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

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

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

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SUMMARY:

We have analyzed the case brief of Petitioners[1] and rebuttal brief of Respondent Yieh United Steel Corporation ("YUSCO") in this Administrative Review of Stainless Steel Plate in Coils ("SSPC") from Taiwan. As a result of our analysis, we have made no changes from the Notice of the Preliminary Rescission of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Taiwan, 68 FR 33472 (June 4, 2003) ("Preliminary Rescission"). Respondent Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") did not submit case or rebuttal briefs. The merchandise covered by this order is stainless steel plate in coils as described in the "Scope of Review" section of the Federal Register notice. The period of review ("POR") is May 1, 2001 through April 30, 2002.

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

LIST OF ISSUES FOR DISCUSSION

A. Issues with Respect to Ta Chen

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[1]Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization are collectively "Petitioners" for this review.

Comment 1: Examining Alleged Middleman Dumping of Ta Chen
Comment 2: Commerce's Rescission Policy

B. Issues with Respect to YUSCO

Comment 3: YUSCO's Affiliated Parties
Comment 4: Alleged Error in the Selection of the Cash Deposit Rate

C. Issues with Respect to Ta Chen and YUSCO

Comment 5: Placing Information on the Record

Comment 1: Examining Alleged Middleman Dumping of Ta Chen

Petitioners state that in the original investigation, the Department of Commerce ("the Department") found that Ta Chen was acting as YUSCO's middleman for YUSCO's U.S. sales and selling at less than Ta Chen's cost. See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15494 (March 31, 1999). However, Petitioners argue that in the Preliminary Rescission the Department rescinded the review of Ta Chen since it certified that it did not ship any subject merchandise POR.

Petitioners argue that by ignoring the U.S. resales by Ta Chen, the Department has elevated its standard for triggering an administrative review such that U.S. entries during a POR are required, and mere sales or re-sales during a POR will not trigger an administrative review. Petitioners contend this directly conflicts with the Department's own regulations that state an administrative review will cover entries, exports or sales of subject merchandise. See 19 CFR 351.213(e)(1)(i). Petitioners contend that the language of this regulation signifies that a review is warranted and should proceed as long as there have been entries, exports or sales during the POR. Petitioners argue that if there were sales, such as any Ta Chen U.S. resales of subject merchandise, the administrative review should continue.

Petitioners cite Hynix Semiconductor Inc. v. United States, 248 F. Supp. 2d 1297 (Ct. Int'l Trade 2003), and argue that in that case the Department was upheld in its reliance on constructed export price ("CEP") sales that were completed during the POR to calculate dumping margins in the antidumping duty order on certain semiconductors from Korea. Petitioners argue that in that case, the Department reviewed the CEP sales and not the entries during the POR, and that the Court of International Trade ("CIT") agreed that dumping margins can be determined on the basis of sales or entries.

Petitioners contend that in the present case, the Department decided not to review Ta Chen's CEP resales during the period of review and found that Ta Chen had not engaged in middleman dumping of CEP resales, even though it was the same sort of CEP sales the Department reviewed in the administrative review challenged in Hynix Semiconductor, Inc. V. United States. Petitioners allege that by requiring entries during the POR to exist before an administrative review will occur, the Department has failed to understand the significance and importance of U.S. resales in a middleman

proceeding. Petitioners assert that middleman dumping occurs at the time of the resale and not at the time of entry into the United States. Petitioners emphasize that while a middleman may import subject merchandise during the POR, the subsequent U.S. resale may not occur until after the review period. Petitioners argue that an accurate dumping margin for middleman resale can only be determined at the time of the U.S. resales by the middleman.

Petitioners contend that the Department has not analyzed and calculated dumping margins for Ta Chen's U.S. resales during the POR, as requested by Petitioners who state that this analysis would be consistent with the congressional intent of middleman dumping. Petitioners assert that this results in the old cash deposit rates being used instead of calculating more current and more accurate cash deposit rates. Petitioners assert that the older cash deposit rate from the investigation in 1997 is not as accurate as one the that the Department could currently calculate. Consequently, Petitioners want the Department to compute the cash deposit rate based on the dumping margin of the POR rather than that of the original investigation.

Petitioners state that the Preliminary Recession is inconsistent with the statute's overall purpose of calculating current dumping margins as accurately as possible with the cash deposit rate being as close as possible to the actual antidumping duties. Petitioners also state that the Department should follow congressional intent and examine the alleged middleman dumping.

Ta Chen did not comment on this issue.

Department's Position:

We disagree with Petitioners that the Department failed to follow the intent of Congress with respect to middleman dumping allegations and calculating current dumping margins as accurately as possible. There is no information on the record that a middleman made entries of subject merchandise from Taiwan during the POR, and no evidence that YUSCO, in particular, made sales of subject merchandise destined for the United States through Ta Chen. Ta Chen informed the Department that it did not have any U.S. sales or shipments during the POR of subject merchandise that were imported after the preliminary determination in the original investigation. See letter from Ta Chen to the Department, dated July 15, 2002. Information provided by U.S. Customs and Border Protection ("Customs") to the Department in all of the administrative reviews following the investigation have supported this conclusion. See Notice of Final Rescission of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Taiwan, 66 FR 18610 (April 10, 2001) ("First Administrative Review Notice") and Notice of Final Results and Rescission in Part of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Taiwan, 67 FR 40914 (June 14, 2002) ("Second Administrative Review Notice").

We disagree with Petitioners' claims regarding a presumption of middleman dumping by Ta Chen during the POR. A finding of middleman dumping in a previous segment of the proceeding does not constitute sufficient grounds to presume middleman dumping is occurring
when all of the record evidence indicates that there have been no entries of subject merchandise in the first place. The United States Court of Appeals for the Federal Circuit ("CAFC") recently rejected the argument offered by Petitioners on this issue in the context of the first administrative review of this order on stainless steel plate in coils from Taiwan. The issue before the CAFC was virtually identical to

the one at hand. The CAFC affirmed the decision from the CIT which held that the Department's rescission for lack of entries during the POR was supported by evidence on the record. See Allegheny Ludlum Corp. v. United States, et. al., 240 F.Supp.2d 1262, 1266 (Ct. Int'l Trade 2002) ("Allegheny I"). The CAFC stated that when the Department conducts an administrative review of an antidumping order, an examination of entries instead of sales "does not conflict with congressional intent and merely implements its lawful regulations."
See Allegheny Ludlum Corp. v. United States, et. al., --- F.3d ----, 2003 WL 22345667 at 3, Slip Op 03-1096 at 6, (Fed.Cir. 2003) ("Allegheny II"). The CAFC also stated that "where there are no entries or unlinked sales during a period of review, there is no subject merchandise and thus nothing to review and no basis for revising cash deposit rates." See id. The Court further addressed Petitioner's "middleman" argument, finding no evidence to support the contention that Congress intended the Department to presume middleman dumping exists when the Department determined that there was no entries during a particular POR. See id. In the instant case, it is clear from record evidence that there were no entries of subject merchandise during the POR and to require Ta Chen to demonstrate linkage would be unnecessary. Therefore, we are not making a finding with respect to whether middleman dumping occurred in this review. Accordingly, there is no basis for the Department to revise Ta Chen's cash deposit rate in this case. Thus, we have made no changes to the Preliminary Rescission with respect to this issue.

Comment 2: Commerce's Rescission Policy

Petitioners argue that if the Department rescinds the review, then Ta Chen should first be required to demonstrate linkage of U.S. resales during the POR to pre-suspension entries. Petitioners state that the Department has no record evidence from Ta Chen to show that its U.S. resales during the POR were linked with pre-suspension entries. Petitioners also argue that the Department should not accept Ta Chen's certification of no shipments of subject merchandise during the POR. Petitioners state the Department's role in reviews is investigatory in nature, and by accepting the certification of Ta Chen, the Department is not carrying out its role properly.
Moreover, Petitioners assert that Ta Chen should meet the linkage requirement of its U.S. resales during the POR to pre-suspension entries.

Petitioners cite the French Wire Rod case, stating that in that case the Department excluded from consideration in a first administrative review certain U.S. sales from inventory that the respondent was able to demonstrate had been derived from pre-suspension entries. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Wire Rods from France, 61 FR 47874 ("French Wire Rod") (September 11, 1996).

Petitioners further assert that Ta Chen should have completed a section A questionnaire response in order for the Department to obtain a list of Ta Chen's affiliated parties that could have acted on behalf of Ta Chen. Petitioners also contend that it is unclear whether the Department's shipment inquiry was actually distributed to all U.S. ports of entry and whether it was read and researched by anyone at each U.S. port of entry and that the Department inquiries to Customs cannot and should not excuse Ta Chen from demonstrating linkage.

Petitioners argue that since the suspension of liquidation on November 4, 1998, three years have elapsed, which makes it unlikely that Ta Chen could have maintained pre-suspension entries in its inventory and that it did not sell subject merchandise from such entries until sometime during the POR. Petitioners assert that the Department cannot and should not substitute itself for the respondent and assume Ta Chen's burden of demonstrating linkage of POR U.S. resales to pre-suspension entries.

YUSCO argues that despite Petitioners' arguments, the Department correctly determined to preliminarily rescind this administrative review. YUSCO states that the Department relied on substantial evidence when making its decision to rescind this administrative review. YUSCO provides the following examples of the record evidence: a certification submitted by YUSCO on July 18, 2002, stating that it did not have any U.S. sales, shipments, or entries of subject merchandise during the POR; and the Department's test of YUSCO's certification through customs inquiries to Customs which validated that YUSCO had no shipments of subject merchandise during the POR. See Preliminary Rescission. Therefore, YUSCO asserts that the Department's decision to preliminarily rescind this review with respect to YUSCO is proper under 19 CFR 213(d)(3) and also consistent with the Department's practice of rescinding administrative reviews where no record has been established of sales, shipments, or entries.

Ta Chen did not comment on this issue.

Department's Position:

We disagree with Petitioners that if the Department applies its policy on rescission to the review of Ta Chen, then Ta Chen should be required to demonstrate linkage of POR U.S. resales to pre-suspension entries. Customs has not provided the Department with any information to indicate that there have been any entries of subject merchandise since the suspension of liquidation at the time of the investigation by Ta Chen. There is sufficient information on the record to establish the lack of sales, entries, or shipments of Ta Chen during the period of review. Therefore as stated by the CIT with respect to this issue, which was also raised in the second administrative review of this case, "...requiring Ta Chen to answer Commerce's questionnaire and supplemental questions would have yielded information that was already established by the record." See Allegheny Ludlum Corp. v. United States, —F.Supp.2d—, 2003 WL 21729449, Ct. of Int'l Trade (July 24, 2003) ("Allegheny III"), currently on appeal. The Court went on to say that accepting the certified statements of a respondent that had no shipments during the POR and verifying those statements with a Customs inquiry is not contrary to the notion that the burden of creating the record rests with the respondent. See id. The CIT stated that it will defer to the Department's "...sensibility as to the depth of the inquiry needed..." and that the Department has "...wide latitude in its verification procedures." See id.

Additionally in the context of reviewing the first administrative review of the order, the CAFC expressly rejected the requirement that a respondent demonstrate linkage when there is already evidence on the record supporting the conclusion that there have been no entries since before the suspension of liquidation. See Allegheny II at 3. The CAFC stated that the Department can determine when it deems additional documentation unnecessary. See id.

In this third administrative review, the Department has reviewed the record and conducted inquiries with Customs. The Department has concluded based on record evidence in this administrative

review and the two prior administrative reviews that there have been no entries of subject merchandise into the United States during the POR by Ta Chen. See First Administrative Review Notice and Second Administrative Review Notice. As the information on the record is clear, we find that the respondent is not obligated to demonstrate linkage between re-sales during the POR and pre-suspension liquidation entries. Therefore, we have made no changes our Preliminary Rescission with respect to this issue.

Comment 3: YUSCO's Affiliated Parties

First, Petitioners allege that the Department's finding of "no entries" of subject merchandise was based on an improper and inadequate Custom's inquiry. Second, Petitioners contend that the Department did not require YUSCO to submit a Section A questionnaire response which would have provided a list of affiliated parties during the POR. Petitioners state that the Department has knowledge of YUSCO's affiliation with the Yieh Group companies, and assert that the Department failed to inquire about shipments of subject merchandise by the affiliated parties. Specifically, Petitioners allege that YUSCO was affiliated with China Steel Corporation ("CSC") during the POR. Petitioners contend that as a result, YUSCO was able to export subject merchandise through its affiliated parties.

Additionally, Petitioners state that while the Department's questionnaire requires a response that includes all the affiliates involved in the production or sale of the products under review, YUSCO limited its certification to only itself. Petitioners contend that the Department should conduct an affiliated-party analysis.

Further, Petitioners asserted, and submitted supporting documentation that YUSCO is affiliated with CSC, Yieh Loong, CSC's nine investment companies and Mr. Lin's investment firms. Petitioners allege that CSC was in a position to control Yieh Loong and, therefore, was in a position to control YUSCO through Yieh Loong. Petitioners conclude that because of all these interconnections, YUSCO, CSC, Yieh Loong and their other affiliates are "controlled together and in tandem" by CSC and Chairman Lin. Furthermore, Petitioners argue that they provided detailed evidence regarding the affiliations and state that evidence on the records shows that the stock relationship between the companies demonstrates additional evidence that YUSCO is affiliated with CSC. See Petitioner's May 14, 2003 letter, at 6.

Petitioners state that the Department has preliminarily faulted Petitioners for not requesting a review of CSC and other affiliated parties. Petitioners disagree with the Department's decision not to examine other potential affiliates of YUSCO and request the Department to reconsider this matter. Petitioners assert that it is impossible for the Department to be aware of all parties that were affiliated with YUSCO during the POR without receiving a Section A questionnaire response from YUSCO. Petitioners point out that YUSCO's questionnaire response did not provide any indication whether any of its alleged affiliated parties exported subject merchandise to the United States during the POR.

Petitioners cite a recent case in which the Department encountered a similar situation where a respondent did not want an affiliated party reviewed because the request for review was only for the respondent company. Petitioners state that in that case the Department dismissed respondent's argument that a review of the affiliated party was not warranted in lieu of a request for the review for

the affiliated party, and instead the Department conducted an affiliated-party analysis. See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France, 67 FR 6493 (February 12, 2002) and accompanying Issues and Decision Memorandum, at Comment 1 ("SSSS from France"). Petitioners argue that the issue of whether a specific request was filed by either party for a review of the affiliated party did not prevent the Department from conducting an affiliated-party analysis. Petitioners insist that the Department should follow suit in this review of YUSCO.

YUSCO did not submit comments on this issue.

Department's Position:

We disagree with Petitioners that a request to review one company automatically covers all affiliated parties. Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. YUSCO certified on the record that they did not export subject merchandise to the United States during the POR. The Department then conducted a Customs inquiry and pursued additional questions following the Customs inquiry pertaining to YUSCO and preliminary determined that YUSCO had not exported subject merchandise to the United States during the POR. See Preliminary Rescission. As the record evidence supports a finding that there were no entries of subject merchandise exported to the Unites States by YUSCO during the POR, the Department is rescinding this administrative review.

Furthermore, in response to the Petitioners' "affiliation" arguments, the party being reviewed in this case is YUSCO, not the other parties which have been alleged to be affiliated with YUSCO. Neither the Petitioners, nor any other party, requested an administrative review of YUSCO's alleged affiliates. YUSCO has been found not to have exported subject merchandise to the Unites States during the POR. Therefore, absent entries from YUSCO, there is no reason for the Department to conduct an affiliation analysis. If the Petitioners believed other parties potentially affiliated with YUSCO are exporting subject merchandise to the United States, then a review request in subsequent periods for those companies should be made. It is illogical to conduct an affiliation analysis for a reviewed respondent who had no entries of subject merchandise during a particular period of review. This case is distinguished from the one cited by Petitioners, SSSS from France, because in SSSS from France the respondent actually made sales and entries of subject merchandise during the POR, which then led the Department to examine an affiliate of the respondent. As the Department finds that YUSCO had no entries of subject merchandise during the POR, the Department is not examining the alleged affiliates of YUSCO. Therefore, we have made no changes to the Preliminary Rescission with respect to this issue.

Comment 4: Alleged Error in the Selection of the Cash Deposit Rate

Petitioners contend that the Department's 8.02 percent ad valorem cash deposit rate for YUSCO's subject merchandise is a deviation from the law. Petitioners allege that by basing the 8.02

percent ad valorem on the evidence that there were no middleman entries of subject merchandise during the POR or that YUSCO made no sales during the POR to the United States through Ta Chen, the Department "turned upside down" the principle that it is YUSCO's responsibility to develop the record. Furthermore, Petitioners argue that the 8.02 percent ad valorem would lead YUSCO and Ta Chen to believe that non-cooperation is advantageous because the Department does not include any amount for middleman dumping in the foreign producer's total cash deposit rate for direct U.S. shipments. Petitioners contend that a 10.20 percent ad valorem rate, which was the rate in the original investigation, would not be an undue burden or a penalty on YUSCO, as the focus of the antidumping law is to remedy the full measure of dumping.

Petitioners assert that by not ascribing Ta Chen's middleman dumping to YUSCO, the Department assumed that YUSCO was not aware that Ta Chen was engaged in middleman dumping. However, Petitioners argue that the record does not support this assumption because both YUSCO and Ta Chen were non-responsive in this administrative review. Petitioners suggest that the Department should consider that YUSCO had knowledge of Ta Chen's middleman dumping, given YUSCO's and Ta Chen's lack of cooperation and YUSCO's knowledge of Ta Chen's middleman dumping during the original investigation. Petitioners conclude that the Department erred by not choosing a single, weighted-average cash deposit rate
of 10.20 percent ad valorem for YUSCO's subject merchandise.

YUSCO argues that contrary to Petitioner's arguments, the Department correctly selected the deposit rate for YUSCO. YUSCO states that the Department's decision is consistent with its determination in the original investigation and in subsequent administrative reviews and that the Petitioners offered no factual support that the Department deviated from its practice in previous segments of this proceeding. YUSCO asserts that there is no legal or factual evidence to apply any other cash deposit rate and that the Department should reject the demand made by Petitioners to use a higher cash deposit rate.

Ta Chen did not submit comments on this issue.

Department's Position:

We disagree with Petitioners that the Department erred as a matter of law in selecting 8.02 percent ad valorem as the cash deposit rate for YUSCO and its subject merchandise. The CIT rejected this argument in Allegheny III as this same issue was raised in the context of the second administrative review of this order and the CIT upheld the Department's decision to apply the 8.02 percent figure. See Allegheny III. The Court stated that Petitioners's allegations that the Department should infer middleman dumping is "without merit." See id. at 43. The Court further stated that the Department properly used its discretion in selecting the rate of 8.02 percent ad valorem for YUSCO in the second review of the order and that Petitioners' argument that this effects the cash deposit rate and encourages producers to not cooperate with the Department is not persuasive. See id.

Further, there is no information on the record that a middleman made entries of subject merchandise from Taiwan during the POR, and no evidence that YUSCO, in particular, made sales of subject merchandise destined for the United States through Ta Chen during the POR. Additionally, we disagree with Petitioners' claims regarding a presumption of middleman

dumping by Ta Chen. A finding of middleman dumping in a previous segment of the proceeding does not constitute sufficient grounds to presume middleman dumping is occurring when there are no entries during the POR.

Additionally, we disagree with Petitioners that it would not be an "undue burden" on YUSCO to apply a middleman dumping margin rate. As we discussed in the Department's Remand Redetermination from the investigation, it would be an "undue burden" on a producer to apply a middleman dumping margin to a producer's direct exports to the United States, when that producer had no reason to know or suspect that the middleman was dumping its merchandise in the United States. See Final Results of Redetermination Pursuant to Court Remand, Allegheny Ludlum Corp. v. United States, dated November 28, 2001 ("Remand Determination") at 25, affirmed by the CIT in Allegheny Ludlum, et. al., v. United States, 239 F.Supp.2d 1381 (September 10, 2002), currently on appeal. (Allegheny - Investigation). The CIT in Allegheny - Investigation agreed with the Department and rejected Petitioners' argument about there being "no burden" in using a middleman adverse facts available rate. See id. at 1383 (referring to Tung Mung Development Corporation v. United States, 219 F.Supp.2d 1333 (August 22, 2002) in which the Court expressly rejected Petitioners' argument. Thus, in the Remand Determination, we applied combination rates to all of YUSCO's direct exports to the United States because it had no reason to know or suspect that Ta Chen was dumping its merchandise. See id. Thus, for all subject merchandise sold directly to the United States by YUSCO, we used a calculated rate which did not include the middleman dumping margin. See id. at 26. In this review, we have found that YUSCO did not sell subject merchandise to the United States. Therefore, we find it unreasonable to apply the middleman margin to YUSCO.

Based on the evidence on the record, we are not making a finding of middleman dumping in this review with respect to YUSCO's sales, and therefore we have applied the rate of 8.02 percent and have made no changes to the Preliminary Rescission with respect to this issue.

Comment 5: Placing Copies of all the Department's Communications with Customs on the Record.

Petitioners argue that in the Preliminary Rescission the Department relied on communications with Customs that were not placed on the record. Petitioners state that the Department did not place three communications with Customs on the record of this review, but relied on these communications when making its decision. Petitioners argue that the Department did not place on the record three communications: an October 29, 2002 Customs reply to an October 8, 2002 inquiry, a 2003 Customs reply to a January/February 2003 inquiry, and a March 19, 2003 Customs reply to a February 11, 2003 inquiry. Petitioners argue that the Department did not follow its regulations when it relied on information that was not on the record, and by its actions also precluded Petitioners from analyzing and commenting on these documents. Petitioners contend that they can identify significant problems with the Department's inquiries but they have not been able to review or comment upon all of Customs' replies.

Petitioners assert that in at least one other case the Department has placed the results of a Customs data search for entries of subject merchandise on the record. See Memorandum to Case

File, from Ryan Langan regarding Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar From India: POR 02/01/2001 through 01/31/2002 dated March 7, 2003. Petitioners argue that if the Department considers the documents to be protected by the Trades Secret Act, then the Department should explain how it obtained the information from Customs in the first place as Petitioners assert that the information might prohibit Customs from releasing the information to the Department but not prohibit the Department from releasing the information to Petitioners.

YUSCO and Ta Chen did not comment on this issue.

Department's Position:

We disagree with Petitioners that the Department's actions in this case violated its regulations, and that such actions have precluded Petitioners from analyzing and commenting on certain documents that were not placed on the record. Petitioners list three documents which they claim were not placed on the record. However, one of those three listed documents was placed on the record in its entirety, and certain information from the other two documents was also placed on the record.

The third document listed by Petitioners, March 19, 2003 U.S. Custom's Service reply to February 11, 2003 inquiry, was placed on the record and released to parties on March 20, 2003. Additionally it was again sent to counsel to Petitioners by facsimile on March 28, 2003 at counsel's request. See Memorandum to the File dated October 28, 2003.

The other two communications were not placed on the record in their entirety as they are inter-agency communications which are protected by the Trade Secrets Act, 18 U.S.C. 1905. However, on January 27, 2003, the Department released a letter to YUSCO and Petitioners which contained the key information from the October 29, 2002 communication from Customs to the Department that was not placed on the record in its entirety. With regard to the U.S. Customs Service Reply to the January and February inquiry, the Department placed on the record a Memorandum to the File stating the information that it received from the U.S. Customs Service in regard to the inquiry as many of the communications were in the form of telephone conversations. See Memorandum to the File dated February 25, 2003.

It is the statutory responsibility of the Department to conduct an administrative review. See section 751 of the Act. As part of the process of conducting the review, the Department must, in every case, make final determinations based upon the relevant information on the record. In the process of conducting a review, the administrative protective order ("APO") allows a party providing information to the Department the opportunity to place proprietary information on the record without that information being released to the public. The Department often obtains information from other sources as well, and places that information on the record of the proceeding. For example, as it did in this case, subject to the Trade Secrets Act, the Department may receive information from Customs relating to the existence, or nonexistence, of subject merchandise. Because some information which the Department received from Customs covered non-subject merchandise, the Department determined which Customs information was relevant for purposes of this antidumping duty review and placed only that information on the record.

Petitioners effectively argue that the Department should place everything it received from Customs on the record and that all of this information would be protected by the APO. Given that

some information the Department received from Customs did not pertain to the merchandise covered by the order, it is unlikely that all of this information would be releasable, regardless of the APO, under the Trade Secrets Act. More importantly, however, it is the Department's responsibility to conduct the review and place on the record information upon which it will rely in conducting the administrative review. Consistent with this authority, the Department placed the information that was relevant on the record in determining that there were no exports of subject merchandise during the POR. Thus, we must deny Petitioners request for the Department to place other information obtained from Customs, which did not pertain to entries of subject merchandise, on the record. Therefore, we have made no changes to the Preliminary Rescission with respect to this issue.

RECOMMENDATION

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

AGREE_____ DISAGREE_____

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James J. Jochum
Assistant Secretary
for Import Administration

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Date