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International Trade Administration
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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review on Narrow Woven Ribbons with Woven Selvedge from Taiwan

Summary

We have analyzed the comments of the interested parties in the 2010-2011 administrative review of the antidumping duty order covering narrow woven ribbons with woven selvedge (narrow woven ribbons) from Taiwan. As a result of this analysis, we have made no changes to the margin assigned to Hubschercorp. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

1. Use of Highest Petition Rate as Adverse Facts Available (AFA)
2. Application of AFA Rate to Hubschercorp's Exports

Background

On June 4, 2012, the Department published in the Federal Register the preliminary results of administrative review of the antidumping duty order on narrow woven ribbons from Taiwan. See Narrow Woven Ribbons With Woven Selvedge From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 77 FR 32938 (June 4, 2012) (Preliminary Results). The period of review (POR) is September 1, 2010, through August 31, 2011.

We invited parties to comment on the Preliminary Results. We received comments from Hubschercorp (the respondent) on July 10, 2012, and rebuttal comments from Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc. (collectively, the petitioner), on July 16, 2012. In September 2012, the Department held a public hearing at the request of Hubschercorp.

INTERNATIONAL TRADE ADMINISTRATION

Discussion of the Issues

Comment 1: *Use of Highest Petition Rate as AFA*

In the Preliminary Results, the Department determined that Hubschercorp's failure to submit a response to the Department's questionnaire warranted the application of a dumping margin based on AFA. In accordance with the Department's practice, we selected as AFA the highest rate on the record of the proceeding. As a result, we preliminarily assigned to Hubschercorp a rate of 137.20 percent, which is the highest rate alleged in the petition. See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 74 FR 39291 (Aug. 6, 2009) (LTFV Initiation).

Hubschercorp does not challenge the Department's decision to base its dumping margin on AFA and admits that it has not fully cooperated with the Department during the administrative review. However, Hubschercorp contends that the AFA rate selected by the Department is not based on substantial evidence on the record, is not reasonable, and is not in compliance with court precedent.

Hubschercorp notes that the Department's corroboration analysis compared the selected AFA rate to model-specific margins calculated for two respondents in the less-than-fair value (LTFV) investigation and found that the AFA rate was similar to the calculated margins. However, according to Hubschercorp, this analysis is flawed because: 1) the appropriate comparison is the overall margins for these companies; and 2) when viewed in this framework, the calculated margins were clearly aberrational (i.e., both respondents received zero final rates, and a third respondent received a rate of 4.37 percent).

Hubschercorp argues that an AFA rate must be a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance. Hubschercorp further argues that the purpose of the AFA rate is to provide respondents with an incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins. Finally, Hubschercorp contends that the AFA rate can be neither unreasonably high nor have no relationship to the respondent's actual dumping margin. According to Hubschercorp, each of these three principles was set out in a recent decision by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) involving virtually identical facts. See Gallant Ocean (Thailand) Co. v. United States, 602 F.3d 1319 (Fed. Cir. 2010) (Gallant Ocean).[1]

Hubschercorp acknowledges the Department's broad discretion in making antidumping determinations, particularly with respect to uncooperative respondents, under section 776(b) of

[1] Hubschercorp notes that, in the administrative review underlying Gallant Ocean, the Department selected an AFA rate of 57.64 percent, which, like here, was the highest rate in the petition; in that review, also similar to here, the overall dumping margins calculated for the respondents ranged from 2.58 percent to 4.31 percent, and two of the respondents had multiple transactions with model-specific dumping margins above the petition rate. See Gallant Ocean, 602 F.3d at 1322.

the Tariff Act of 1930, as amended (the Act). However, Hubschercorp maintains that the Federal Circuit has held that this discretion is not unbounded.[2] According to Hubschercorp, the Gallant Ocean court required the Department to select AFA rates comporting with commercial reality, which it defined by reference to the dumping margins computed for cooperating respondents.[3]

Finally, Hubschercorp contends that Congress included the corroboration requirement in the Act so as to block any temptation by the Department to overreach reality when seeking to maximize deterrence. According to Hubschercorp, as in Gallant Ocean, the Department has failed here to corroborate the petition rate with independent sources that are reasonably at its disposal, and thus it has overreached reality. Hubschercorp argues that a few sales above the petition rate do not constitute substantial evidence that the rate is corroborated, and it quotes Gallant Ocean for support for this proposition (i.e., "substantial evidence requires {the Department} to show some relationship between the AFA rate and the actual dumping margin"). See Gallant Ocean, 602 F.3d at 1325.[4]

Hubschercorp notes that the final dumping margin assigned in Gallant Ocean was 84.02 percent higher than the highest rate given to any mandatory respondent in the underlying investigation. Therefore, Hubschercorp argues that the Department should assign to Hubschercorp an AFA rate of 8.04 percent, which is 84.02 percent higher than 4.37 percent, the highest margin calculated in the LTFV investigation.

The petitioner urges the Department to reject Hubschercorp's argument that Gallant Ocean is the controlling precedent. Rather, the petitioner contends that the more applicable case law is found in the Federal Circuit's subsequent ruling in KYD, Inc. v. United States, 607 F.3d 760 (Fed. Cir. 2010) (KYD). In that case, the Federal Circuit affirmed an AFA call made under similar facts, despite being aware of its ruling in Gallant Ocean. Thus, the petitioner argues that the Department should continue to use as AFA the corroborated petition rate of 137.20 percent.

With respect to Hubschercorp's claim that the Department failed to corroborate the petition rate with independent sources, the petitioner maintains that the Department's actions in this review mirror those actions upheld by the Federal Circuit in KYD. The petitioner states that the

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[2] In support of this assertion, Hubschercorp cites F.lli De Cecco Di Filippo Fara S. Martino S.P.A. V. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000), where the Federal Circuit rejected the Department's AFA rate, which was the average of rates alleged in the petition, as "discredited and uncorroborated."

[3] Specifically, Hubschercorp cites Gallant Ocean, 602 F.3d at 1324, where the Federal Circuit stated that:

> The 57.4% adjusted petition rate is more than ten times higher than the average dumping margin for cooperating respondents. This high rate is also more than five times higher than the highest rate applied to a cooperating respondent. Moreover, nothing in the record ties the adjusted petition rate to Gallant, because Gallant did not participate in the original investigation. Thus, the record shows that the 57.64% rate is unrelated to commercial reality, and, thus, not a 'reasonably accurate estimate' of Gallant's actual dumping rate.

[4] Hubschercorp contends that this sentence distinguishes Gallant Ocean from two preceding AFA cases before the Federal Circuit, Ta Chen Stainless Steel Pipe, Inc v. United States, 298 F.3d 1330 (Fed. Cir. 2002) (Ta Chen) and PAM, S.p.A. Inc. v. United States, 582 F.3d 1336 (Fed. Cir. 2009) (PAM).

Department confirmed the accuracy and validity of the 137.20 percent petition rate through the analysis of underlying petition information, including source documents and publicly available information; the petitioner notes that this method was affirmed by the KYD court. See KYD, 607 F.3d at 765. Furthermore, the petitioner rejects Hubschercorp's claim that the identification of a few sales above the petition rate cannot reflect the actual dumping margins calculated for the ribbons industry, arguing that KYD unequivocally stated that the Department "need not select, as the AFA rate, a rate that represents the typical dumping margin for the industry in question." See KYD, 607 F.3d at 765-6. The petitioner notes that, in the case underlying KYD, the Department corroborated an AFA rate by identifying high-volume transaction-specific margins for cooperative companies that were at or above the selected rate. In so doing, the KYD court held that the Department had "a sufficient basis for concluding that the AFA rate {…} was reliable." See KYD, 607 F.3d at 766. In the same manner, the petitioner argues that the Department's identification of multiple model-specific margins above 137.20 percent for two of the three mandatory respondents in the investigation satisfies the requirements for corroboration and follows the methods affirmed in KYD.

Finally, the petitioner rejects Hubschercorp's claim that the Department's AFA rate is simply too high and, therefore, punitive in nature. The petitioner notes that the Federal Circuit, in KYD, rejected this notion, stating that AFA rates calculated pursuant to statutory requirements cannot be punitive measures. The petitioner asserts that the Department's actions in the current review, having followed the statutory requirements under section 776(b) of the Act and the precedent set forth in KYD, are appropriate. Thus, the petitioner urges the Department to continue to use as AFA the corroborated petition rate of 137.20 percent in the final results.

Department's Position:

After considering all arguments on this issue, we are continuing to apply 137.20 percent, the highest petition rate, as the AFA rate for Hubschercorp in these final results. As discussed below, we have corroborated this rate to the extent practicable, in accordance with section 776(c) of the Act. Due to the business proprietary nature of the information for the specific details of this analysis, see the Memorandum to the File from Holly Phelps, Analyst, entitled, "Final Results in the 2010-2011 Antidumping Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge from Taiwan: Corroboration Analysis," dated concurrently with this memorandum (Final Corroboration Memo).

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, inter alia, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information.

At issue here is not whether the use of AFA for Hubschercorp is justified, but rather whether the Department has selected an appropriate AFA rate. Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record. As this is the first administrative review of the antidumping duty order on narrow woven ribbons from Taiwan, there exists no information from previous reviews. Moreover, there are no participating respondents in this review, and the only information Hubschercorp placed on the record of this review is the aggregate quantity and value (Q&V) data for its entries of subject merchandise, as well as the capacity of the spools on which Hubschercorp sold its exported narrow woven ribbons. Due to Hubschercorp's lack of cooperation and the absence of data supplied by other respondents, the Department does not have abundant resources in this administrative review from which to select a rate. Rather, the only sources of data from which to select an AFA rate here are the petition and the final determination in the LTFV investigation.

The Court of International Trade (CIT) recently highlighted that the Department has greater discretion in selecting an AFA rate where the record is devoid of all sales data, making it difficult for the Department to determine a relevant and reliable rate for a respondent. See Dongguan Sunrise Furniture Co. Ltd. v. United States, Court No. 10-254, Slip Op. 2012-79 (CIT June 6, 2012) (Dongguan), at 9. Given the limited options, we continue to find that the petition represents the preferred source of AFA information for Hubschercorp because: 1) during the LTFV investigation, we determined that the highest petition rate was supported by substantial evidence (i.e., the export price was based on a confidential price quote from a ribbon manufacturer and the normal value was built based on mostly publicly-available rates and the petitioner's own experience);[5] and 2) this information can be corroborated within the meaning of section 776(c) of the Act. Moreover, as explained below, there is a link between the petition rate and Hubschercorp's own commercial activity because Hubschercorp imported subject merchandise into the United States in similar quantities, and at equivalent spool sizes, as the independent source data used to corroborate the petition rate.

In this instance, to corroborate the 137.20 percent petition margin, we compared it to the model-specific dumping margins calculated for each of the three respondents in the LTFV investigation. We found that two of these exporters had numerous dumping margins at or above the petition rate of 137.20 percent, covering dozens of models and thousands of spools of ribbon. See Final Corroboration Memo. Given that a substantial number of actual U.S. sales transactions were dumped at the same rate as, or at an even higher level than, the petition margin, we find that the petition rate is neither aberrational nor divorced from commercial reality, but rather is corroborated with the limited evidence available on the record. As the Federal Circuit has held, these transaction-specific margins for cooperative companies support a finding that the AFA margin "does not lie outside the realm of actual selling practices." See KYD, 607 F.3d at 766. Moreover, the Federal Circuit also found that the use of transaction-specific margins to corroborate the petition margin was sufficient, stating that the Department "need not select, as the AFA rate, a rate that represents the typical dumping margin for the industry in question." Id.,

[5] See LTFV Initiation, 74 FR at 39295.

607 F.3d at 765-6. Our comparison of model-specific margins in this review is analogous to the Department's comparison of transaction-specific margins in the administrative review underlying KYD. Indeed, because these model-specific margins are made up of a number of individual transactions, they reflect broader selling behavior than the transaction-specific margins that were affirmed by the Federal Circuit in KYD.

Because the petition rate does "not lie outside the realm of actual selling prices," it represents commercial reality for a segment of the narrow woven ribbons industry.[6] Further, we find that the petition rate represents commercial reality for Hubschercorp as well. Although Hubschercorp failed to provide its own POR transaction-specific sales data, Hubschercorp did report the aggregate Q&V of its imports of subject merchandise during the POR. See Hubschercorp's January 17, 2012, Q&V response (Hubschercorp's Q&V response) at Attachment I. These Q&V data show that Hubschercorp imported narrow woven ribbons produced in Taiwan of a particular spool size, which is similar to the spool size for a model used to corroborate the petition margin. Moreover, the dumping margin for that model is substantially higher than the margin assigned as AFA.[7] Thus, we find it reasonable to assume that Hubschercorp's sale of similarly-sized merchandise could lead to similar dumping margins (thereby directly linking it to Hubschercorp's own commercial reality).[8]

Finally, Hubschercorp also imported narrow woven ribbons in at a quantity which was similar to[9] the total quantity of the sales used in the corroboration analysis. See Hubschercorp's Q&V response at Attachment I. We find this fact significant because the quantity used in our analysis is large in relation to Hubschercorp's own experience, and thus it is reasonable to assume that there is an established market for Hubschercorp's similar quantities of subject merchandise, which plausibly was dumped at similar levels (again directly linking it to Hubschercorp's own commercial reality).

For the above reasons, we find that the AFA rate is a "reasonably accurate estimate" of Hubschercorp's own dumping margin, consistent with the requirements set forth in Gallant Ocean.

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[6] By "segment of the ribbons industry," we simply mean that there exists in the commercial marketplace a number of actual customers who expect to (and do) purchase ribbons at this level of dumping. Thus, it is not unreasonable to infer that Hubschercorp could sell subject merchandise to those companies at the same dumping levels.

[7] Because these figures are business proprietary, we cannot disclose them here. For further discussion, see the Final Corroboration Memo.

[8] It is reasonable to assume that size of the spool is a material factor in determining the price of narrow woven ribbon.

[9] In its case brief, Hubschercorp stated it did not distinguish in its Q&V response between sales where Hubschercorp was merely the importer of record for shipments of subject merchandise and sales where it was the actual exporter. Only the sales in the latter category are subject to this review. See Comment 2, below. Given Hubschercorp's assertion that it overstated its export quantity, the quantity of sales used to corroborate the petition rate may be even greater than Hubschercorp's total exports of subject merchandise.

We disagree that the Federal Circuit's decision in Gallant Ocean stands for the proposition that the Department may never assign as AFA for a non-participating respondent a rate which differs markedly from the weighted-average rates calculated for participating respondents. In Gallant Ocean, the Federal Circuit struck down the Department's use of the highest dumping margin stated in the petition as AFA, based on a finding that the rate could not be corroborated when viewed in the context of the facts of that record. Despite the apparent similarities in the magnitude of the AFA rate vis-à-vis the calculated margins in Gallant Ocean and in this case, unlike in Gallant Ocean, here we have established a link between the AFA rate and commercial reality for Hubschercorp, as discussed above.

A review of other Federal Circuit decisions consistently shows that, if the AFA rate reflects the commercial reality for a given respondent, the magnitude of the AFA rate does not invalidate an otherwise corroborated rate. This can be seen in recent rulings in three Federal Circuit decisions, the first two of which were cited by the Gallant Ocean court and the third which followed on the heels of it: Ta Chen, PAM, and KYD. In each of these three cases, the court upheld the Department's decision to assign an AFA rate which differed significantly from the rates calculated for cooperating respondents, all in orders of magnitude many times higher than the calculated rates. For example, in the administrative review underlying the PAM decision, the Department calculated rates ranging from 0.12 to 7.23 percent;[10] thus, the AFA margin of 45.49 percent was over six times higher than the highest calculated rate and more than 21 times the average calculated figure. Similarly, in KYD, the Department calculated rates ranging from 0.80 to 1.87 percent;[11] thus, the AFA margin of 122.88 percent was more than 65 times the highest rate calculated for a cooperating company and over 100 times more than the average calculated rate. In each of these cases, the Federal Circuit found that that the AFA rates were sufficiently linked to the exporter's commercial reality to deem the rates appropriate. Again, here the AFA rate is sufficiently linked to Hubschercorp's commercial reality via its own import data to deem it appropriate, the magnitude of this rate notwithstanding.

It is clear from the above precedent that the linkage factor is of paramount importance to the court, and that this linkage factor should be accorded heavy weight when selecting among available AFA rates. It is also clear that the courts accord the Department substantial deference in the selection of AFA rates. See, e.g., United States v. Eurodif, 555 U.S. 305, 316 (2009) (the courts defer to the Department's reasonable interpretation of the Act absent unambiguous statutory language to the contrary); Chevron U.S.A. Inc. v. Natural Res. Def. Council Inc., 467 U.S. 837, 842-844, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984); see also Suramericana de Aleaciones Laminadas C.A. v. United States, 966 F.2d 660, 665 (Fed. Cir. 1992) (stating that it is not the court's duty to "weigh the wisdom of, or to resolve any struggle between, competing views of the policy interest, but rather to respect legitimate policy choices made by the agency in interpreting and applying the statute"); Dongguan (stating that the Department "has greater

[10] See Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255, 6257 (Feb. 10, 2004).

[11] See Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 64580, 64581 (Nov. 16, 2007).

discretion in attempting to determine a relevant and reliable rate" in cases where "the record is devoid of all sales data").

Hubschercorp argues that the Department should interpret Gallant Ocean narrowly by focusing on the size of the margin in isolation. However, such an interpretation would result in a severe limitation of the Department's discretion in applying the dumping law, and would be inconsistent with the cases cited above. Moreover this interpretation would lead to the absurd (and surely unintended) result of precluding the Department from ever assigning to non-responding exporters AFA petition margins which differ markedly from average rates calculated for cooperating parties, except in rare instances where: 1) that same petition margin was assigned as an AFA rate in a previous segment of the proceeding (as in KYD); and 2) either the assigned rate was not previously challenged in court or it survived judicial review before the Gallant Ocean decision was issued (also as in KYD). We believe that such a result is inconsistent with the intent of Congress, as set forth in section 776(b)(1) of the Act (which authorizes the Department to use petition information as AFA), and the Federal Circuit's own recent rulings.

Reading Gallant Ocean in this context, it is possible to view the ruling as consistent with the principles enumerated above. Specifically, the court found in Gallant Ocean that "the record does not show that the transactions at and above the 57.64% dumping margin reflect Gallant's commercial activity." See Gallant Ocean, 602 F.3d at 1324 (emphasis added). Thus, the court found that the Department should have relied on more reliable facts available such as the representative dumping rates of "similarly-sized and similarly-situated exporters" in the original investigation and in the administrative review. Id. Moreover, the court found that the Department had "abundant resources" from which to calculate a "more reasonable" rate, given that "over a dozen respondents submitted timely questionnaires during the administrative review." Id.

As is clear from Gallant Ocean, the Federal Circuit may find it unreasonable to use a high petition rate as AFA where better sources of information exist. In this case, however, unlike in the administrative review underlying Gallant Ocean, the administrative record here does not contain any information to determine whether a previous respondent was "similarly-sized and similarly-situated" to Hubschercorp. Indeed, while there are certain general similarities here (i.e., both Hubschercorp and Gallant Ocean failed to respond to the Department's questionnaire), there are more significant differences. Importantly, unlike in Gallant Ocean, in this administrative review there are no are no other resources from which to draw and thus the Department does not have "abundant resources" from which to calculate a "more reasonable" rate.

The CIT has recognized that selecting an AFA rate that is both reliable and relevant can be problematic when there is a dearth of information from which to choose. In a recent opinion involving the selection of an AFA rate in a case with better information, the CIT stated:

> This is not a total AFA case where the record is devoid of all sales data, making it difficult for Commerce to determine a relevant and reliable rate for a respondent. Nor is it a case where the record contains demonstrably untrustworthy

> information. In these types of cases, Commerce has greater discretion in attempting to determine a relevant and reliable rate. See 19 U.S.C. § 1677e(c) (requiring Commerce to corroborate "to the extent practicable").

See Dongguan at 9 (emphasis added).

As to whether the selected rate is punitive, we disagree with Hubschercorp that we are prohibited from selecting the petition margin as AFA because it is "punitively high." As noted in KYD:

> an AFA dumping margin determined in accordance with the statutory requirements is not a punitive measure, and the limitations applicable to punitive damage assessments therefore have no pertinence to duties imposed based on lawfully derived margins such as the margin at issue in this case.

See KYD, 607 F.3d at 768.

Finally, there is no merit to Hubschercorp's suggestion that the Department should apply an AFA rate similar to the rate ultimately applied to the respondent in Gallant Ocean.[12] The Federal Circuit did not find, nor is there any basis in law to argue, that AFA rates must all have the same proportional relationship to prior calculated rates. As noted above, there is no need to select an alternative AFA rate because we have corroborated the highest petition rate to the extent practicable, in accordance with section 776(c) of the Act. The selected rate satisfies the requirements of Gallant Ocean, as explained above.

For the foregoing reasons, we are continuing to base Hubschercorp's dumping margin on the corroborated petition rate of 137.20 percent for purposes of the final results.

Comment 2: *Application of AFA Rate to Hubschercorp's Exports*

Hubschercorp contends that any rate determined by the Department in this review is limited in application to only those exports of Taiwan narrow woven ribbon to the United States where Hubschercorp was the exporter. Thus, Hubschercorp argues that the Department should clarify in its instructions to U.S. Customs and Border Protection (CBP) that any entries where Hubschercorp (or an affiliated company) served as the importer of record, but where the exporter was a Taiwan company, be liquidated at the "all-others" rate of 4.37 percent. To this end, Hubschercorp offered to provide information regarding its sales so that the Department may properly identify those entries where Hubschercorp should not be considered the exporter. Hubschercorp implies that this additional information is necessary because its Q&V information, submitted in January 2012, differs from import data maintained by CBP.

[12] Following the Federal Circuit's initial ruling on Gallant Ocean, the Department and Gallant Ocean agreed to settle the dispute out of court, and the resulting rate bore no relationship to either the commercial reality of the uncooperative respondent or that of the cooperating respondents in the administrative review. See Certain Frozen Warmwater Shrimp from Thailand; Notice of Amended Final Results of Antidumping Duty Administrative Review, 76 FR 6603 (Feb. 7, 2011).

The petitioner notes that the draft liquidation instructions issued by the Department on June 1, 2012, correctly limit assessment to entries where Hubschercorp is the exporter. Consequently, the petitioner sees no reason for the Department to deviate from its practice by adding needless language to its instructions to CBP. Additionally, the petitioner contends that Hubschercorp's situation is not unique, and that any claims should be raised by Hubschercorp directly with CBP. In any event, the petitioner notes that Hubschercorp certified to the completion and accuracy of its Q&V data, and, there is no reason for the Department to reopen the record.

Department's Position:

According to Hubschercorp's Q&V response, Hubschercorp is a reseller of subject merchandise produced in Taiwan. The Department's practice with respect to resellers is to treat as reviewable transactions only those sales where the reseller was the first entity in the chain of distribution with knowledge that the merchandise was ultimately destined for the United States (i.e., where the producer did not know or should not have known at the time of sale that the merchandise was being exported to the United States). See, e.g., Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (Sept. 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3. Therefore, Hubschercorp's imports of subject merchandise which were exported by the producer in Taiwan are not subject to this review. As a result, we disagree with Hubschercorp that it is necessary to clarify in our instructions to CBP that such merchandise should be liquidated at the "all-others" rate.

At the time of the Preliminary Results, we released draft assessment instructions to this effect:

> FOR ALL SHIPMENTS OF NARROW WOVEN RIBBONS WITH WOVEN SELVEDGE FROM TAIWAN EXPORTED BY HUBSCHERCORP, AND ENTERED, OR WITHDRAWN FROM WAREHOUSE, FOR CONSUMPTION DURING THE PERIOD 09/01/2010 THROUGH 08/31/2011, ASSESS AN ANTIDUMPING LIABILITY OF 137.20 PERCENT OF THE ENTERED VALUE.

Because there has been no new information since the Preliminary Results to contradict or invalidate these assessment instructions, we continue to find the language in these instructions to be appropriate.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of review and the final weighted-average dumping margin for Hubschercorp in the Federal Register.

Agree ✓ Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

November 29, 2012
(Date)