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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *cm*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty First Administrative Review on Narrow Woven
Ribbons with Woven Selvedge from the People's Republic of
China

Summary

We have analyzed the comments of the interested parties in the 2010-2011 first administrative review of the antidumping duty order covering narrow woven ribbons with woven selvedge (“narrow woven ribbons”) from the People’s Republic of China (“PRC”). 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.

Background

On August 8, 2012, the Department of Commerce (“the Department”) published in the Federal Register the preliminary results of administrative review of the antidumping duty order on narrow woven ribbons from the PRC.¹ 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 September 7, 2012 (“Hubschercorp’s Case Brief”), and rebuttal comments from Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc. (“Petitioner”), on September 12, 2012 (“Petitioner’s Rebuttal Brief”).

¹ See Narrow Woven Ribbons With Woven Selvedge From the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 47363 (August 8, 2012) (“Preliminary Results”), and accompanying memorandum corroborating the adverse facts available selected. See Memorandum to the File from Karine Gziryan, Re. Placement on the record of the 2010-2011 Antidumping Duty Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the PRC of proprietary Model-Specific Margins and Proprietary Corroboration of Advers Facts Available Rate from the Less-Than-Fair-Value Investigation of Narrow Woven Ribbons with Woven Selvedge from the PRC (“Preliminary Corroboration Memo”).



Preceding the publication of the Preliminary Results, Hubschercorp failed to submit a response to the Department's section D questionnaire and Sections A and C supplemental questionnaires. Instead, Hubschercorp indicated to the Department that it was withdrawing its participation and would no longer participate in this review.² On November 29, 2012, the Department extended the deadline for issuing the preliminary determination by 60 days until February 6, 2013.³ In the Preliminary Results, the Department determined that the application of a rate based on adverse facts available ("AFA") was warranted to Hubschercorp because of its failure to respond to questionnaires. In accordance with the Department's practice, we selected as AFA the highest corroborated rate on the record of the proceeding. As a result, we preliminarily assigned to Hubschercorp a rate of 247.65 percent, which is the highest rate alleged in the petition.⁴

Scope of 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 not limited to nylon, polyester, rayon, polypropylene, and polyethylene terephthalate), 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;"

² See Narrow Woven Ribbons With Woven Selvedge from People's Republic of China, Antidumping Duty Investigation: Withdrawal from Administrative Review, Hubschercorp's Letter to the Department, dated May 29, 2012.

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations titled "Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated November 29, 2012.

⁴ See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 74 FR 39291 (August 6, 2009).

- 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 the 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.

Discussion of the Issue

Comment 1: Use of Highest Petition Rate as AFA

Respondent:

- 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 recent precedent from the Court of Appeal for the Federal Circuit ("CAFC").⁵
- Hubschercorp notes that the Department's corroboration analysis compared the selected AFA rate to model-specific margins calculated for the mandatory respondent, Yama Ribbons Co. Ltd. ("Yama"), 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) not all of Yama's sales used to corroborate the petition margin had a dumping margin at or above the petition rate; and 2) Yama had the weighted-average rate of 0.00 percent in LTFV investigation and was excluded from the antidumping duty order, therefore, those Yama's sales which were used to corroborate the petition margin in LTFV investigation were unquestionably aberrational.
- 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

⁵ See Gallant Ocean (Thailand) Co. v. United States, 602 F.3d 1319 (Fed. Cir. 2010) ("Gallant Ocean").

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.⁶ According to Hubschercorp, in Gallant Ocean the CAFC required the Department to select AFA rates comporting with commercial reality, which it defined by reference to the dumping margins computed for cooperating respondents.

- 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.⁷
- Hubschercorp argues that in this case the facts are nearly identical with those of Gallant Ocean. First, the Department ignored the average margin assigned to the mandatory respondent in the investigation. Second, the Department has taken an extremely small sample of the mandatory respondent's individual dumping margins and ignored the vast preponderance of evidence for that respondent. Third, the Department has relied solely on the highest rate in the petition, which has not been corroborated, as defined by the CAFC in Gallant Ocean. Thus, Hubschercorp argues that the AFA rate the Department applied to Hubschercorp is not based on substantial evidence, is not reasonable, and is not in accordance with law.

Petitioner

- Petitioner urges the Department not to be lured by Hubschercorp into believing that Gallant Ocean is the controlling precedent. Rather, petitioner contends that the Department's selection of AFA in this review most closely tracks the selection of AFA in the first review of the order on Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 53405, 53406-53407 (September 11, 2006), which was affirmed by the U.S. Court of International Trade ("CIT") in Universal Polybag Co. v. United States, 577 F.Supp. 2d 1284 (CIT 2008), and subsequently discussed favorably and de facto affirmed by the CAFC in KYD, Inc. v. United States, 607 F.3d 766 (Fed. Cir. 2010) ("KYD"). In that case, the CAFC affirmed an AFA call made under similar facts, despite being aware of its ruling in Gallant Ocean.

⁶ Hubschercorp notes that, in 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 CAFC held in Gallant Ocean that the rate at issue was "unrelated to commercial reality," and thus was "not a 'reasonably accurate estimate' of Gallant's actual dumping rate." Id., at 1324.

⁷ For support of this claim, Hubschercorp cites to Gallant Ocean, 602 F.3d at 1325. Hubschercorp contends that Gallant Ocean is distinguished from two preceding AFA cases before the CAFC, 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") because in those cases, a "relationship between the AFA rate and the actual dumping margin" existed, while no such relationship was shown to exist in Gallant Ocean.

- With respect to Hubschercorp’s claim that the Department failed to corroborate the petition rate with independent sources, petitioner maintains that the Department’s actions in this review mirror those actions upheld by the CAFC in KYD. Petitioner points out that the CAFC in KYD expressly approved the Department’s corroboration method used in the first review in that case, which is virtually identical to the method and evidence of corroboration used in the review at issue here.
- Petitioner rejects Hubschercorp’s claim that the “Commerce has ignored the average dumping margin assigned to the mandatory respondent in the investigation.” Petitioner points out that the only available calculated margin for a mandatory respondent in the investigation was “zero” margin determined for Yama, the only mandatory respondent in the investigation. Petitioner argues that because Hubschercorp failed to cooperate with the Department in this review it cannot be rewarded for its non-cooperation by either considering Yama’s result of zero margin or the margin of 123.83 percent assigned to the cooperative separate rate respondents in the investigation.
- Petitioner argues that the facts available rate of 247.65 percent was first corroborated and applied as the PRC-wide rate in the investigation, and was not challenged, and that there is no rationale that should allow Hubschercorp to obtain a better result through non-cooperation in this review than the facts available rate applied to uncooperative respondents in the investigation.
- Finally, petitioner notes that the CAFC, in KYD, rejected the notion that high AFA rates are by default impermissibly punitive, stating that AFA rates calculated pursuant to statutory requirements cannot be punitive measures. Petitioner asserts that the Department’s actions in the current review, are appropriate, having followed the statutory requirements under section 776(b) of the Tariff Act of 1930, (“the Act”) and in KYD. Thus, Petitioner urges the Department to continue to use as AFA the corroborated petition rate of 247.65 percent in the final results.

Department’s Position:

After considering all arguments on this issue, we have determined to continue to apply 247.65 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, for additional analysis, see the Preliminary Corroboration Memo and the February 5, 2013 Memorandum to the File from Karine Gziryan, Senior Financial Analyst, Office 4, NME Unit, “Antidumping Administrative Review of Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China: Proprietary Memorandum regarding Corroboration of Adverse Facts Available Rate” (“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 AFA rate which is sufficiently corroborated and otherwise supported by substantial evidence on the record. 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. Further, Section 776(c) of the Act provides that when the Department relies on secondary information, rather than on information obtained in the course of an investigation or review, for the AFA rate, the Department “shall, to the extent practicable corroborate that information from independent sources that are reasonably at their disposal.”

As this is the first administrative review of the antidumping duty order on narrow woven ribbons from the PRC, there exists no information from a previous segment of the proceeding, other than the record of the LTFV investigation. Moreover, there are no other mandatory respondents in this administrative review. Therefore, the Department placed information from the record of the LTFV investigation⁸ on this administrative record, and from that information, corroborated the AFA rate applied to Hubschercorp. To “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁹

The use of the information derived from the investigation is fully consistent with the Department’s statutory discretion to corroborate information, pursuant to Section 776(c) of the Act, “to the extent practicable.” Indeed, the CIT recently highlighted that the Department is given significant deference in selecting an AFA rate in a case such as this 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.¹⁰ Furthermore, the CAFC has recognized that the Department is allowed “discretion when choosing which sources and facts it will rely on to support an adverse inference.”¹¹

In the legislative history of the AFA provision, in the SAA, Congress expressly stated that the choice of AFA must “ensure that the party does not obtain a favorable result by failing to corroborate than if it had cooperated fully.”¹² In employing adverse inferences, “one factor” the

⁸ See Preliminary Corroboration Memo.

⁹ See 19 CFR 351.308(d).

¹⁰ See *Dongguan Sunrise Furniture Co. Ltd. v. United States*, 865 F. Supp. 2d 1216 (CIT June 6, 2012), at 1234 (“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”).

¹¹ See *Ta Chen*, 298 F.3d at 1339.

¹² See Statement of Administrative Action (“SAA”), URAA, H. R. Doc. 316, Vol. 1, 103d Cong. (1994), at 870.

Department “will consider is the extent to which a party may benefit from its own lack of cooperation.”¹³ The CAFC in F.lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (“F.lli De Cecco”), clarified, however, that “it is clear from Congress’s imposition of the corroboration requirement in {section 776(c)} that it intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent’s actual rate, albeit with some built-in increase intended as a deterrent to noncompliance.”

The rate applied to Hubschercorp, 247.65 percent, is derived from the petition. This rate was the highest rate calculated in the petition, and was derived from a comparison of an export price, based on a confidential price quote from a PRC ribbon manufacturer, with a normal value derived primarily from publicly-available surrogate value rates and the petitioner’s own production experience.¹⁴

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.¹⁵ In the LTFV investigation, the Department confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information.¹⁶ We, therefore, determined that the AFA rate derived from the petition was reasonable.¹⁷ We also determined that the rate was relevant by comparing the 247.65 percent rate to the model-specific margins we found for the sole participating mandatory respondent, Yama.¹⁸ We found that the margin of 247.65 percent was in the range of Yama’s model-specific margins.¹⁹ Accordingly, the Department concluded in the LTFV investigation, that this rate was corroborated, in accordance with section 776(c) of the Act.²⁰

For purposes of this administrative review, there is no evidence on the record that would undermine the Department’s determination in the investigation that the export price and normal

¹³ Id.

¹⁴ See Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 74 FR 39295 (August 6, 2009). This rate was applied to the PRC-wide entity in the investigation because the Department determined that the PRC-wide entity failed to act to the best of its ability in responding to the Department’s questionnaires. See also Narrow Woven Ribbons With Woven Selvedge From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808 (July 19, 2010) (“NWR Final Determination”).

¹⁵ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

¹⁶ See NWR Final Determination, and accompanying Issues and Decision Memorandum at Comment 12; see also July 12, 2010 Memorandum to the File from Karine Gziryan, International Trade Analyst, AD/CVD Operations, Office 4, “Antidumping Investigation of Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China: Proprietary Memorandum regarding Corroboration.”

¹⁷ See id.

¹⁸ The use of transaction-specific rates for purposes of corroboration has been affirmed by the CAFC in both Ta Chen, 298 F.3d at 1339 and PAM, 582 F.3d at 1340 (citing to the CAFC’s analysis in Ta Chen).

¹⁹ See NWR Final Determination, 75 FR at 41811 and Final Corroboration Memo.

²⁰ See id., 75 FR at 41808, 41811.

value underlying the 247.65 percent rate from the petition are reliable. Accordingly, we continue to find this rate to be reliable.

With respect to the relevance aspect of our corroboration analysis, as we did in the LTFV investigation, the Department compared the AFA rate with the model-specific dumping margins calculated for Yama, and found that Yama had a number of model-specific dumping margins at or above the petition rate of 247.65 percent, covering thousands of yards of ribbon.²¹ Such an analysis is relevant to Hubschercorp's own commercial activity during the POR, because this is the first review under this order (i.e., only one segment removed from the LTFV investigation), and Yama's sales of subject merchandise during the POI are comparable in time to Hubschercorp's transactions subject to this review. Furthermore, the only ribbons Hubschercorp sold to the United States subject to the antidumping duty order during the POR were produced by Yama. That is, Yama produced the merchandise subject to this review, sold it to Hubschercorp, who then resold it to the United States during the POR. Accordingly, the Department has determined that Yama's reported model-specific dumping margins in the LTFV investigation are relevant for purposes of determining whether or not the 247.65 percent rate is corroborated with respect to an exporter of Yama's merchandise.

The CAFC was faced with a similar factual scenario in KYD. In KYD, a respondent failed to act to the best of its ability in the context of an administrative review, and the CAFC upheld the Department's application of an AFA margin derived from the petition in the investigation to that exporter's merchandise.²² In corroborating the AFA rate, the CAFC affirmed the Department's use of transaction-specific margins for cooperative companies derived from the original investigation.²³ The CAFC stated that the fact that these margins had come from cooperative respondents indicated that the AFA margin used in subsequent proceedings "does not lie outside the realm of actual selling practices."²⁴ The CAFC 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."²⁵

Because the petition rate does "not lie outside the realm of actual selling prices," it represents the commercial experience of a segment of the narrow woven ribbons industry.²⁶ Accordingly, for the above reasons, the Department finds that the 247.65 percent rate is corroborated, pursuant to section 776(c) of the Act.

We disagree with Hubschercorp that Yama's model-specific margins, which are larger than than 247.65 percent rate, are "divorced from commercial reality" or that because there was a limited number of Yama's transactions that "had a dumping margin at or above" the AFA rate, those "handful of sales" must be "unquestionably aberrational." Given that a number of actual U.S.

²¹ See Preliminary Corroboration Memo.

²² See KYD, 607 F.3d at 765-66.

²³ Id., 607 F.3d at 766.

²⁴ Id., 607 F.3d at 766.

²⁵ Id., 607 F.3d at 765-6.

²⁶ 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.

sales transactions were dumped at the rate within the range of the petition margin,²⁷ we find that the petition rate is not “divorced from commercial reality,” but in fact is both reliable and relevant in light of the record evidence. Furthermore, there is nothing about those transactions that calls into question their commercial nature or suggests that they were aberrational. Indeed, the CAFC has affirmed the use of margins by the Department for AFA, pursuant to sections 776(b) and (c) of the Act, that represented 0.04 percent and 0.5 percent of a respondent’s total sales.²⁸ Therefore, in determining if an AFA rate is probative, we believe it is permissible to corroborate the AFA rate in this review using Yama’s model-specific margins.

With respect to Hubschercorp’s claim that the “Commerce has ignored the average dumping margin assigned to the mandatory respondent in the investigation,” we agree with petitioner that because Hubschercorp failed to cooperate with the Department in this review, *i.e.*, withdrew from the administrative review, it can not be rewarded for its non-cooperation neither by considering Yama’s calculated zero margin, nor the margin of 123.83 percent assigned to the cooperative separate rate respondents in the LTFV investigation. The Department is not required to assign to an uncooperative respondent such as Hubschercorp a rate assigned to cooperative respondents in the same case. Indeed, in KYD, the CAFC held that because the respondent, King Pac, failed to participate in subsequent administrative reviews, the Department acted within its discretion in drawing an adverse inference against King Pac and assigning it the highest calculated rate.²⁹

Further, we disagree with Hubschercorp that the CAFC’s decision in Gallant Ocean stands for the proposition that the Department may never assign a non-participating respondent an AFA rate which differs markedly from the weighted-average rates calculated for participating respondents. With respect to the CAFC’s analysis in Gallant Ocean, specifically, the CAFC found it significant that the petition rate was not valid primarily because there were dumping margins in the original investigation between 5.91 percent and 6.82 percent and also calculated dumping margin in the first administrative review ranging from 2.58 percent to 10.75 percent.³⁰ In the instant case, on the other hand, the Department does not have multiple calculated rates for several respondents, nor were there multiple calculated rates in the original investigation. Furthermore, 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, and there are not “abundant resources” from which the Department could determine a different rate.³¹

²⁷ See Final Corroboration Memo

²⁸ See Ta Chen, 298 F.3d at 1339; PAM, 582 F. 3d at 1340.

²⁹ See KYD, 607 F.3d at 766 (citing to F.lli De Cecco, 216 F. 3d at 1029, 1033-34 (an uncooperative party may be assigned the “highest verified margin” of the cooperating companies, even though it was “highly likely that the real dumping margin for {that company} would be well under” the AFA rate) and Shanghai Taoen Int’l Co. v. United States, 360 F.Supp. 2d 1339, 1345-48 (CIT 2005) (upholding a 233.01 percent AFA dumping margin, the “highest rate determined in the current or any previous segment of the proceeding” because “the rate reflects recent commercial activity” by a different exporter of the same goods from the same country, and because there was no prior dumping margin for that company on which the Department could rely)).

³⁰ See Gallant Ocean, 602 F.3d at 1322, 1324.

³¹ Id., 602 F.3d at 1324.

In KYD, the CAFC distinguished Gallant Ocean, stating that in the underlying proceeding at issue in Gallant Ocean, the Department's "own investigation revealed that the petition rate was not credible," while on the record at issue in the KYD litigation, "King Pac's failure to cooperate deprived Commerce of the most direct evidence of King Pac's actual dumping margin."³² The CAFC found that the AFA petition rate applied by the Department in the second administrative review of the antidumping duty order had been successfully corroborated in the previous, first administrative review using "high-volume transaction-specific margins for cooperative companies that were higher and close to the" AFA rate.³³ The CAFC noted that this methodology for corroborating an AFA margin was affirmed by the CIT (and not appealed) in Universal Polybag Co. v. United States, 577 F.Supp. 2d 1284 (CIT 2008), and the CAFC held that the petition rate continued to be considered corroborated with respect to King Pac for purposes of the second administrative review.³⁴

Similar to the exporter King Pac in the KYD litigation, Hubschercorp failed to participate and did not submit adequate information pertaining to its own commercial experience upon which the Department could conduct an administrative review. Likewise, as noted above, the Department has used the same methodology affirmed by the CAFC in KYD in these final results to corroborate the AFA rate applied to Hubschercorp's exports, and nothing in the CAFC's decision in Gallant Ocean undermines the reasonableness and lawfulness of such a determination. Accordingly, consistent with the CAFC's holding in F.lli De Cecco, we have determined that 247.65 percent rate reflects "a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to noncompliance."³⁵

Finally, we disagree with Hubschercorp's characterization of the AFA rate as "punitively high." As the CAFC stated 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."³⁶ Because the adverse 247.65 percent rate derived from the petition was determined in accordance with sections 776(a) and (b) of the Act, and is corroborated, in accordance with section 776(c) of the Act, it is therefore not punitively high.

For the foregoing reasons, for the final results, we are continuing to base Hubschercorp's dumping margin on the corroborated petition rate of 247.65 percent.

³² See KYD, 607 F.3d at 767.

³³ See KYD, 607 F.3d at 766.

³⁴ See KYD, 607 F.3d at 763, 767.

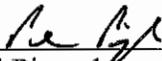
³⁵ See F.lli De Cecco, 216 F.3d at 1032.

³⁶ See KYD, 607 F.3d at 768.

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



Paul Piquado
Assistant Secretary
for Import Administration

5 FEBRUARY 2013
(Date)