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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
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

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I. SUMMARY

We analyzed the case briefs of interested parties in the 2014-2015 administrative review of the antidumping duty (AD) order on narrow woven ribbons with woven selvedge (NWR) from Taiwan. The review covers four producers/exporters of the subject merchandise, from which we selected two mandatory respondents, Roung Shu Industry Corporation (Roung Shu) and A-Madeus Textile Ltd. (A-Madeus).[1] Based on our findings at verification, we made certain changes to Roung Shu's margin calculations; however, the calculated margins for the final results result in the same margin as those calculated from the *Preliminary Results*.[2] Moreover, after considering the facts on the record as well as the comments received, we made no changes to the adverse facts available (AFA) margin of 137.20 percent assigned to A-Madeus in these final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below we note the sole issue in this administrative review for which we have received comments from the interested parties:

1. Rate Assigned to A-Madeus

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[1] With respect to the remaining two producers/exporters (*i.e.*, Xiamen Yi He and Fujian Rongshu), we preliminarily determined that they had no reviewable transactions during the period of review (POR). We received no comments from interested parties with respect to our preliminary no-shipments determinations, and so for these final results, we continue to find that these companies had no reviewable transactions during the POR.

[2] *See Narrow Woven Ribbons With Woven Selvedge From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 71057 (October 14, 2016) (*Preliminary Results*).

II. BACKGROUND

On October 14, 2016, the Department published in the *Federal Register* the preliminary results of the 2014-2015 administrative review of the antidumping duty order on NWR from Taiwan.[3] The POR is September 1, 2014, through August 31, 2015.

After the *Preliminary Results*, we conducted verification of the sales and cost of production (COP) data reported by Roung Shu, in accordance with section 782(i)(3) of the Tariff Act of 1930, as amended (the Act). Roung Shu subsequently submitted a revised cost database at our request.

We invited parties to comment on the *Preliminary Results*. On February 22, 2017, we received a case brief from May Arts, LLC, a U.S. importer of the merchandise under review.[4] Based on our analysis of the comments received, we have continued to base the final dumping margin for A-Madeus on AFA. We made no changes to the 137.20 percent AFA margin assigned to A-Madeus in these final results.[5]

III. MARGIN CALCULATION

For these final results, we have calculated export price and normal value using the same methodology stated in the *Preliminary Results*.[6] We revised Roung Shu's margin calculations to take into account our findings from the sales and cost verifications.[7]

IV. SCOPE OF THE ORDER

The scope of the order covers narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but

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[3] *Id*.

[4] *See* May Arts' Case Brief, dated February 22, 2017 (May Arts Case Brief).

[5] This margin was also used as an AFA rate in the 2010-2011, 2011-2012, and 2012-2013 administrative reviews. *See Narrow Woven Ribbons With Woven Selvedge From Taiwan; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19635 (April 13, 2015) (*Ribbons from Taiwan 2012-2013 Final Results*); *see also Narrow Woven Ribbons With Woven Selvedge From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 50377 (August 19, 2013) (*Ribbons from Taiwan 2011-2012 Final Results*); *see also Narrow Woven Ribbons With Woven Selvedge From Taiwan: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 72825 (December 6, 2012) (*Ribbons from Taiwan 2010-2011 Final Results*).

[6] *See Preliminary Results*, and accompanying Preliminary Decision Memorandum, at 81 FR 71058, and 6-14, respectively.

[7] *See* Memorandum, "Verification of the Sales Response of Roung Shu Industry Corporation (Roung Shu) in the 2014-2015 Antidumping Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge (NWR) from Taiwan," dated February 14, 2017, at 2-3; and Memorandum, "Verification of the Cost Response of Roung Shu Industry Corporation (Roung Shu) in the 2014-2015 Antidumping Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge (NWR) from Taiwan," dated March 3, 2017, at 2-3. *See also* Memorandum, "Calculations for Roung Shu Industry Corporation for the Final Results," dated April 12, 2017.

not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the order may:

- also include natural or other non-man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an "ornamental trimming;"
- be wound on spools; attached to a card; hanked (i.e., coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the order include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this antidumping duty order.

Excluded from the scope of the order are the following:

(1) formed bows composed of narrow woven ribbons with woven selvedge;

(2) "pull-bows" (*i.e.*, an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.*, filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.*, fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a “belly band” around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven

ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to the order is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by the order is dispositive.

V. DISCUSSION OF THE ISSUE

Comment 1: *Rate Assigned to A-Madeus*

Background

There are two mandatory respondents in this administrative review: Roung Shu and A-Madeus. In the *Preliminary Results*, we calculated a zero margin for Roung Shu, and we assigned a rate of 137.20 percent to A-Madeus. Because A-Madeus did not respond to the Department's questionnaire in this administrative review, the Department applied facts otherwise available with an adverse inference, in accordance with section 776 (a) and (b) of the Act, when determining A-Madeus' rate. Specifically, the 137.20 percent rate assigned to it is the highest dumping margin from a prior segment of this proceeding, which was the AFA rate assigned to non-cooperative respondents in prior segments.

May Arts' Arguments

- According to May Arts, due to recent modifications made to section 776(c)(2) of the Act, the Department is no longer required to corroborate a selected AFA rate. May Arts argues that the elimination of the corroboration requirement is in direct violation of its due process rights, afforded to it by the Fifth Amendment of the U.S. Constitution.[8] May Arts contends that, when an organization is deprived of property (*i.e.*, increased antidumping duty liability) by the federal government, the U.S. Constitution requires an opportunity for it to present objections to a neutral decision-maker.[9] May Arts claims that in this instance, it did not receive one.

- May Arts argues that, because the Department is no longer required to corroborate its selected AFA rate (*e.g.*, relate the rate to "commercial reality"), the newly-enacted statutory

[8] *See* May Arts Case Brief, at 2 (citing *United States Constitution*, at Amendment 5 (*Due Process Clause*)).

[9] *See* May Arts Case Brief, at 2 (citing *In re Estate of Delaney*, 819 A.2d 968, 990 (D.C. 2003) (*Estate of Delaney*)).

provision precludes interested parties from challenging the basis of the selected rate.[10] Specifically, May Arts argues that interested parties are deprived of a "fair hearing" to contest that decision, a measure that cannot withstand judicial scrutiny. Rather, according to May Arts, if the Department were to corroborate the selected AFA rate with secondary information, it would find that Roung Shu's data do not support it.

- May Arts asserts that, apart from section 776 of the Act, the Department is legally bound to ensure the validity of a selected AFA rate by examining "whether the secondary information to be used has probative value."[11] In order to uphold accuracy and deterrence, May Arts further states the Department must rely on contemporaneous secondary information, "to the extent practicable,"[12] rather than an uncorroborated eight-year-old rate. In fact, according to May Arts, in the three most recently-completed segments of this proceeding, the Department provided an appropriate analysis determining the probative value of the AFA rate selected (*i.e.*, by finding that the mandatory respondent(s) had model-specific margins at or above 137.20 percent), thus, corroborating the selected AFA rate.[13]

- May Arts contends that in a past review of NWR from Taiwan, when considering an AFA rate from a prior segment in the proceeding, the Department stated that it "will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate" and, in instances where not appropriate, the Department "may disregard the margin and determine an appropriate margin."[14] However, according to May Arts, the Department has not followed this methodology. Rather, May Arts points out that the Department offered no analysis when it stated that, "the highest prior dumping margin is the most probative evidence of the current weighted dumping margin."[15] May Arts argues that this is a presumptive statement and, as such, does not provide adequate rationale as to why the selection of the highest margin was appropriate for AFA in the instant review. Thus,

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[10] *See* May Arts Case Brief, at 3 (citing *NEC Corp. v. United States*, 151 F.3d 1361 (Fed. Cir. 1998) (*NEC Corp.*) and *United States v. Florida East Coast Ry. Co.*, 410 U.S. 224 (1973) (*Florida East Coast Ry. Co.*), where May Arts points to *NEC Corp.* and *Florida East Coast Ry. Co.*, as cases in which the organizations argued that the *Due Process Clause* required that they receive a hearing in which to contest and resolve issues concerning said organization.

[11] *See* May Arts Case Brief, at 4 (citing 19 CFR 351.308(d)).

[12] *See* May Arts Case Brief, at 4 (citing *Papierfabrik Aug. Koehler SE v. United States*, 843 F.3d 1373, 1380-81 (Fed. Cir. 2016) (*Papierfabrik Aug. Koehler*)).

[13] *See* May Arts Case Brief, at 5 (citing *Ribbons from Taiwan 2012-2013 Final Results*, 80 FR 19635 (April 13, 2015); *Ribbons from Taiwan 2011-2012 Final Results*, 78 FR 50377; and *Ribbons from Taiwan 2010-2011 Final Results*.

[14] *See* May Arts Case Brief, at 5-6 (citing *Narrow Woven Ribbons With Woven Selvedge From Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 32938 (June 4, 2012), unchanged in *Ribbons from Taiwan 2010-2011 Final Results*).

[15] *See* May Arts Case Brief, at 6 (citing *Preliminary Results*, and accompanying Preliminary Decision Memorandum at 18).

May Arts asserts that the Department has an obligation to address whether the AFA rate is supported by substantial evidence.[16]

- May Arts asserts that the Department has ample discretion and a wide range of sources from which it can choose a rate to apply as AFA.[17] May Arts maintains that the Department has a stated preference for margins from reviews, because they are more reliable indicators of dumping behavior than those calculated during an investigation.[18] Additionally, May Arts asserts that the 137.20 percent AFA margin assigned to A-Madeus is "grossly punitive," as demonstrated by margins calculated for respondents in the investigation, the 2012-2013 and 2013-2014 administrative reviews, and the current administrative review.[19] Further, May Arts alleges that the Department has primarily calculated zero percent rates for respondents in this proceeding, and the AFA rate of 137.20 percent is 4.5 to 31 times greater than the only non-zero rates calculated in prior segments.

- May Arts asserts that it had no ability to compel A-Madeus, an unaffiliated supplier, to respond to the Department's questionnaire. Further, May Arts argues that the AFA rate selected by the Department is excessive and serves no purpose, other than to punish a U.S. importer of record that had no involvement in A-Madeus' business practices.

- May Arts acknowledges the Department's stance that an AFA rate should have a built-in deterrence,[20] but May Arts asserts that, in this case, the AFA rate assigned to it is "unduly excessive when viewed in light of actual past results and serves only to punish a U.S. importer that had no control over its supplier's behavior."[21] Moreover, May Arts asserts that the Department's determination will not change A-Madeus' behavior (as the company's decision not to participate appears to reflect a lack of interest in the U.S. market) and will effectively bankrupt May Arts' U.S. business if it receives bills for additional duties that exceed its deposit amounts at the all others rate by more than 3,000 percent.

- May Arts argues that the Department should apply to A-Madeus, either as a whole, or specifically for May Arts' imports, the 30.64 percent rate calculated in the 2012-2013 administrative review. Alternatively, May Arts suggests the Department could use the simple average of the antidumping margins previously calculated for investigated respondents, plus the highest rate stated in the petition, which results in an alternative rate of

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[16] *See* May Arts Case Brief, at 5 (citing *Dongguan Sunrise Furniture Co. v. United States*, 931 F. Supp. 2d. 1346, 1350 (CIT 2013) (*Dongguan Sunrise*)).

[17] *See* May Arts Case Brief, at 6 (citing *Smith-Corona Group v. United States*, 713 F.2d 1568, 1571 (Fed. Cir. 1983) (*Smith-Corona Group*); and section 776(b)(2) of the Act and 19 CFR 351.308(c)).

[18] *See* May Arts Case Brief, at 6-7 (citing *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016) (*Ribbons from Taiwan 2013-2014 Final Results*), and accompanying Issues and Decision Memorandum at Comment 1).

[19] *See* May Arts Case Brief, at 7.

[20] *Id.* (citing *Ad Hoc Shrimp Trade Action Committee v. United States*, 802 F.3d 1339, 1361 (CIT 2015) (*Ad Hoc Shrimp*)).

[21] *See* May Arts Case Brief, at 7.

57.40 percent. According to May Arts, either of these alternative methods will result in a corroborated AFA rate for A-Madeus and May Arts that is more accurate, reliable, and of probative value, and will still deter other exporters from non-participation in the future. Thus, May Arts requests that the Department reconsider its preliminary determination of the AFA rate assigned to A-Madeus and issue a revised AFA rate that has probative value and has been corroborated.

Department's Position

After considering all arguments on this issue, we are continuing to apply the AFA rate of 137.20 percent, the highest petition rate, to A-Madeus in these final results.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Additionally, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.

As stated in the *Preliminary Results*, A-Madeus did not respond to the Department's questionnaire in this administrative review.[22] Under these circumstances, the Department has a sufficient basis to deem the company in question non-cooperative, and to assign it a dumping rate based on AFA. No party is challenging the Department's determination to apply AFA, and thus at issue here is only whether the rate selected as AFA is appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[23] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.[24] Because the Department initiated the instant review on November 9, 2015,[25] these amendments to section 776 of the Act apply to this administrative review.

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[22] *See Preliminary Results*, 81 FR at 71057, 71058.

[23] *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (*TPEA*).

[24] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*TPEA Application Dates*); *see also Ad Hoc Shrimp*, 802 F.3d at 1339, 1350 (holding that Congress intended section 502 of the TPEA, the provision amending section 776 of the Act, to apply to "determinations made on or after the date of enactment.").

[25] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 69193 (November 9,

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with the Department's request for information.[26] Further, 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.[27]

Section 776(c) of the Act provides that, in general when the Department relies on secondary information[28] rather than on information obtained in the course of a proceeding, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[29] However, under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[30] It is the Department's practice, when selecting an AFA rate from among the possible sources of information, to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce the respondent to provide the Department with complete and accurate information in a timely manner."[31]

Finally, section 776(d) of the Act also makes clear that when selecting information as AFA, the Department is not required to estimate what the weighted-average dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the information used as AFA reflects an "alleged commercial reality" of the interested party.[32]

For purposes of the final results, we continue to assign A-Madeus an AFA rate of 137.20 percent. May Arts contends that the Department must corroborate an AFA rate with the most contemporaneous data available to ensure that it continues to have probative value and strikes a proper balance between accuracy and deterrence.[33] We disagree. Section 776(c)(2) of the Act expressly provides that the Department is not required to corroborate a dumping margin applied in a separate segment of the same proceeding. Here, the selected rate is the highest dumping

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2015).

[26] *See* section 776(b)(1)(B) of the Act; and TPEA, section 502(1)(B).

[27] 19 CFR 351.308(c).

[28] Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994); 19 CFR 351.308(d).

[29] 19 CFR 351.308(d).

[30] *See* section 776(c)(2) of the Act.

[31] *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

[32] *See* section 776(d)(3) of the Act; and TPEA, section 502(3).

[33] *See* May Arts Case Brief, at 4.

margin applied in a prior segment of this proceeding and has been used as an AFA rate in other segments, *i.e.*, the first, second, and third reviews of the antidumping duty order on NWR.[34] As explained in the *Preliminary Results*, when assigning adverse rates in a review, the Department has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin,[35] and May Arts recognizes that the Department has discretion in choosing the rate to apply as an AFA rate.[36] Additionally, selection of the 137.20 percent rate is consistent with the purpose of AFA, which is to "ensure that the party does not obtain a more favorable result by failing to cooperate than it if it had cooperated fully."[37] This rate is sufficiently adverse so as to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[38] Further, this rate has been consistently applied as the AFA rate throughout this proceeding, and was most recently corroborated in the *Ribbons from Taiwan 2012-2013 Final Results*.[39]

Although May Arts relies on *Papierfabrik Aug. Koehler* to support its claim that the Department must corroborate an AFA rate used in a separate segment of the same proceeding and consider arguments that the selected AFA rate reflect commercial reality despite the TPEA amendments, we find that May Arts' reliance is misplaced.[40] The court in *Papierfabrik Aug. Koehler* applied the statute prior to the TPEA amendments, because the Department's determination in the underlying administrative proceeding was issued prior to the amendments by the TPEA, which does not apply retroactively.[41] Here, the Department's decision to apply the 137.20 percent AFA

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[34] *See Ribbons from Taiwan 2010-2011 Final Results*, 77 FR at 72825, *Ribbons from Taiwan 2011-2012 Final Results*, 78 FR at 50378; and *Ribbons from Taiwan 2012-2013 Final Results*, 80 FR at 19636. We note that no company received an AFA rate during the 4th review, and that A-Madeus, the respondent not selected for individual examination, received the most recent above *de minimis* margin calculated for a mandatory respondent. *See Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 60627, unchanged in *Ribbons from Taiwan 2013-2014 Final Results.*

[35] *See* Preliminary Decision Memorandum, at 18.

[36] *See* May Arts' Case Brief, at 6; *see also* section 776(d) of the Act.

[37] *See* Preliminary Decision Memorandum at 16. *See also* SAA at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007); Certain *Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review*, 72 FR 10689, 10692 (March 9, 2007), unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007).

[38] *See Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (CAFC 2010).

[39] *See Ribbons from Taiwan 2012-2013 Final Results*, and the accompanying Issues and Decision Memorandum, at 80 FR 19635, and Comment 12, respectively. In addition, we note that this rate was corroborated accordingly in the 2010-2011 and 2011-2012 administrative reviews. *See Ribbons from Taiwan 2010-2011 Final Results*, and accompanying Issues and Decision Memorandum, at 77 FR 72825, and Comment 1, respectively; and *Narrow Woven Ribbons with Woven Selvedge Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 29703 (May 21, 2013) (*Ribbons from Taiwan 2011-2012 Preliminary Results*), and accompanying Preliminary Decision Memorandum, at 7-8.

[40] *See* May Arts Case Brief, at 2, 4.

[41] *See Papierfabrik Aug. Koehler*, 843 F.3d at 1380 n.1 ("Although Congress has recently amended the subsection of 19 U.S.C. § 1677e relating to corroboration of secondary information, that amendment was not retroactive and took effect on June 29, 2015, after Commerce's determination here.").

rate occurred after the statute was amended and, therefore, made pursuant to those amendments. Thus, *Paperfabrik Aug. Koehler* is not applicable and does not require the Department to corroborate an AFA rate used in a separate segment of the same proceeding in this case. Neither does *Papierfabrik Aug. Koehler* require that such an AFA rate, given the TPEA amendments, be reflective of commercial reality.[42] Moreover, May Arts ignores that sections 776(d)(2) and (3) of the Act give the Department the discretion to apply the highest rate and provide that the Department need not demonstrate that the dumping margin reflects an alleged commercial reality.

Although May Arts cites the decision in *Dongguan Sunrise* to allege that the Department has an obligation to address whether the AFA rate is supported by substantial evidence, the facts at issue in *Dongguan Sunrise* are distinguishable in that the underlying administrative review in that case concerned a determination that applied *partial* AFA and was issued prior to the amendments by the TPEA.[43] In contrast, the issue at hand relates to an application of total AFA. Moreover, under the amendments as result of the TPEA, the Department is not required to corroborate AFA rates applied in previous segments of a proceeding, and the Department has the discretion to apply the highest rate.[44]

With respect to May Arts' claim that section 776(c)(2) of the Act denies it its rights to due process under the Fifth Amendment to the U.S. Constitution, the Department disagrees. During the course of this administrative review, the Department granted both May Arts and A-Madeus the opportunity to fully participate by: 1) issuing a questionnaire to A-Madeus; 2) providing both parties an opportunity to comment and submit written argument; and 3) providing both parties the opportunity to request a hearing.[45] A-Madeus elected not to respond to the Department's questionnaire, and although May Arts filed written argument regarding the *Preliminary Results*, May Arts elected not to request a hearing. In the absence of a hearing request from May Arts, the Department did not hold a hearing in this review, because the only parties who actually requested a hearing, Roung Shu and the petitioner, decided to withdraw their hearing requests. May Arts, nevertheless, claims that it is entitled to a hearing under the due process clause of the Fifth Amendment, as prescribed by the courts.[46] However, the cases cited by May Arts do not support its demand for a hearing, despite its opportunity to request such a hearing. Specifically, in *Florida East Coast Ry. Co.*, the court found that there was "no across-the-board constitutional right to oral argument in every administrative proceeding regardless of its nature."[47] Similarly, May Arts' citation of *NEC Corp*., while relevant, in that the court recognized that the importer

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[42] *See* section 776(d)(3)(B) ("{T}he administering authority is not required to demonstrate that the . . . dumping margin used by the {Department} reflects an alleged commercial reality of the interested party.").

[43] *See Dongguan Sunrise*, 931 F. Supp. 2d. 1356 (directing the Department to rely on a significant portion of the available evidence to determine the *partial* AFA rates" (emphasis added)).

[44] *See* sections 776(d)(2) and (3) of the Act.

[45] *See Preliminary Results*, and accompanying Preliminary Decision Memorandum, at 81 FR 71058, and 2, respectively.

[46] *See NEC Corp.*, 151 F.3d at 1370; and *Florida East Coast Ry. Co.*, 410 U. S. at 247

[47] *See Florida East Coast Ry. Co.*, 410 U.S. at 245 (citing *FCC v. WJR*, 337 U.S. 265 (1949)).

may be entitled to procedural due process,[48] does not advance May Arts' position that it was wholly denied its due process rights. Instead, May Arts fails to acknowledge the Department's provision of opportunities for interested parties to participate accordingly, at both the *Preliminary Results* and these final results. Consistent with its regulations, the Department provides interested parties with an opportunity to request a hearing and submit comments for the Department's consideration.[49] As stated above, May Arts submitted comments, but chose not to request a hearing. Accordingly, the Department placed no such restrictions on either May Arts or A-Madeus that inhibited either party from participating in this proceeding.

Despite May Arts being afforded the opportunity to request a hearing, the Supreme Court has considered the requirements of the *Due Process Clause* as "flexible" and that its applicability depends on the nature of the proceeding and circumstances of the given case.[50] On this point, May Arts' citation to *Estate of Delaney* is misplaced because, in that case, the Court stated that "the requirements of due process are flexible and depend on the private and governmental interests implicated by a particular case."[51] Even with this flexibility, the Department conducts investigations and reviews of antidumping duty orders in conformity with the antidumping law and regulations in a manner consistent with the principle of due process.

Moreover, we note that the Federal Circuit has held that "the Constitution does not provide a right to import merchandise under a particular . . . rate of duty . . . or even a protectable interest to engage in international trade."[52] Additionally, the Federal Circuit has recognized that an importer is legally responsible, by law and regulation, for paying the assessed duties associated with the goods its imports.[53] In light of the above, the Department's determination to apply the 137.20 percent AFA rate to A-Madeus in the instant review is consistent with section 776(c) of the Act, as May Arts has no vested right to import nor right to any particular rate of duty protected by due process.

The Department's questionnaire is designed not only to request certain information from respondents, but also serves to inform them of their obligation to provide this information accurately within established time frames, fairly providing warning that failure to cooperate by not acting to the best of their ability may result in application of AFA. The Department's

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[48] *See NEC Corp.*, 151 F.3d at 1370 ("Nonetheless, an importer may be entitled to procedural due process regarding the resolution of disputed facts involved in a case of foreign commerce when the importer faces a deprivation of "life, liberty, or property" by the Federal Government.").

[49] Pursuant to section 751(e) of the Act and 19 CFR 351.309; *see also* 19 CFR 351.310.

[50] *See Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, 894 (1961) ("The Fifth Amendment does not require a trial-type hearing in every conceivable case of government impairment of private interest."). *See also, e.g.*, *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976); and *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

[51] *See Estate of Delaney*, 819 A.2d at 995.

[52] *See Int'l Customs Prods., Inc. v. United States*, 791 F.3d 1329, 1337 (Fed. Cir. 2015).

[53] *See KYD, Inc. v. United States*, 607 F.3d 760, 768 (Fed. Cir. 2010).

Preliminary Results further informed parties of our intention to apply the 137.20 percent AFA rate to A-Madeus, due to its refusal to cooperate in this proceeding.[54]

Thus, May Arts was not denied its due process rights by A-Madeus receiving the 137.20 percent AFA rate, because May Arts knew of A-Madeus' failure to participate and the AFA rate to be applied, in addition to being granted opportunity to be heard pursuant to the statute and regulations.

While May Arts argues that the 30.64 percent calculated margin from the 2012-2013 administrative review is appropriate as AFA, given the Department's "ample discretion" and considerable sources from which to base a rate as AFA, we disagree and find, instead, that the highest rate in the petition, 137.20 percent, is the most appropriate source to use, as we have in past cases involving NWR from Taiwan.[55] In *Ribbons from Taiwan 2012-2013 Final Results*, we applied the 137.20 percent margin, as AFA, to the non-cooperative respondent, Hen Hao Trading Co. Ltd., while the cooperative respondent received the 30.64 percent calculated rate.[56] A-Madeus has not cooperated during this administrative review and, thus, we find no justification for departing from our practice and assigning a margin calculated for a cooperating respondent as an AFA rate, as May Arts proposes.

Likewise, we disagree with May Arts' suggestion that we should use a simple average of previous margins, rather than only the highest margin. Given these choices, the Department's general practice with respect to the assignment of adverse rates is to assign the higher of the highest rate in the petition or the highest margin rate calculated in any segment of a given proceeding, unless there are case-specific reasons that these rates are not acceptable.[57] Moreover

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[54] *See Preliminary Results*, 81 FR at 71058, and Preliminary Decision Memorandum, at 2 and 14-18.

[55] *See, e.g., Ribbons from Taiwan 2011-2012 Preliminary Results*, and accompanying Preliminary Decision Memorandum, at 8 ("Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin.… Similarly, the Department does not apply a margin that has been judicially invalidated. Because the respondents' rate was assigned as AFA to Hubschercorp, another Canadian reseller of subject merchandise, and there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA, we determine that this rate continues to be relevant, to the extent practicable. As the 137.20 percent rate is both reliable and relevant, we determine that it has probative value, and thus, it has been corroborated to the extent practicable pursuant to section 776(c) of the Act. Also, we find that the 137.20 percent margin is sufficiently adverse to ensure that Intercontinental Skyline and Pacific Imports do not benefit from failing to cooperate to the best of their ability in our review by refusing to respond to the Department's request for information. Thus, we have assigned this AFA rate to exports of the subject merchandise from Intercontinental Skyline and Pacific Imports." (citations omitted)), unchanged in *Ribbons from Taiwan 2011-2012 Final Results*.

[56] *See Ribbons from Taiwan 2012-2013 Final Results*, 80 FR at 19636.

[57] *See, e.g., Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029, 17030 (March 23, 2012) ("It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information."). Similarly, in the first administrative review of the order on NWR from the People's Republic of China, as AFA, the Department assigned the uncooperative exporter, Hubschercorp, the highest petition rate of 247.65 percent, which it corroborated using information from the investigation. *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 10130 (February 13, 2013), and accompanying Issues and Decision Memorandum at Comment 1.

there is no record evidence which would merit consideration for assigning A-Madeus a rate other than the highest rate assigned in the history of this proceeding. The purpose of applying the highest corroborated margin is to induce parties to participate; A-Madeus has not done so. In this review, we find that the petition rate, 137.20 percent, is a valid rate in applying AFA, and the petition rate is one explicitly authorized under section 776(c) of the Act.

With regard to May Arts' assertion that margins from administrative reviews are more reliable indicators of dumping behavior than those calculated during an investigation, we note that the AFA rate of 137.20 percent was assigned to mandatory respondents in three of the past four completed administrative reviews.[58] Further, while May Arts refers and cites to prior completed segments of NWR from Taiwan to substantiate its claim that the Department may rely on various methods of calculating an AFA rate, we note that these segments were governed by the statute prior to the TPEA amendments. As such, May Arts' arguments are primarily premised on certain sections of the Act that are not applicable. The current version of the Act does not require the Department to corroborate any margin used in a prior segment of a proceeding, and the Act gives the Department the discretion to apply the highest rate.[59] Additionally, May Arts' citation to *Smith-Corona Group* is misplaced, because the case addressed the Department's discretion in granting circumstances of sale adjustments, not discretion to choose among margins in assigning an AFA margin.[60] Lastly, May Arts cites to *Ad Hoc Shrimp*; but this case does not appear to support May Arts' position. In *Ad Hoc Shrimp*, the Court affirmed the Department's determination that the purpose of AFA is to ensure "an uncooperative party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully" and that an AFA rate should have "some built-in increase intended as a deterrent to non-compliance" (citations omitted).[61]

Consequently, for these final results the Department will continue to apply, as AFA, the highest margin previously applied in this proceeding of 137.20 percent to A-Madeus, consistent with section 776(b)-(d) of the Act.

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[58] *See Ribbons from Taiwan 2010-2011 Final Results*, 77 FR at 72825; *Ribbons from Taiwan 2011-2012 Final Results*, 78 FR at 50378; and *Ribbons from Taiwan 2012-2013 Final Results*, 80 FR at 19636.

[59] *See* section 776(d)(2) of the Act. *See also TPEA Application Dates*, 80 FR at 46794.

[60] *See Smith-Corona Group*, 713 F.2d at 1568, 1571.

[61] *See Ad Hoc Shrimp*, 802 F.3d at 1339, 1361.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position in these final results. If this recommendation is accepted, we will publish the final results of the review and the final dumping margins for A-Madeus and Roung Shu in the *Federal Register*.

☒ ☐

Agree Disagree

4/12/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance