



A-570-890
AR: 1/1/10-12/31/10
Public Document
AD/CVD/O4: RP

DATE: August 20, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2010 Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China

SUMMARY

The Department of Commerce (the Department) analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced review. As a result of our analysis, we have made changes to our preliminary results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Background

On October 24, 2011, the Department published in the Federal Register the Preliminary Results of the administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (PRC).¹ We invited parties to comment on our Preliminary Results. On November 23, 2011 Petitioners² and a U.S. importer, Amini Innovation Corp. ("Amini"), submitted case briefs with the Department. On November 28, 2011, Tube-Smith Enterprises (ZhangZhou) Co., Ltd., Tube-Smith Enterprise (Haimen) Co., Ltd., and Billionworth Enterprise, Ltd. (collectively "Tube-Smith") filed a letter in lieu of a rebuttal brief with the Department.³

Below is the complete list of the issues in this administrative review for which we received comments.

¹ See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part, 76 FR 65684 (October 24, 2011) ("Preliminary Results").

² Petitioners are the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. ("Petitioners").

³ See Letter from Tube-Smith to the Honorable John Bryson, Secretary of Commerce, regarding, "Wooden Bedroom Furniture from the People's Republic of China: Letter in Lieu of Rebuttal Brief," dated November 28, 2012 ("Tube-Smith Rebuttal Letter").

List of the Issues:

Comment 1: Whether the Department Should Rescind the Review of Tube-Smith

Comment 2: The Appropriate Rate to Assign to Tube-Smith

Comment 3: Whether the Department Misspelled Tube-Smith's Name in the Cash Deposit Instruction

Comment 4: Whether the Department Should Make Corrections to the PRC-wide Liquidation Instructions

DISCUSSION OF THE ISSUES:

Comment 1: Whether the Department Should Rescind the Review of Tube-Smith

Amini

- The review of Tube Smith's exports should be rescinded. Although Tube-Smith stated that it was requesting a review “in order to allow the Department to calculate an antidumping duty margin that is specific to the period of review January 1, 2010 - December 31, 2010,” the email that Amini received from Tube-Smith shows that Tube-Smith was trying to use the review as a threat to compel Amini to pay Tube-Smith to drop the review.⁴
- Tube-Smith's misstatement of its purpose for requesting a review and request for money from Amini constitute fraud for which the Department has the inherent authority to take action to protect its proceedings from fraud which is upheld by the CAFC in *Tokyo Kikai*.⁵
- As domestic interested parties have the right to request reviews and cannot, by failing to participate further in the review, thwart the Department's efforts to calculate dumping margins accurately, the Department's views on the settlement agreements between the domestic industry and foreign producers/exporters should not influence the Department's decision in this case.
- In contrast to domestic parties, Tube-Smith, as a foreign/producer exporter, is in the position to manipulate the results and thwart the Department's efforts to calculate an accurate dumping margin.
- Tube-Smith's conduct demonstrates that it had no real interest in allowing the Department to calculate an accurate dumping margin and consequently, continuing Tube-Smith's

⁴ See Amini's case brief at 4 citing to the letter from Tube-Smith to the Secretary of Commerce regarding, “Wooden Bedroom Furniture from the People's Republic of China: Request for Administrative Review,” dated January 31, 2011.

⁵ See Amini's case brief at 5-6 citing to *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1361-2 (Fed. Cir. 2008).

review is “inconsistent with the fundamental purpose underlying the administrative review system.”⁶

Tube-Smith

- The Department has correctly and properly found that it must continue Tube-Smith’s review and that none of Amini’s allegations are relevant to the Department’s decision as to whether to rescind the review.
- The Department should continue Tube-Smith’s review based on Tube-Smith’s timely and properly filed request for review and separate rate certifications.
- The Department declined to issue a supplemental questionnaire to Tube-Smith or to verify Tube-Smith’s submissions, demonstrating further that the Department has no reason to doubt the integrity or veracity of Tube-Smith’s submissions.

Department’s Position:

The Department has reconsidered the facts of this case and the arguments made by interested parties. Based upon the unique facts and circumstances in this case, and for the reasons stated below, the Department is rescinding the administrative review with respect to Tube-Smith.

On January 31, 2011, Tube-Smith requested a review “to allow the Department to calculate an antidumping duty margin that is specific to the period of review January 1, 2010 - December 31, 2010.”⁷ Subsequently, all parties except Tube-Smith withdrew their requests to review Tube-Smith. On May 27, 2011, four days before the 90-day deadline for withdrawing review requests, Amini, the U.S. importer of wooden bedroom furniture, placed on the record an email it received from Tube-Smith; in subsequent filings,⁸ Amini argued that the Department should rescind the review with respect to Tube-Smith on the basis of the statements contained therein. In its email, Tube-Smith specifically stated “{i}f you would agree to deposit US\$2,000,000 by next Monday, I would be willing to withdraw our own request for review by next Tuesday. We would stay in the review but may not actively participate if we don’t withdraw next Tuesday.”⁹ Further, Tube-Smith stated that the outcome of the case, even when it is a 216 percent rate (the rate frequently applied by the Department in this proceeding, if appropriate, as an adverse facts available rate), would not have any impact on Tube-Smith’s operations because the company was “discontinuing the furniture business” and had “decided to stop the U.S. business.”¹⁰

⁶ See Amini’s case brief at 7.

⁷ See Tube Smith’s January 31, 2011 Request for Review letter.

⁸ See letter from Amini to the Honorable Gary Locke, Secretary of Commerce, regarding, “Wooden Bedroom Furniture from the People’s Republic of China: Administrative Review for the Period January 1, 2010 to December 31, 2010,” dated June 3 and letter from Amini to the Honorable Gary Locke, Secretary of Commerce, regarding, “Wooden Bedroom Furniture from the People’s Republic of China: Administrative Review for the Period January 1, 2010 to December 31, 2010,” dated June 8, 2011, and Amini’s November 23, 2011 case brief. Tube-Smith filed comments on June 6, 2011.

⁹ See letter from Amini to the Honorable Gary Locke, Secretary of Commerce, regarding, “Wooden Bedroom Furniture from the People’s Republic of China: Administrative Review for the Period January 1, 2010 to December 31, 2010,” dated May 27, 2011 (“Amini’s May 27, 2011 Letter”) at Exhibit 2.

¹⁰ See Amini’s May 27, 2011 Letter at 1, Ex. 2.

Although Tube-Smith may have properly filed a request for review, the Department has authority to rescind reviews to protect the integrity of the proceeding.¹¹ In this case, the record demonstrates that Tube-Smith's interest in maintaining the review became limited to using the opportunity of the proceeding solely to seek to obtain \$2 million from its importer, Amini, in exchange for withdrawing its request for review. During the course of the review, Tube-Smith did not deny the veracity of the email placed on the record by Amini or that it had used the Department's administrative review procedures to seek to obtain \$2 million from its importer. Further, Tube-Smith stated that it "would stay in the review but may not actively participate" if it was selected as a mandatory respondent, noting that even if the outcome of the case resulted in a 216 dumping margin it would not be affected because it decided to stop its U.S. business. The impact of Tube-Smith's non-participation is that Amini could be required to pay duties as high as 216 percent were this to occur.¹²

During the administrative review, Tube-Smith also did not make any arguments about the duty rate that the Department should apply to its products in the final results – a position that is contrary to its interest as an exporter of subject merchandise, *i.e.*, to obtain the lowest margin possible. Instead, Tube-Smith limited its rebuttal brief to arguing that the Department "correctly and properly found that it must continue this review as to Tube-Smith, based on Tube-Smith's timely and properly filed request for review and timely and properly filed separate rate certifications"¹³ and to contending that Amini's allegations are irrelevant to the Department's decision.

The uncontested evidence shows that Tube-Smith's sole interest in maintaining this review was to use the opportunity of this proceeding to attempt to obtain \$2 million from the U.S. importer. In particular, the uncontested evidence demonstrates that Tube-Smith strengthened its demand for money by threatening the importer with the possibility of its own non-participation in the review, and thereby used the existence of the Department's procedures and practice with respect to the application of facts available and adverse inferences in its attempt to obtain money from the importer. Based upon the unique facts that have unfolded in this case, the strength of the uncontested evidence concerning Tube-Smith's expressed lack of interest in the results of the Department's review, taken together with the critical component of Tube-Smith's expressed threat of non-participation, we find that Tube-Smith's conduct constitutes an abuse of the Department's procedures and administrative process. Therefore, to protect the integrity of its antidumping proceedings in light of all of the above, the Department is rescinding the review with respect to Tube-Smith in this case.

¹¹ See Tokyo Kikai Seisakusho, Ltd. v. United States, 529 F.3d 1352, 1361 (Fed. Cir. 2008); Alberta Gas Chemicals, Ltd. v. United States, 650 F.2d 9, 11-13 (2nd Cir. 1981); Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: : Final Results of Reconsideration of Sunset Review, 73 FR 67131 (Dep't of Commerce Nov. 13, 2008) and accompanying I&D Memo at Comment 1; Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review, 69 FR 10410, 10415-16 (Dep't of Commerce Mar. 5, 2004), unchanged in final results, 69 FR 54635 (Dep't of Commerce Sept. 9, 2004) and accompanying I&D Memo at Comment 5.

¹² See Amini's May 27, 2011 Letter at 1, Ex. 2.

¹³ See Tube-Smith Rebuttal Letter at 2.

Comment 2: The Appropriate Rate to Assign to Tube-Smith

Amini

- If the Department does not rescind Tube-Smith’s review, it should revise its determination of the dumping margin assigned to Amini's imports from Tube-Smith “in a manner consistent with both basic fairness and the fundamental goal of achieving an accurate result.”¹⁴
- When there is no calculated rate on the record, the Department may use any reasonable method to assign a rate, but the method must be fair and should not result in “a punitive, or even quasi-punitive, rate.”¹⁵
- The 41.75 percent margin assigned to Tube-Smith in the Preliminary Results is inaccurate because it is based on partial adverse facts available due to the Department’s finding of unreported constructed export price sales in the fifth administrative review, which is not the case for the sales between Tube-Smith and its unaffiliated importer, Amini.
- The 41.75 percent margin assigned to Tube-Smith in the Preliminary Results is unfairly punitive because Tube-Smith has fully cooperated with the Department by responding to all requests for information, and the higher margin only affects Amini, who has to pay the assessment duties, whereas Tube-Smith is not responsible for the assessment duties and is not concerned about its future cash deposit because it is leaving the business.
- Increasing the dumping margins on Amini's imports would undermine the reason the Department referred Tube Smith’s extortion attempt to the Justice Department.
- The sole reason for assigning a new rate to Tube-Smith is because of Tube-Smith’s own request for review, which was based on a false statement. Neither Amini nor domestic interested parties maintained their request for review of Tube-Smith.
- As the Department has not conducted any analysis of Tube-Smith’s sales, or any exporter’s sales in this POR, there is no reason to believe that Tube-Smith’s rate should change.
- The withdrawal of the domestic interested parties’ requests for review of Tube-Smith indicates that the domestic industry did not believe that the margin would have significantly increased.
- There is no evidence on the record to indicate that the dumping margin for Tube-Smith would have increased in the instant POR and thus, the Department should find that “the

¹⁴ See Amini’s case brief at 3.

¹⁵ See Amini’s case brief at 9 citing to National Knitwear v. United States, 779 F. Supp. 1364, 1372-1373 (Ct. Int’l Trade1991).

dumping margin on Amini's imports was equal to the cash deposit rate that applied to Amini's imports during the review period.”¹⁶

- Alternatively, if the Department chooses to assign a new rate based on the calculated margin from the 2009 administrative review, it should calculate a margin based only on the mandatory respondent’s export price sales and apply this margin to Tube-Smith.
- No other party commented on this issue.

Department’s Position:

Because the Department is rescinding the review with respect to Tube-Smith, the issue of the appropriate rate to assign to Tube-Smith is no longer relevant to the final results in this review. With respect to Tube Smith, the Department will assess antidumping duties at a rate equal to the cash deposit or bonding rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Issue 3: Whether the Department Misspelled Tube-Smith’s Name in the Cash Deposit Instruction

Petitioners

- In the draft cash deposit instructions for Tube-Smith, the Department misspelled one of Tube-Smith’s entity names as “Billionworth Enterprises Ltc.” although the correct spelling should be “Billionworth Enterprises Ltd.”
- No other parties commented on this issue.

Department’s Position:

We agree with Petitioners that the correct name for Tube-Smith is “Tube-Smith Enterprise (Zhangzhou) Co. Ltd.; Tube-Smith Enterprise (Haimen) Co., Ltd.; Billionworth Enterprises Ltd.” We will use this name in our liquidation instructions. Because we are now rescinding the review we will not issue cash deposit instructions for Tube-Smith.

Issue 4: Whether the Department Should Make Corrections to the PRC-wide Liquidation Instructions

Petitioners

- In the draft liquidation instructions for the PRC-wide entity, the Department incorrectly identified Dongguan Bon Ten Furniture Co., Ltd. (“Bon Ten”) and Meikangchi (Nantong) Furniture Company, Ltd. (“Meikangchi”) as only exporters when they should have been listed as exporter/producer combinations.

¹⁶ See Amini’s case brief at 11.

- The Department used the exporter and manufacturer combination case numbers for Bon Ten and Meikangchi that were assigned during their respective NSRs; however, it failed to include the exporter only case numbers assigned to Bon Ten and Meikangchi at the completion of the 5th administrative review.
- The Department’s liquidation instructions do not clearly associate the case numbers with the exporters that are no longer eligible for a separate rate and it should ensure that its instructions clearly reflect that none of the case numbers for the entities who have lost their separate rate remains available for future entries of subject merchandise.
- No other parties commented on this issue.

Department’s Position:

We disagree with Petitioners that we should include the case numbers that we assigned to Bon Ten and Meikangchi at the completion of 5th administrative review and their respective new shipper reviews in the liquidation instructions for the PRC-wide entity. The Department correctly identified in its instructions the exporters to whom a separate rate was previously assigned that had lost their separate rate during the January 1, 2010 through December 31, 2010 administrative review. The liquidation instructions state that “{e}ntries of such merchandise may have entered under the following case numbers.” The case numbers assigned to Bon Ten and Meikangchi at the completion of 5th administrative review were not in effect until after 2010 and thus, no entries during the POR could have come in under these numbers. Furthermore, Petitioners concerns that the instructions do not clearly reflect that certain case numbers are no longer available for future entries of subject merchandise are misplaced because the Department will deactivate all case numbers for the entities who have lost their separate rate during this review, thereby ensuring against their future use.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Agree_____

Disagree_____

 Paul Piquado
 Assistant Secretary
 for Import Administration

 Date