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December 8, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

RE: Issue and Decision Memorandum for the Final Results in the 2004-2005 Administrative Review of Cut-to-Length Carbon Steel Plate from the People's Republic of China

SUMMARY:

We have analyzed the case and rebuttal briefs, as well as the hearing arguments, of interested parties in the 2004-2005 administrative review of cut-to-length carbon steel plate ("CTL plate") from the People's Republic of China ("PRC"). As a result of our analysis, we did not make changes to our findings in the preliminary results, nor have we granted the request of interested party Marubeni-Itochu Steel America Inc. ("MISA") to issue liquidation instructions with respect to a particular entry, as set forth in MISA's case brief and at the hearing. We recommend that you approve the position described in the "Discussion of the Issue" section of this memorandum, *infra*.

BACKGROUND:

On August 10, 2005, the Department of Commerce ("Department") published the preliminary results of the administrative review of CTL plate from the PRC and invited interested parties to comment on these results. See *Cut-to-Length Carbon Steel Plate from the People's Republic of China: Notice of Rescission, in Part, and Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45768 (August 10, 2006) ("Preliminary Results"). As part of our Preliminary Results, the Department preliminarily rescinded the administrative review with respect to Angang New Steel Co., Ltd. and Angang Group Hong Kong Co., Limited (collectively "ADR Angang"), as it timely withdrew its request for review. The Department found China

Metallurgical Import & Export Liaoning Company (“Liaoning Company”) failed to demonstrate it was entitled to a separate rate, and we preliminarily applied adverse facts available (“AFA”) to Liaoning Company, as part of the PRC-wide entity, for failing to act to the best of its ability in providing information. The Department also determined that it could not issue special liquidation instructions identifying the exporter of the shipment of CTL plate (“CTL plate shipment”) claimed to be jointly exported by Angang Group Hong Kong Co. Limited (part of ADR Angang) and Angang Group International Trade Corporation (a respondent in the original CTL plate investigation), as ADR Angang withdrew its request for review and the Department had no continuing proceeding in which to analyze the shipment or relationship between the two exporters.

On August 14, 2006, Hunton & Williams withdrew its appearance on behalf of ADR Angang, as well as on behalf of Angang Group New Iron and Steel Company Limited, and Angang Group International Trade Corporation (respondents in the original CTL plate investigation). On September 11, 2006, MISA, importer of the CTL plate shipment, entered a notice of appearance, filed a case brief and filed a request for a hearing. No other party filed a case brief on the Preliminary Results. On September 18, 2006, Nucor Corporation (“Petitioner”) and domestic producer IPSCO Steel Inc. (“IPSCO”) filed rebuttal briefs. On October 26, 2006, the Department conducted a hearing in this administrative review. *See* transcript “In the Matter of: Cut to Length Carbon Steel Plate from the Peoples Republic of China” (October 26, 2006) (“Transcript”) on file in the Central Records Unit located in room B-099 of the main Department of Commerce building.

DISCUSSION OF THE ISSUE:

Whether the Department Should Determine the Exporter for a Specific CTL Plate Shipment as Requested by Importer MISA

MISA argues that it was the Department’s obligation to ask follow-up questions of ADR Angang regarding its request for liquidation instructions on its CTL plate shipment, regardless of ADR Angang’s withdrawal from review, and asserts that the Department failed in its duty by not issuing a supplemental questionnaire on this issue. MISA reports the 2005 CTL plate shipment was entered under Angang Group International Trade Corporation’s (“AITC”) 30.68 percent separate rate from the original investigation. However, MISA thereafter received a rate advance letter from U.S. Customs and Border Protection (“CBP”), dated April 15, 2005, stating that “{d}ocuments indicate that the manufacturer is Angang Group Hong Kong, which is subject to the “all other” rate of 128.59% . . .”¹ MISA asserts that because the parties entered the shipment under case number A-570-849-001 (AITC’s exporter case number), the entry should be liquidated at AITC’s 30.68 percent rate from the original investigation and not at the PRC-wide rate that applies to Angang Group Hong Kong Co., Limited. MISA argues that in the Preliminary Results, the Department should have either: 1) stated that the issue is for CBP to

¹ The “all other” rate referenced by CBP is the PRC-wide rate.

determine; or 2) asked additional questions rather than taking no action and thereby effectively applying an AFA rate to the shipment by allowing CBP to apply the PRC-wide rate.

At the hearing, in response to Department questioning, MISA confirmed that it had discussed the issue with the exporter prior to the request for administrative review, and that in conferring with producer Angang New Steel {Co., Ltd.} (one party to ADR Angang) they decided “to simply go ahead and request an administrative review.” *See* Transcript at 20. MISA also argued, in response to Department questioning, that after ADR Angang withdrew from review, MISA’s request to the Department to “fix a Customs error” without going through an entire review was a legitimate one. *See* Transcript at 23-24.

Petitioner argues the Department was under no obligation to investigate the CTL plate shipment any further after ADR Angang withdrew its request for review. Petitioner argues the Department is not required to solicit information on companies which have withdrawn their request for review and are no longer participating in the review. Petitioner notes the information ADR Angang submitted to the record was incomplete and that the roles the two exporters played in the CTL plate shipment, as well as their relationship with each other, was unclear from the information provided. Petitioner further argues that adopting a policy allowing an exporter without a separate rate to declare a “co-exporter” with a lower rate could lead to circumvention of antidumping duty orders. Finally, Petitioner argues MISA’s late participation in the review is inappropriate, particularly since the CBP letter to MISA was issued over a year prior. Petitioner notes MISA had 17 months to raise the liquidation issue with the Department, as well as over eight months to raise the issue in the current review, and argues that allowing such late participation deprives Petitioner the opportunity to properly comment on such new information.

At the hearing, in response to Department questioning, Petitioner argued MISA and ADR Angang had other outlets to address who the exporters are. *See* Transcript at 25-26. Petitioner also argued, in response to Department questioning, that the Department should not allow parties to “cherry-pick certain information” and pursue only those issues they are interested in without fully participating in a review. *See* Transcript at 26-27.

IPSCO argues the PRC-wide rate is the proper rate for the CTL plate shipment, as the record does not support a finding that AITC was an exporter of the CTL plate shipment. Rather, IPSCO asserts that the record indicates Angang Group Hong Kong Co., Limited is the exporter of the CTL plate shipment, and because it withdrew its request for review and does not have its own rate, the PRC-wide rate is applicable. IPSCO points out that Angang Group Hong Kong Co., Limited’s original request for review noted that “Angang Group Hong Kong is an exporter of the subject merchandise” and did not identify AITC as an exporter or co-exporter. IPSCO argues that the burden was on MISA to support its claim that the AITC rate applies to the CTL plate shipment, but documentation on the record shows, at most, that AITC is a trading company facilitating the transport of merchandise. Finally, IPSCO notes that Angang Group Hong Kong Co., Limited’s withdrawal (as part of ADR Angang) from the administrative review limited the Department’s opportunity to examine the CTL plate shipment.

At the hearing, in response to Department questioning, IPSCO agreed with Petitioner that selective participation in an administrative review should not be permitted and argued that a review is to be conducted in full, as its purpose is to explore questions such as “what is a co-exporter?” See Transcript at 28-29.

Department’s Position:

Consistent with the *Preliminary Results*, the Department finds it cannot issue any results of review with respect to the particular entry of CTL plate with which MISA is concerned. This entry appears to have been covered by ADR Angang’s request for review, but that request for review was withdrawn and the review is being rescinded pursuant to the Department’s regulation, 19 C.F.R. 351.213(d)(1). Although ADR Angang sought to bring the particular shipment to the Department’s attention after the *Preliminary Results*, ADR Angang did not express any objection with the Department’s preliminary decision to rescind the review with respect to ADR Angang. Because the administrative review with respect to ADR Angang is being rescinded, there is no ongoing proceeding in which the Department can make any determination with respect to the shipment with which MISA is concerned.

MISA’s participation after the Department’s issuance of the *Preliminary Results*, and request for a finding with respect to a particular entry that was previously covered by ADR Angang’s request for review does not alter the basis for the Department’s determination to rescind the review, with respect to ADR Angang. Because no other party, including MISA, requested a review for ADR Angang other than the now-withdrawn request made by ADR Angang itself, the Department’s regulations provide that the review will be rescinded. While MISA argues that it was ready and available to answer questions regarding the entry, this participation by MISA does not create an administrative proceeding covering the entry in question. MISA confirmed that it had discussed the particular shipment with both the exporter and producer and decided that Angang New Steel {Co., Ltd.} should request an administrative review that would cover the entry in question. MISA’s participation in the review did not occur until after the *Preliminary Results* were issued, almost 13 months after MISA became aware of the issue it now raises with respect to the shipment in question. MISA could have participated in the administrative review requested by ADR Angang from the start, or requested a review of ADR Angang, but apparently decided not to. Even if there were an ongoing proceeding in which to make a determination concerning the particular shipment in question, we find that MISA’s appearance after issuance of the *Preliminary Results* to raise this issue is untimely. MISA did not request an administrative review that would cover the entry in question, nor did it argue against rescinding the review with respect to ADR Angang. The Department will not issue results of review with respect to a particular entry made during the POR in the absence of an administrative proceeding that covers the entry in question. See Section 751(a)(1) of the Act; 19 C.F.R. 351.213(d)(1).

The Department does not conduct administrative reviews with respect to only some, but not all, entries of subject merchandise made by an exporter during the POR. Instead, the Department examines all of the exporter’s entries of subject merchandise to the United States made during

the period to determine the appropriate margin of dumping for the exporter under review as well as the relevant antidumping duty assessment. To issue results of review for a particular entry outside the context of a full administrative review would effectively allow parties to selectively participate in only portions of a review in a manner that is not contemplated by the statute or regulations. Because the review of ADR Angang is being rescinded, there is no ongoing proceeding in which the entry in question may be examined. Therefore, the Department will not issue any results of review with respect to the entry with which MISA is concerned. While MISA argues that by not issuing results of review for this single entry, the Department is effectively applying an AFA rate to ADR Angang, we disagree. ADR Angang continues to be subject to the same PRC-wide rate that applied to it before requesting the review. This rate is no more and no less than the rate imposed on any other party that does not have a separate rate of its own. ADR Angang is not entitled to any other rate unless it demonstrates that it is entitled to have a separate rate calculated on the basis of its own exports in the context of a full administrative review. *See, e.g., Carbazole Violet Pigment 23 From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 71 FR 65073, 65074 (November 7, 2006) (there is a rebuttable presumption that all companies in a non-market economy should be assigned a single antidumping duty rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate); *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764, 74765 (December 16, 2005) (unchanged in final results). By withdrawing its request for review, ADR Angang ensured that a separate rate would not be calculated on the basis of its own exports. Accordingly, for the purposes of these final results, we find that a change to the Department's *Preliminary Results* is not warranted.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting the above position. If the recommendation is accepted, we will publish the final results of the administrative review and the final dumping margin for the reviewed firm in the *Federal Register*.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date