

December 2, 2011

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

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

SUBJECT: Issues and Decision Memorandum for Final Results of
Antidumping Duty Administrative Review: Certain Circular
Welded Non-Alloy Steel Pipe from Mexico

SUMMARY: We have analyzed the case brief and rebuttal brief of interested parties in the antidumping duty administrative review of certain circular welded non-alloy steel pipe from Mexico. As a result of our analysis, we have made no changes from the preliminary results. *See Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 49437 (August 10, 2011) (*Preliminary Results*). 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.

Case Brief

Petitioners Wheatland Tube Company Case Brief dated September 9, 2011 (Wheatland’s case brief)

Rebuttal Brief

Respondents Lamina y Placa Comercial, S.A. de C.V., and Tuberia Nacional, S.A. de C.V., Comments in Response to the Wheatland case brief dated September 13, 2011 (Lamina/TUNA’s rebuttal brief)

Comment 1: Allegedly Incorrect Classification of Entry Documents

In Wheatland’s case brief at pages 2-4, Wheatland maintains that the Department’s queries to Customs and Border Protection (CBP) failed to expose misclassified entries. Wheatland states that there is a vast disparity between publicly-available import data on the record of this administrative review and the results of the Department’s CBP data query. Wheatland proposes

that such a disparity “could be the result of the fact that the respondents erroneously declared subject shipments as ‘Type 01’ on their entry documents.” Wheatland asserts that the Department’s data query, since it was limited to Type 3 entries, “cannot expose those misclassified entries and does not, therefore, substantiate the ‘no shipment’ claims by the respondents.” Wheatland insists that the Department should have conducted a new CBP query to include all Type 1 entries and placed on the record all data entry documents for all Type 1 sales by any of the respondents. In support of its contention, Wheatland cites to *Ad Hoc Shrimp Trade Action Committee v. United States*, Slip Op. 11-106, CIT (August 24, 2011) at note 19 (*Ad Hoc Shrimp*); Wheatland maintains that the situation in *Ad Hoc Shrimp* is “similar” to that in the instant administrative review.

In Lamina/TUNA’s rebuttal brief at pages 2-4, Lamina/TUNA contends that “Wheatland’s citation to *Ad Hoc Shrimp* is both interesting and complex in that the reference concurrently (1) serves as an example of the danger of referring to a court’s holding in isolation, and (2) actually supports, rather than detracts from, the Department’s preliminary decision that LYPSCA and TUNA had no reviewable sales, shipments, or entries during the POR.” Lamina/TUNA maintains that the *Ad Hoc Shrimp* petitioners had placed on the record of that proceeding several highly-persuasive items of evidence which indicated the likelihood that entries which ought to have been described by respondents as Type 3 had been misclassified as Type 1 entries. The first was a CBP report to Congress which provided the results of a special CBP operation which confirmed purposefully incorrect classification by the Chinese respondents. The second was a United States Government Accountability Office report to Congress concerning seafood fraud which found that Chinese shrimp were being routed through Malaysia in order to circumvent U.S. antidumping duties. The third was the Issues and Decisions Memorandum from the immediately-preceding administrative review in which the Department itself had determined that entries which ought to have been described by the same respondents as Type 3 had been incorrectly classified as Type 1 entries. Lamina/TUNA claims that the court in *Ad Hoc Shrimp* concluded that the Department’s limitation of its CBP query to Type 3 entries was improper because these three substantial items of evidence over-rode the presumption of reliability normally accorded CBP data, citing to *Pakfood Public Co. Ltd. v. United States*, 753 F. Supp. 2D 1334 (CIT 2011). Lamina/TUNA states that Wheatland has “provided no evidence calling into question the reliability of the CBP data used by the Department” such as government reports, findings, or results of investigations comparable to those considered in *Ad Hoc Shrimp* which would indicate incorrect classification or circumvention. Lamina/TUNA maintains that Wheatland’s claims “amount to speculation only” and urges the Department to “disregard Wheatland’s conjecture in its entirety.”

Department’s Position:

After considering all factual information on the record of this review, we continue to find that the CBP data upon which the Department relied to make its preliminary determination that respondents did not have reviewable sales, shipments, or entries during the POR is reliable.

The CBP data on which the Department’s respondent selection methodology is based represent reliable data on entries of subject merchandise. The data are reliable because they are compiled from actual entries of merchandise subject to the order, based on information required by and provided to the U.S. government authority responsible for permitting goods to enter into the

United States, *i.e.*, CBP. The entries compiled in this database are the same entries upon which the antidumping duties determined by this review would have been assessed had there been dutiable entries.

Even a casual review of the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings which may include subject merchandise (*i.e.*, 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90) will show that these are “basket categories” which also include many products that are not subject merchandise. While petitioners may address issues of alleged fraud with CBP, we have no reason to call into question the data with which we have been provided by CBP. We note that we have but a single indication of incorrect classification between Type 1 and Type 3 entries during this POR, that this involved a respondent incorrectly identifying an entry Type 3 when it was actually Type 1, that CBP corrected its record with regard to this entry, and that it was the respondent itself which brought this correction to the attention of the Department and placed it upon the record of this proceeding. *See* letter from Mueller Commercial {*sic*} de Mexico, S. de R.L. de C.V., and Southland Pipe Nipples Company, Inc., to the Secretary of Commerce dated February 25, 2011, entitled “Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; 2009-2010 Administrative Review; Request to Rescind Administrative Review With Respect to Mueller Commercial {*sic*} de Mexico, S. de R.L. de C.V. and Southland Pipe Nipples Company, Inc.” The record of this proceeding is devoid of a single indication that any other entry has been incorrectly classified either through fraud or negligence. We therefore find that there is no basis upon which to find that respondents have incorrectly classified their entries or that the CPB data are unreliable.

Comment 2: Verification

In its case brief at page 4, citing to 19 CFR 351.307(b)(1)(iv), Wheatland maintains that the discrepancies it alleges between publicly-available import data and the respondents’ no-shipment claims constituted “good cause” for verification of each of the respondents.

Lamina/TUNA maintains that Wheatland’s claims “do not describe any evidence that contradicts the Department’s preliminary finding... or that would give ‘good cause’ to the Department for further review of this issue” in a verification. Lamina/TUNA urges the Department to “disregard Wheatland’s conjecture in its entirety.”

Department’s Position:

As stated above, we found no indication that any entries (other than the one discussed above) have been incorrectly classified either through fraud or negligence. Consequently, we did not find that Wheatland’s contentions amount to “good cause” for verification of any of the respondents.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting both of the above positions. If accepted, we will publish the final determination of the review in the *Federal Register*.

AGREE_____ DISAGREE_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date