

July 14, 2008

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

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

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Hand Trucks and Certain Parts Thereof
from the People's Republic of China

SUMMARY

We have analyzed the case brief of Gleason Industrial Products, Inc., and Precision Products, Inc. ("Petitioners"), the only interested parties to submit a brief for these final results in the antidumping duty administrative review of hand trucks and certain parts thereof from the People's Republic of China ("PRC"). The period of review ("POR") covers December 1, 2005, through November 31, 2006. As a result of our analysis, we have determined not to calculate a margin for the sole respondent, but to apply total adverse facts available (AFA"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments from Petitioners.

- Comment 1:** Application of AFA to Taifa Based Upon Taifa's Failure at Verification
- Comment 2:** Application of the PRC-Wide Rate to Taifa
- Comment 3:** Use of FA or AFA Because Taifa Failed to Report FOPs for Wheels
- Comment 4:** Domestic Inland Freight
- Comment 5:** Wage Rates
- Comment 6:** Application of AFA to Taifa's Unreported Sales
- Comment 7:** Surrogate Value for V-Belt
- Comment 8:** Inflation Adjustment for Surrogate Value for Electricity
- Comment 9:** Market-Economy Inputs from South Korea
- Comment 10:** Surrogate Value for Marine Insurance
- Comment 11:** International Freight
- Comment 12:** Surrogate Value for Coal
- Comment 13:** Deflation Adjustment for Surrogate Values for Diesel Oil and Coal
- Comment 14:** Inflation Adjustment for Foreign Inland Truck Freight
- Comment 15:** Calculation of Domestic Inland Freight and Domestic Brokerage and Handling

DISCUSSION OF THE ISSUES

Comment 1: Application of AFA to Taifa Based Upon Taifa's Failure at Verification

Petitioners contend that the Department of Commerce ("Department") should base its final results on AFA because Qingdao Taifa Group I&E Co., Ltd. ("Taifa I&E") and its owner/producer Qingdao Taifa Group Co. Ltd. ("Taifa Ltd.") (collectively referred to as "Taifa") failed verification. Petitioners assert that during verification Taifa (1) provided misleading information and attempted to destroy documents, (2) obstructed efforts to verify its questionnaire responses by refusing to answer follow-up questions asked by Department personnel, (3) failed to provide the Department written and objective evidence in support of various oral assertions it made about the company's ownership history and about its shipment of hand trucks to the United States without wheels, and (4) destroyed key source documents which, by itself, would have been reason enough for the Department to resort to AFA.¹

Department's Position: For a more detailed discussion of this issue, see Memorandum to the File from Eugene Degnan through Robert Bolling and Wendy Frankel, Application of Adverse Facts Available for Qingdao Taifa Group Import and Export Co., Ltd and Qingdao Taifa Group Co., Ltd. in the Review of Hand Trucks and Certain Parts Thereof From the People's Republic of China (July 14, 2008).

The Department finds that the information to construct an accurate and otherwise reliable margin is not available on the record with respect to Taifa. As the Department finds that necessary information is not on the record, and that Taifa withheld information that had been requested, significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2)(A), (C) and (D) of the of Tariff Act of 1930, as amended ("the Act"), the Department is using the facts otherwise available. Further, because the Department finds that Taifa has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying facts available in this review. Accordingly, as AFA, the Department is denying Taifa a separate rate in this administrative review.

Taifa stated throughout the course of this review that it did not sell hand trucks with wheels during the POR. See August 14, 2007, Section C Questionnaire Response; December 10, 2007, Fourth Supplemental Response at Question 6; December 26, 2007, Fifth Supplemental Response at Questions 3(c) and 6; March 26, 2008, Sixth Supplemental Response at Question 11; and Memorandum to the File through Robert Bolling from Paul Stolz and Eugene Degnan, Verification of the Sales and Factors Response of Qingdao Taifa Group Import & Export Co., Ltd. and Qingdao Taifa Group Co., Ltd. in the Review of Hand Trucks and Certain Parts Thereof From the People's Republic of China (June 12, 2008) ("Verification Report") at VE 1. At verification, however, Taifa officials informed Department officials that Taifa did, in fact, sell hand trucks with wheels during the POR, but did not attach the wheels to the hand trucks when

¹ See Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review, 63 FR 12752, 12752-53 (March 16, 1998) (where, Commerce found this respondent had not cooperated to the best of its ability with the agency and based the final results on AFA "{b}ecause we were unable to verify the information submitted by Heveafil in this period of review (POR) and because the company failed to adequately prepare and provide information during the verification" Id., at 12753).

shipping, in order to avoid having to pay antidumping duties on the wheels. See Verification Report at 13-14.

At verification, Taifa officials withheld, refused to answer questions concerning, and altered production documentation requested by the Department. See Verification Report at 11-13. Furthermore, at verification, Taifa was unable to substantiate the authenticity of two documents that it had submitted to the Department in its questionnaire responses: its 2003 Articles of Association, and a 2003 Share Transfer Agreement submitted to show the authenticity of the 2003 Articles of Association. See Verification Report at 5-6.

Facts Otherwise Available

Section 776(a)(1) of the Act provides that the Department shall apply “facts otherwise available” if necessary information is not on the record. Necessary information to calculate normal value (“NV”) and U.S. price is not on the record of this administrative review. Section 773(c)(1) of the Act provides that the Department shall determine the NV of subject merchandise based on the factors of production (“FOPs”) utilized in producing the merchandise. Taifa stated at verification that it sold hand trucks with wheels. See Verification Report at 13-15. Therefore, FOPs for wheels are necessary to calculate NV. Taifa, however, did not report any FOPs for the wheels it produced and sold with its hand trucks.

Section 772(c) of the Act provides that the Department will adjust U.S. price by adding packing expenses and subtracting movement expenses. While Taifa reported, at the Department’s insistence, the U.S. sales price for wheels, it did not report complete U.S. sales information, including the packing expenses and/or movement expenses, for hand trucks sold with wheels. Therefore, information necessary to calculate an accurate U.S. price is not on the record.

Accordingly, the Department finds that necessary information, i.e., accurate FOPs utilized in producing the subject merchandise, and expenses incurred in the U.S. sale price, are not on the record.

Section 776(a)(2) of the Act provides that the Department shall also apply “facts otherwise available” if an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides such information but the information cannot be verified as provided in section 782(d)(i).

Taifa withheld information that was requested by the Department. The Department requested information for all FOPs in the Original Questionnaire. Additionally, as described supra, the Department specifically requested information regarding sales of hand trucks with wheels on multiple occasions, and Taifa consistently denied making sales of hand trucks with wheels until it was brought to light at verification that it had, in fact, sold hand trucks with wheels during the POR. See also Verification Report at 13-15.

Thus, as described, supra, at verification, Taifa admitted to selling its self-produced wheels with hand trucks, as well as shipping wheels produced by other suppliers with its hand trucks, in direct contradiction to its questionnaire responses to the Department. Further, Taifa never

provided FOP data for its self-produced wheels, nor offered any explanation why it did not provide this information. Therefore, record evidence demonstrates that Taifa withheld information requested by the Department regarding the sale of hand trucks with wheels. Without this information, the Department cannot determine NV, U.S. price, nor calculate an accurate dumping margin.

Taifa significantly impeded this proceeding. In addition to impeding this proceeding by withholding information regarding the sales of wheels in conjunction with its hand trucks, Taifa significantly impeded this proceeding at verification by (1) not providing, nor answering questions regarding, warehouse-out slips at the factory; (2) not providing, nor answering questions regarding, production notices at the factory; and (3) not providing, and attempting to alter, the production sub ledger at verification of the factory.

Taifa provided information that could not be verified as provided in section 782(d)(i) of the Act. Taifa submitted two documents to the Department in its responses that Taifa was unable to satisfactorily substantiate at verification. Taifa submitted 2003 Articles of Association that showed a different ownership structure, including a possible controlling share by the government, from that reported by Taifa in its submissions and from the ownership structure shown in other Articles of Association found on the official government record in Qingdao. Taifa did not provide a reasonable explanation why these Articles of Association were not registered with the proper government authority. Further, the 2003 Share Transfer Agreement provided by Taifa as evidence of the accuracy and authenticity of the 2003 Articles of Association also could not conclusively be verified. Taifa could not present a reasonable explanation why this document was also not registered with the proper authorities. Additionally, while Taifa showed officials the transfer of shares in its books and records, it was unable to provide any documentation showing the names of the parties that purchased the shares.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Companion section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable. Taifa never informed the Department that it was in any way unable to submit the information that the Department requested in its questionnaires or that it needed assistance.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. In this proceeding, as described, supra, the Department presented Taifa with multiple opportunities to provide the requested information (i.e., FOPs for wheels and U.S. sales of hand trucks with wheels). Taifa, moreover, never disclosed to the Department, until verification, that it sold hand trucks with wheels.

Therefore, the Department was prohibited, by Taifa's lack of disclosure, from determining that Taifa's responses did not comply with the Department's requests for information.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot be used, (4) the interested party demonstrated that it acted to the best of its ability in providing the information, and (5) the information can be used without undue difficulties. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties. The Department is unable to apply this statute in the instant case because Taifa never submitted the necessary information (i.e., FOP and U.S. sales data for sales of wheels with hand trucks).

Use of Adverse Inferences

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994).

It is clear on the record of this case that Taifa withheld, and provided misleading, information on a number of issues. At verification, Taifa officials admitted that Taifa sold hand trucks with wheels, yet Taifa withheld this information from its submissions to the Department. Additionally, at verification, Taifa withheld the delivery notices and production notices requested by the Department, as evidenced by the fact that the Department found the same delivery notices and production notices in Taifa's offices. Further, Taifa officials withheld information by not replying to Department officials' questions regarding these same delivery notices and production notices. Additionally, Taifa attempted to provide misleading information to the Department by altering the production sub ledger at verification.

Furthermore, "affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997). The U.S. Court of Appeals for the Federal Circuit has held that the "best of its ability" standard "requires the respondent to do the maximum it is able to do." See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed Cir. 2003) ("Nippon Steel"). The Court further elaborated:

While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt,

careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.”

Id.

The Department finds that Taifa did not meet this standard in regard to the 2003 Articles of Association and 2003 Share Transfer Agreement that it presented to the Department. The Department finds that Taifa’s excuse, that it did not register its 2003 Articles of Association because the person in charge of registering them quit, does not meet the Nippon Steel standard, above, as to “inattentiveness, carelessness, or inadequate record keeping.” Further, the Department also finds that Taifa fails to meet the Nippon Steel standard by its inability to produce any source document to support the accuracy of the 2003 Share Transfer Agreement. At the very least, Taifa’s inability to provide the contract between the parties that it claimed as the basis of payment for the share transfer showed that it did not “keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce.”

Application of Total Adverse Facts Available

The application of AFA is necessary in this case because Taifa has not provided sufficient information for the Department to calculate an accurate dumping margin, nor for the Department to adequately determine Taifa’s ownership. Taifa’s failure to report FOPs and U.S. sales expenses for a major component of the subject merchandise, wheels, makes it impossible for the Department to calculate NV or U.S. price. Further, Taifa’s behavior at verification of refusing to answer Department officials’ questions, withholding documents, and altering documents, prevented the Department from fully verifying the accuracy of the information presented by Taifa. Finally, Taifa’s unsupported ownership documentation brings into question Taifa’s ownership structure.

Based on the failures enumerated above, we have determined that Taifa failed to cooperate to the best of its ability in this administrative review. Further, because the information provided by Taifa is incomplete and unreliable, we have determined that there is no information on the record that can be used to calculate an antidumping duty margin for Taifa. Therefore, for the final results, the Department has determined that the application of total AFA is warranted for Taifa pursuant to sections 776(a) and (b) of the Act.

Comment 2: Application of the PRC-Wide Rate to Taifa

Petitioners contend that the record conclusively shows that Taifa withheld information from the Department about the Chinese Government’s ownership of the company and that these actions undermine the very basis on which the Department determined whether this company deserved a separate rate. Petitioners assert that, therefore, for its final results, the Department must find that Taifa inappropriately withheld important information about the Chinese Government’s involvement in the company; infer from this finding that Taifa’s exports of hand trucks to the United States are controlled by the Chinese Government; and conclude from this inference that Taifa is part of the PRC entity, subject to the PRC-wide rate.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 3: Use of FA or AFA Because Taifa Failed to Report FOPs for Wheels

Petitioners argue that the Department should resort to total AFA because Taifa failed to respond accurately and completely to the agency's requests for information; or, in the alternative, partial AFA to calculate the NV of Taifa's hand trucks so as to incorporate FOPs normally associated with hand truck wheels.

Department's Position: Please see the Department's position in Comment 1, supra.

Comment 4: Domestic Inland Freight

Petitioners contend that the Department erred by not subtracting the reported domestic inland freight from plant to port from the U.S. price.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 5: Wage Rates

Petitioners assert that the Department should use its most recently calculated non-market economy wage rates to value labor inputs.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 6: Application of AFA to Taifa's Unreported Sales

Petitioners contend that the Department should apply AFA to the 13 sales reported by Taifa at verification.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 7: Surrogate Value for V-Belt

Petitioners contend that the Department should revise the surrogate value for V-belt derived from WTA data to exclude imports from North Korea, as it is a non-market economy.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 8: Inflation Adjustment for Surrogate Value for Electricity

Petitioners contend that the Department should inflate the International Energy Agency electricity rate from the year 2000, rather than the year 2003.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 9: Market-Economy Inputs from South Korea

Petitioners argue that the Department should disregard purchases of inputs by Taifa from South Korea because South Korea maintains broadly available, non-industry specific export subsidies.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 10: Surrogate Value for Marine Insurance

Petitioners contend that the Department erred in not applying the war risk premium and the ten-percent adjustment in its calculation of marine insurance.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 11: International Freight

Petitioners argue that the Department incorrectly calculated the number of hand trucks that can fit into a standard container using statistics for a high-ceiling container, instead of a standard sized container.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 12: Surrogate Value for Coal

Petitioners argue that the Department should value coal using Indian Import Statistics, as it did in Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008).

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 13: Deflation Adjustment for Surrogate Values for Diesel Oil and Coal

Petitioners contend that the Department improperly deflated the values obtained for Diesel Oil and Coal from IEA data. Petitioners argue that these values pre-date the IEA data publication

date, and the Department should ascertain what period the data are from and adjust its deflation accordingly.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 14: Inflation Adjustment for Foreign Inland Truck Freight

Petitioners argue that the Department committed a mathematical error in calculating the inflation adjustment for foreign inland truck freight, and should correct this error for the final results.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

Comment 15: Calculation of Domestic Inland Freight and Domestic Brokerage and Handling

Petitioners contend that the Department committed a ministerial error by not including the weight of finished hand trucks in its equations for calculating domestic inland freight and domestic brokerage and handling in the margin calculation program.

Department's Position: Because the Department has determined to apply total AFA to Taifa in this review, we do not reach a determination on this comment.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the Federal Register.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)