DEPARTMENT OF COMMERCE

International Trade Administration

University of Pennsylvania; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 04–017. *Applicant:* University of Pennsylvania, Philadelphia, PA. *Instrument:* Electron Microscope, Model Technai G^2 TWIN bioTWIN. *Manufacturer:* FEI Company, Japan. *Intended Use:* See notice at FR 69, 60395, October 8,2004. *Order Date:* January 20, 2004.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of the instrument OR at the time of receipt of the application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

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DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA Panel.

SUMMARY: On October 19, 2004, the NAFTA Panel issued its decision in the matter of Corrosion-Resistant Carbon Steel Flat Products from Canada, Secretariat File No. USA–CDA–00–1904–11.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these rules.

Background Information: On December 28, 2000, Dofasco filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final results of the full sunset review of antidumping duty orders made by the United States International Trade Commission, respecting Certain Corrosion-Resistant Steel Flat Products from Canada and the continuation of antidumping duty order by the U.S. Department of Commerce based on the International Trade Commission's determination. These determinations were published in the **Federal Register**, (65 FR 75301) on December 1, 2000, and (65 FR 78469) on December 15, 2000. The NAFTA Secretariat has assigned Case Number USA–CDA–00–1904–11 to this request.

Panel Decision

The Panel remanded this matter back to the International Trade Commission and found:

(1) The Commission's decision to cumulate Canadian imports, in light of its consideration of the high capacity utilization rates in Canada, is unsupported by substantial evidence; and

(2) The Commission's determination that the Domestic Industry is in a ''weakened state'', in light of its ''profit center'' rationale, is unsupported by substantial evidence and not in accordance with law.

Accordingly, the Panel remanded the case to the Commission stating:

—If it still wishes to cumulate Canadian corrosion resistant steel products, the Commission must sufficiently explain and articulate—consistent with this opinion—the basis of its conclusions as to whether, in light of the high capacity utilization rates prevalent in Canada during the period of review, there exists substantial evidence in the record upon which to base the Commission's determination that there was available excess capacity in Canada sufficient to lead to an increase in imports having a discernible adverse impact upon the domestic industry if the antidumping order were to be revoked.

—If the Commission still chooses to find that the Domestic Industry is in a vulnerable or weakened state, the Commission must sufficiently explain and articulate—consistent with this opinion—the basis of its conclusions as to whether the Commission's analysis of the impact of Canadian imports involves the profits of the domestic corrosion-resistant steel industry or those of the broader steel industry, and the impact of the profit analysis upon the Commission's affirmative vulnerability determination regarding the domestic corrosion-resistant steel industry.

In a separate opinion, Panelist Anissimoff stated in part:

The issue concerns the Arguments made by parties before the Commission which are left unaddressed by the Commission in its determination. The Complainant says that its arguments and evidence were not expressly addressed by the Commission in its determination.

The obligation to discuss relevant and material arguments legally springs from 19 U.S.C. 1677f(i)(3)(B) along with the legislative history as found at the Uruguay Round Trade Agreements, Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. 892 (1994) (hereinafter ''SAA''). Shortly stated, the Commission is legally obliged to discuss in its determination the relevant and material arguments made by interested parties, in this case the Complainant.

Equally the Commission is presumed by law to have considered all of the