the PRC at Comment 2. Accordingly, “{w}e cannot use CBP data to corroborate the respondent’s information if a respondent does not provide a response with respect to the existence or non-existence of shipments of subject merchandise during the POR.” Id. See also Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 75 FR 10207 (Mar. 5, 2010), and accompanying Issues and Decision Memorandum at Comment 2. The CBP entry data is not sufficient to conclude a particular party had no shipments because the data does not provide the full details of each transaction. The only party identifier included in the CBP entry data is the “manufacturer” field, and the data does not include information about producer/exporter combinations.⁶ Most notably, there is no information in the CBP data showing which party in the exporting transaction was the first party with knowledge of U.S. destination for each shipment, which is the relevant question in determining whether a party has shipments of subject merchandise. For example, a producing party could ship through an unaffiliated reseller/exporter with full knowledge of U.S. destination without ever appearing in the CBP data. Those sales would be properly reportable sales on the part of the producer, but would not be included in the CBP data as the producer’s sales.⁷ Thus, the only way for the Department to conclude that a party did not have shipments is for the party itself to affirmatively certify that it did not have shipments.⁸

Additionally, we disagree with YUSCO that the Department’s refusal to rely on CBP data to conclude that a respondent had no shipments is inconsistent with its use of CBP data for respondent selection purposes. See Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 75 FR 10207 (Mar. 5, 2010), and accompanying Issues and Decision Memorandum at Comment 2. While the CBP data are the same, the uses to which these data are applied are separate and distinct. In this case, we relied on CBP data for

⁶ See the August 31, 2009 memorandum to the file from Henry Almond, Analyst, entitled, “Release of Customs Entry Data from U.S. Customs and Border Protection.”

⁷ See, e.g., Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954, 23955 (May 6, 2003) (“the producer already bears the responsibility of reporting sales made through a reseller where the producer has knowledge that the reseller will sell the merchandise in the United States”).

⁸ See Garlic from the PRC at Comment 3 (“the respondent...possesses the most reliable information on whether it made shipments of subject merchandise during the POR”) and Zenith Electronics Corp. v. United States, 988 F.2d at 1583.

respondent selection in order to determine which exporter named in the Initiation Notice was the largest shipper of subject merchandise. At that time, we noted that ambiguities existed with respect to certain entries included in this data; however those ambiguities were not material enough to call into question our conclusion as to which respondent was the largest exporter. Specifically, for certain entries we noted that the CBP data listed one party in the “manufacturer” field and that we were unable to determine the identity of the exporting party.⁹ As such, it would be inappropriate to rely on the CBP data as the sole basis for concluding whether any respondent had no shipments, while our reliance on CBP data for respondent selection remains reasonable. For this very reason, it is the Department’s practice to issue specific no-shipment inquiries to CBP to confirm no-shipment certifications. In fact, in this very review, this is how we confirmed the no-shipment certification of another respondent, China Steel Corporation,¹⁰ despite YUSCO’s contention to the contrary.

Although YUSCO cites several administrative determinations and argues that it is the Department’s practice to rescind reviews even without no-shipment certifications, these cases do not support the proposition that this is the Department’s practice.¹¹ Regarding Honey from the PRC, in that case the respondent at issue submitted a voluntary response purporting to show reviewable transactions; however the Department found that the information in the submissions supported a conclusion that the respondent in question did not have any POR shipments of subject merchandise. See Honey from the PRC, 73 FR at 66222. In Bags from Malaysia, the Department rescinded a review with respect to a respondent based upon the respondent’s submissions and entry documentation from CBP which indicated the transactions at issue entered during a different POR. See Bags from Malaysia, 73 FR at 24942. Similarly, in SSWR from India, the Department determined, based upon submissions from the respondent, that the only potentially reportable transaction at issue was properly reviewable in a different POR. See SSWR from India, 71 FR at 40697. In PTFE from Japan, the respondent argued that it should be subject to the administrative review based on one sale during the POR (despite its letter indicating that it “did not have any entries or shipments of subject merchandise during the period of review”); however, the Department rescinded the review because there was no corresponding entry during the POR. See PTFE from Japan, 70 FR at 44088. In Pipe and Tube from Turkey, the company certified that it had no shipments during the POR, which was confirmed by CBP data. See Pipe and Tube from Turkey, 74 FR at 7394. Finally, the CIT and CAFC cases cited by YUSCO also follow the fact pattern of the above administrative reviews: based upon the submissions of the respondents, the Department was able to make affirmative findings that there

⁹ See the October 6, 2009, memorandum to James Maeder, Office Director, from Henry Almond, Analyst, entitled, “Selection of Respondents for Individual Examination” at footnote 4.

¹⁰ The Department’s no-shipment inquiry for China Steel Corporation is located on the CBP website under message number 9352003, dated December 18, 2009. See <http://addcvd.cbp.gov/index.asp?ac=home>.

¹¹ Regarding CVP from the PRC, we note that the analysis of whether the respondent involved in that review had POR shipments is contained in a business proprietary memorandum, and the bases for that determination are not discussed at any length in the Federal Register notice. In any event, there is nothing in CVP from the PRC indicating that the fact pattern in that case supports YUSCO’s position.

were no reviewable transactions for the respondents at issue. See Chia Far v. U.S., 343 F. Supp. 2d at 1373-74, and Allegheny Ludlum v. U.S., 346 F. 3d at 1369-70.

Thus, cases cited by YUSCO are factually distinguishable because the Department made affirmative company-specific findings of no shipments based upon the information submitted by the respondents in question. In addition, notably, most of the determinations cited by YUSCO involved rescissions (or notices of intent to rescind) at the preliminary stage of the underlying administrative review, which afforded the Department ample opportunity to analyze and investigate the respondents' data, to supplement the record, as necessary, and to allow comments from interested parties. Here, YUSCO provided no factual submissions of any kind, let alone the no-shipment certification requested by the Department, either within the Department's published deadline, or even prior to the Preliminary Results.

YUSCO's reliance on Shrimp from Brazil is similarly misplaced. There, the Department attempted to select respondents on the basis of CBP data but was unable to do so because the CBP data showed no shipments of subject merchandise. See Shrimp from Brazil, 74 FR at 28665. Instead of relying on the CBP data initially collected (as YUSCO requests that we do here), the Department then solicited comments from parties and confirmed the fact that there were no shipments from any respondents by issuing a no-shipment inquiry to CBP. Id. This fact pattern is markedly different from the facts here. In this case the CBP data showed a number of entries, including those made by Chia Far (i.e., the exporter/producer selected for individual examination). Thus, Shrimp from Brazil is not applicable here since in that case there were no reviewable entries at all, which lead the Department to conclude that no individual respondents had shipments.

We are also unpersuaded by YUSCO's contention that the 30-day deadline for filing no-shipment certifications is unreasonable and arbitrary. The Department recently addressed this issue in Garlic from the PRC. See Garlic from the PRC at Comment 3. There, we noted that 19 CFR 351.213(d)(3) clearly establishes the Secretary as the deciding authority on whether there are no entries, exports, or sales of subject merchandise, a decision based on information submitted by the parties. Id. In that determination we also noted that allowing parties to submit responses without regard to our established deadlines would "significantly impede our ability to meet our statutory deadlines" and would prevent other interested parties from participating in our proceedings meaningfully. Id. Moreover, the Department has the authority to set and enforce time limits, and this authority has been upheld by the courts. See, e.g., Uniroyal Marine Exports Ltd. v. U.S., 626 F.Supp.2d 1312, 1316 (CIT 2009) ("this Court has consistently sustained determinations by Commerce rejecting new factual information submitted after the applicable deadline"); SKF USA INC. v. United States, 675 F. Supp. 2d 1264, 1274 (CIT 2009) ("Commerce has broad authority to set, and extend, its deadlines"); and Yantai Timken Co., Ltd. v. U.S., 521 F.Supp. 2d 1356, 1371 (CIT 2007) (Yantai Timken) ("{f}or Commerce to fulfill its mandate to administer the antidumping duty law, including its obligation to calculate accurate dumping

margins, it must be permitted to enforce the time frame provided in its regulations¹²).¹² Thus, we find that our 30-day deadline for filing no-shipment certifications is reasonable. Moreover, we disagree with YUSCO that the recent extension of the period in which parties may submit a no-shipment certification from 30 days to 60 days indicates that the practice is in flux. The Department has the authority to establish such deadlines, as discussed above, and we note that the 60-day deadline is well before the date the preliminary results of review must be issued.¹³

We also note that at no point did YUSCO request an extension of this deadline, nor did YUSCO raise its concerns about the reasonableness of this deadline until filing its case brief. Further, YUSCO has not claimed that it was unaware or otherwise unable to comply with our 30-day deadline for filing its no-shipment certification. In fact, counsel for YUSCO filed an entry of appearance and administrative protective order (APO) three days after the publication of our Initiation Notice. See YUSCO's August 28, 2009, entry of appearance and APO application. In its entry of appearance and APO application, YUSCO refers to itself as "a respondent company participating in this proceeding" and references the Federal Register citation for our Initiation Notice, showing that YUSCO was clearly aware of its inclusion in the review and reasonably indicating that it was aware of the Department's 30-day deadline. Id.

Regarding YUSCO's claim that the Department has ample time to further evaluate whether YUSCO had shipments of subject merchandise during the POR, the Department requires that parties submit timely no-shipment certifications, as discussed above. These certifications serve as the evidentiary foundation of our no-shipment analysis, and without a timely certification there is nothing for the Department to evaluate further. Additionally, it is not clear that we do have ample time between the receipt of YUSCO's case brief and our final results to conduct a full analysis while affording parties ample time to analyze and comment on our finding. As outlined in Garlic from the PRC, analyzing no-shipment statements can be a straightforward exercise; however, it can also be rather involved, potentially requiring supplemental questionnaires, the solicitation of data and documentation from CBP, and possibly verification. Moreover, our finding would need to be completed in such a timely fashion as to allow other interested parties, including the petitioners, the opportunity to comment on our finding, and potentially submit information rebutting the party's claim, if they so chose. Accordingly, we find that it would be inappropriate to re-open the record and evaluate whether YUSCO had no shipments of subject merchandise during the POR. Thus, for these final results we have continued to apply the review-specific average rate to YUSCO.

¹² While our 30-day deadline is not the sort of regulatory deadline discussed in Yantai Timken, YUSCO did not file any submission related to its shipment status prior to the deadline for filing new factual information set forth in 19 CFR 351.301(b)(2).

¹³ See section 751(a)(3)(A) of the Act (requiring the preliminary determination in an administrative review to be made within 245 days of the last day of the anniversary month of the publication of the order).

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 weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree_____

Disagree_____

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

(Date)