65 FR 81827, December 27, 2000

A-583-816
ARP: 6/1/98-5/31/99
Public Version
DAS III(9): AV/DC

MEMORANDUM TO: Troy H. Cribb
Assistant Secretary for
Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
AD/CVD Enforcement Group III

SUBJECT: Issues and Decision Memorandum for the Sixth Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: June 1, 1998, through May 31, 1999

SUMMARY:

We have analyzed the comments of interested parties in the sixth administrative review of the antidumping duty order covering certain stainless steel butt-weld pipe fittings from Taiwan. We have also analyzed our own findings from the home and U.S. market verifications of Ta Chen's questionnaire responses. As a result of our analyses of the comments received and our own findings, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the sections of this memorandum entitled "Changes Since the Preliminary Results" and "Discussion of the Issues." A complete list of the issues in this administrative review is as follows:

Changes Since The Preliminary Results:

1. Reimbursement of Antidumping Duties
2. Treatment of U.S. Repacking Expense
3. Calculation of Constructed Export Price ("CEP") Adjustments
4. Minor Corrections to Database from Verification
   a. Foreign Inland Freight
   b. Manufacturer
   c. U.S. Warehousing Expense
   d. U.S. Bank Charges

e. Ocean Freight and U.S. Brokerage Charges
f. U.S. Repacking Expense for Tampa Warehouse

5. Correction of Ministerial Errors in SAS Program
   a. Reformatting of Entry Date
   b. Definition of CEP Sales

Discussion of the Issues:

1. Resales of Purchased Fittings
2. CEP Profit Adjustment Calculation
3. Reclassification of Export Price ("EP") Sales to CEP Sales
4. Short-Term Interest Rate Used in Calculation of U.S. Credit and Inventory Carrying Costs
5. U.S. Indirect Selling Expenses ("ISEs")
6. Decision Not to Revoke the Order in Part

Attachment 1 to this memorandum contains the SAS programming language applicable to the margin calculations, including any changes noted in this memorandum.

BACKGROUND:

On July 6, 2000, the Department of Commerce ("Department") published the preliminary results of administrative review and intent not to revoke in part the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Intent Not to Revoke in Part, 65 FR 41629 (July 6, 2000) ("Preliminary Results"). The merchandise covered by the order is stainless steel butt-weld pipe fittings as described in the "Scope of the Review" section of the Federal Register notice. The period of review ("POR") is June 1, 1998, through May 31, 1999, and the respondent in this review is Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen").

We conducted the home market cost, and certain portions of the U.S. sales database, verification of Ta Chen's questionnaire responses from September 11-16, 2000, in Taiwan. We conducted the balance of the U.S. market sales verification of the responses of Ta Chen and its U.S. subsidiary, Ta Chen International (CA) Corp. ("TCI"), from September 18-19, 2000, in Long Beach, CA. We issued the home and U.S. market verification reports on October 5, 2000, and October 13, 2000, respectively. We invited parties to comment on our preliminary results and verification findings. Both Ta Chen and petitioners submitted briefs on October 16, 2000, and rebuttal briefs on October 18, 2000. On November 7, 2000, we issued our preliminary decision that reimbursement of antidumping duties has occurred with respect to Ta Chen Taiwan and extended the final to allow parties to comment on our

preliminary decision[1]. Both petitioners and respondents commented on the preliminary finding of reimbursement. See Letters from Collier Shannon Scott (November 20 & 30, 2000); Letters from Ablondi, Foster, Sobin & Davidow (November 27, 2000 and December 5, 2000).

CHANGES SINCE THE PRELIMINARY RESULTS:

1. **Reimbursement of Antidumping Duties**

Respondent argues that there was no reimbursement during the POR. Respondent also contends that the reimbursement issue could have been considered at the start of this review since all the relevant facts were reported in Ta Chen's first submission. Respondent states that the Department is incorrect in stating that the reimbursement issue arose out of verification. Respondent notes that there were neither questions from the Department officials at verification on the reimbursement issue, nor was there a request for any documents regarding reimbursement. Respondent also states that there was no mention of reimbursement throughout the verification report. Respondent states that the reimbursement issue involves only the 1992-94 administrative review period.

Respondent states that there is no current agreement by Ta Chen to reimburse TCI, the U.S. importer, for any antidumping duties. Respondent states that no one ([* * *] or otherwise) has agreed to reimburse or pay dumping duties owed by TCI as to the fitting imports.

Respondent alleges that the Memo speculates as to the reason for the lack of a contingent liability that Ta Chen might have agreed to pay TCI's dumping duties as to the POR fittings. Respondent argues that the fact that Ta Chen did not enter a contingent liability is indicative that Ta Chen is not paying TCI's dumping duties. Respondent contends that U.S. Customs has no authority to move against the foreign parent of U.S. subsidiary to force the parent to pay dumping duties in the event that the a U.S. importer does not. See Circular Welded Non-Alloy Steel Pipe from Korea, 62 FR 55574, 55580 (October 27, 1997). Further, respondent states that the reason that there is not a contingent liability in TCI's books is that it was not believed that any dumping duties would be owed on the fittings under this review and in fact Ta Chen was requesting revocation based on no dumping duties in previous review periods. See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order in Part, 65 FR 41629, 41632-33 (July 6, 2000).

Respondent argues that TCI's financial statements fully disclosed the situation by indicating that it has a contingent liability. Moreover, respondent claims that the accountants determined that fully disclosing the situation in this way did not warrant a separate contingent liability. Respondent denies allegations

---

[1] See Memorandum to Edward Yang, Director Office 9 from Jim Doyle, Program Manager, AD/CVD Enforcement Group III, November 7, 2000 ("Memo").

that the "dumping legal work" referred to in the Memo indicates that Ta Chen reimbursed TCI for dumping duties. According to the respondent, the fact that the financial statement indicates that Ta Chen reimbursed TCI for accounting and legal fees indicates by the omission of dumping duties that there was no reimbursement for dumping duties.

Respondent refutes the Memo's speculations that because different review periods are referred to in different financial statements, it is indicative that reimbursement extends to the current administrative review. Respondent submits that the different review periods referred to in the financial statements refer to the period of June 1992 to December 1994, not the current review period of June 1998 to May 1999. Respondent argues that the Department may not speculate that an event from a previous POR is still occurring during the current POR. See Borden Inc. v. U.S. , Slip Op. 98-36 at 26 (CIT March 26, 1998); Ta Chen Stainless Steel Pipe, Ltd., v. U.S., Slip Op. 99-117 at 46 (CIT Oct. 28, 1999), and Emhart Industries, Hartford Div v. N.L.R.B., 907 F. 2d 372 (2nd Cir. 1990).

According to the respondent, [* * *] was not acting on behalf of Ta Chen Taiwan even as to the actions with respect to the 1992-94 period. Respondent claims that the regulation applies to the "producer or exporter," of the subject merchandise, not a person acting "on behalf of the producer or exporter." Also, respondent argues that just because [* * *] is the director of Ta Chen, and is a [* * *] shareholder of Ta Chen, does not mean that [* * *] acted on behalf of or at the request of Ta Chen. Respondent states that Ta Chen did not request [* * *] to do this or provide any compensation for such action. Respondent notes that [* * *] personally undertook this action and is doing it for [* * *] own reasons. Respondent argues that according to TCI's financial statements, [* * *] agreed to reimburse only "if such reimbursement is not in violation of the U.S. dumping law and if the final decision and court appeal are unfavorable to the company." Respondent claims that there is no reason why this statement should appear in the parent company's (Ta Chen's) financial statements.

Further, respondent argues that the Department's reimbursement regulation is contrary to the statute. Respondent's reason is that the dumping duty may only offset the amount of dumping. According to the respondent, doubling the amount of dumping is punitive and thus unlawful. See Torrington Co. v. U.S., 127 F. 3d. 1077, 1078 (Fed. Cir. 1997), and Hoogovens Staal BV v. U.S., 93 F. Supp. 2d. 1303, 1307 (CIT 2000) ("Hoogovens II").

Respondent argues that the Department's application of its reimbursement regulation in its Memo is in effect a promulgation of a substantive rule which must satisfy notice and comment requirements of the Administrative Procedures Act ("APA"). Respondent claims that the Department must publish a notice of rule-making in the Federal Register and give interested parties an opportunity to participate in the rule-making process through submission of written data, views, or argument, and incorporate in the rules a concise general statement of their basis and purposes. See Carlisle Tire & Rubber Co. v. United States, 10 C.I.T. 301, 304, 634 F. Supp 419, 423 (CIT 1986). According to the respondent, the Department has a longstanding practice of applying its reimbursement rule only to exporters and producers of the subject merchandise. Respondents argue that the Department substantially revised its

rule in the current review and applied the reimbursement rule to parties not contemplated by the existing law, persons who neither export nor produce the subject merchandise. Furthermore, respondent claims that the Department's Memo is not an interpretative rule or exception to the APA notice and comment requirements. See Carlisle Tire & Rubber Co. v. United States, 10 C.I.T. 301, 304, 634 F. Supp. 4190, 423 (CIT 1986) and IPSCO Inc. v. United States, 12 C.I.T. 359, 374, 687 F. Supp. 614, 627 (CIT 1988).

Petitioners argue that the Department should make an affirmative finding of reimbursement as to Ta Chen. Petitioners argue that it is well established that the Department has broad discretionary power and full authority to offset an exporter's reimbursement of an importer for antidumping duties. See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 63 Fed Reg 13,204, 13,214, (March 18, 1998) ("Dutch Caron Steel Plate"); Statement of Administrative Action ("SAA") at 216. Petitioners argue that the Department's power to counteract reimbursement has been judicially affirmed. See Hoogovens Staal BV v. United States, 4 F. Supp.2d 1213, 1217 (CIT 1998) ("Hoogovens I"); aff'd following remand, ("Hoogovens II"); Color Televisions Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, 61 FR 4408 (Feb. 6, 1996). ("Korean CTVs"). Petitioners contend that the Courts in Hoogovens I and Hoogovens II; upheld the Department's authority to apply the regulation on reimbursement to the situation in which the U.S. importer is related or affiliated to the foreign exporter or producer. See Hoogovens I, 4 F.Supp.2d at 1217-18; and Hoogovens II, 93 F. Supp.2d at 1306-07 n.4. Petitioners assert that Korean CTVs held that reimbursement occurs between related or affiliated parties if the evidence demonstrates that the exporter directly pays the antidumping duties for the related importer or reimburses the importer for such duties. See Korean CTVs, 61 FR at 4411. Petitioners asserts that the Department has held that reimbursement takes place indirectly when someone acting on behalf of the exporter or producer pays the antidumping duties or reimburses the importer. See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 26934 (May 18, 1999) ("PSC from Mexico"). Further, petitioners assert that an administrative agency may adopt policies that depart from its prior norms as long as it clearly sets forth its grounds for doing so and as long as the action taken is consistent with its legislative mandate. See Atchison, T.& S.F.Ry.Co. V. Wichita Board of Trade, 412 U.S. 800, 808 (1973). Finally, petitioners argue that an agreement or understanding to reimburse is sufficient to bring the regulation on reimbursement into play. See Dutch Carbon Steel 61 FR at 48,470-71.

Petitioners argue that the Department should make an affirmative finding of reimbursement as to Ta Chen based on their following findings from the record. Petitioners note that first, [* * *] has agreed to reimburse TCI for the antidumping duties; second, TCI is responsible for the payment of the antidumping duties, and finally, [* * *] Petitioners assert that this conclusion is warranted pursuant to 19 C.F.R. §351.402(f), under which the Department will deduct the amount of any antidumping duty which the exporter or producer has either paid directly on behalf of the importer or reimbursed to the importer. Petitioners also argue that the reimbursement regulation governs not only direct payments by the exporter or producer, but also includes reimbursement by parties acting on behalf of the exporter or

producer. See PSC from Mexico, 64 FR at 26937.

Petitioners argue that the record demonstrates that [* * *] acted on behalf of Ta Chen when he agreed to reimburse TCI for antidumping duties arising from stainless steel butt-weld pipe fittings proceedings. Petitioners note that [* * *] is a major shareholder of Ta Chen. Petitioners assert that Ta Chen's financial statement for the fiscal years ending October 31, 1997 and October 31, 1998, indicates that [* * *] agreed to reimburse TCI for antidumping duties arising from the Department's antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan. Moreover, petitioners argue that this statement was made in the first financial statement issued by Ta Chen as a public company. Petitioners argue that [* * *] made such a statement to attract investors to Ta Chen.

Petitioners note that [* * *] agreed to reimburse TCI any antidumping duty liability arising from its imports of stainless steel butt-weld pipe fittings from Taiwan from December 23, 1992 to May 31, 1994. Petitioners contend that the Department should determine that [* * *] will continue to engage in such activity in subsequent reviews, because the relevant circumstances suggest that [* * *] promise to reimburse was made for the purpose of reassuring Ta Chen's potential investors that their capital will be gainfully employed to improve Ta Chen's profitability, and not to expunge TCI's debts to the United States government for antidumping duties. Petitioners contend that as TCI's exposure to antidumping liability has grown, the imperative from [* * *] perspective to shield Ta Chen's shareholders and potential investors from the draining impact of antidumping duties has commensurately increased. Further, petitioners argue that [* * *]

Respondent rejects petitioners' claims that [* * *] has agreed to pay TCI's antidumping liabilities so that potential buyers will not be deterred from buying Ta Chen stock and that TCI is unable to pay for such duties itself. Respondent argues that there is no such evidence on the record to support these claims. Respondent urges that the Department must make final determinations based on the record before it, not on speculation and conjecture. See e.g., Borden Inc. v. U.S., Slip Op. 98-36 at 26 (CIT March 26, 1998), Chung Ling, Co., Ltd v. United States, 805 F. Supp. 45, 52 (CIT 1992), and Technoimporterexport v. United States, 783 F. Supp. 1401, 1406 (CIT 1992). According to respondent, the record evidence shows that Ta Chen has not reimbursed TCI for dumping duties for POR butt-weld pipe fitting imports; there is not an agreement to reimburse TCI for POR fittings imports; and that Robert Shieh agreed to reimburse only with respect to the 1992-94 period, if not in violation of U.S. antidumping law, and if the court appeals as to that period are unfavorable to the company.

Moreover, respondent rejects petitioners' allegations that investors would not be persuaded to buy Ta Chen's stock on the basis that a shareholder paid or offered to pay an expense which was not and would never be a liability for the company. Respondent counters petitioners' argument that [* * *] has agreed to pay TCI's antidumping duties to protect his investment interest in Ta Chen by stating that [* * *] maintains only a [* * *] interest in Ta Chen and reimbursement would cost him more than he would benefit.

Respondent disagrees with petitioners' claim the Department has unlimited discretion in implementing its reimbursement policy. Respondent argues that absent amending an existing regulation pursuant to the APA rule-making framework, an agency is governed by its own regulations. See Accardi v. Shaughenessy, 347 U.S. 260, Service v. Dulles, 354 U.S. 3363, 387, 77 Ct. 1152, 1165, Vitarelli v. Seaton, 359 U.S. 535, 540, 3 L. Ed. 2d. 1012, and United States v. Nixon, 418 U.S. 683, 94 S. Ct. 3090.

According to respondent, under the current regulation, 19 C.F. R. §351.402(f), the Department may only find reimbursement where antidumping duties are directly paid or reimbursed by the producer or exporter. Respondent argues that the reimbursement regulation should not be interpreted to include payments made "on behalf" of a foreign exporter. Respondent states that the Department should not misinterpret the regulation. See Transcom Inc. v. United States, 2000 Ct. Int'l Trade LEXIS 150; Slip Op. 2000-146, Christensen v. Harris County, 529 U.S. 576, 120 S. Ct. 1655, 1633, 146 L. Ed. 2d 621 (2000), and Flour Constructors, Inc. v. Occupational Safety and Health Review Commission, 861 F. 2d. 936, 940 (1988). Respondent claims that 19 C.F.R. §351.402(f) does not include the "on behalf of" the foreign producer or exporter standard applied in the Memo and thus, the standard may not be applied as a matter of law. The Department can issue a notice of proposed rule-making advising interested parties that it is considering amending its regulations to apply reimbursement to parties other than those considered by the current regulations. However, until the Department has taken these steps, it is bound by the existing regulation.

Respondent maintains that even if the Department applies its "on behalf of" standard, [* * *] has not reimbursed TCI on behalf of Ta Chen. Respondent states that as submitted on the record and audited by its auditor's report, the reimbursement was a personal commitment by [* * *]. Respondent states that the commitment was not on behalf of anyone, much less Ta Chen.

Respondent argues that the petitioners incorrectly portray the Department's reimbursement policy as being affirmed by the Courts. Respondent contends that if the courts had directly addressed this issue they would find the Department's reimbursement regulation invalid because it is inconsistent with the antidumping law. See Hoogovens II, 93 F. Supp. 2d 1307 (2000).

Finally, respondent asserts that the Department abused its discretion by not considering relevant facts when making its reimbursement determination. Respondent argues that the Department is mandated with fairly and accurately administering the antidumping law. See Rhone Poulenc, Inc. C. United States, 8 Fed Cir. 61, 67, 889 F. 2d. 1185, 1191 (1990). Respondent maintains that the Department's rejection of Ta Chen's factual information relating to this new issue constitutes an abuse of discretion. Respondent states that it immediately presented the information once the Department notified Ta Chen of its reimbursement concern. Respondent argues that the Department has the discretion of accepting new factual information and basing its findings on a complete and thorough record. See Certain Refrigeration Compressors From the Republic to Singapore: Final Results of Countervailing Duty Administrative Review, 63 FR 32849, 32853 (June 16, 1998), Sebacic Acid from

the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 1849, 1851 (January 12, 2000), Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Review 62 FR 2081, 2093 (January 15, 1997), and Flat-Rolled Hot-Rolled Carbon-Quality Steel Products from Brazil: Notice of Preliminary Determination of Sales at Less Than Fair Value 64 FR 8299, 8302 (February 19, 1999).

Petitioners disagree with Ta Chen's argument that the Department's regulation on reimbursement is contrary to the antidumping law. Petitioners argue that the Department's regulation on reimbursement is consistent with the statute and supported by recent judicial precedent. Petitioners note that Ta Chen cites to legal authority which does not support Ta Chen's argument. Petitioners argue that Hoogovens I held that the regulation on reimbursement is consistent with the language of the statute and furthers the statutory purpose of remedying injury caused by unfairly traded imports. Petitioners note that Ta Chen cites to dicta from Torrington Co. v. United States, which the Department is not bound to follow. See Torrington Co. v. United States, 127 F.2d 1077 (Fed. Cir. 1997); Hoogovens II, 93 F. Supp.2d 1303 (CIT 2000). Finally, petitioners argue that reimbursement thwarts the purpose of the antidumping law. Petitioners argue that the corrective mechanism of the statutory scheme is undercut when the importer is able to avoid payment of the antidumping duties by virtue of reimbursement of those duties by the exporter or producer. Petitioners argue that when the fundamental intent of the statute is at stake, the Department's considerable discretion to enforce the antidumping law is at its zenith. See Dutch Carbon Steel, 63 FR at 13214.

Petitioners rebut Ta Chen's argument that the application of the regulation on reimbursement as to Ta Chen will violate the APA because the Department has not engaged in notice and comment rule-making before applying the reimbursement regulation. Petitioners disagree with Ta Chen's argument that the Department is obligated under the APA, 5 U.S.C. § 551-559, to engage in notice and comment rule-making before the Department may lawfully apply the reimbursement regulation in this administrative review. Petitioners assert that Ta Chen's arguments that the Department's longstanding policy has been to limit the reimbursement regulation to exporters and producers of subject merchandise and that the Department here would be applying this regulation retroactively to a party that is neither the exporter nor the producer are incorrect. Petitioners argue that the Department has held that the reimbursement regulation can apply to a party acting on behalf of the exporter or producer. See PSC from Mexico. Further, petitioners argue that the Department, in PSC from Mexico, also found that application of this rule does not require the formal notice and comment, rule-making nor does it constitute a "retroactive" application in violation of the APA. Id.

Petitioners argue that there is substantial evidence on the record that supports the conclusion that reimbursement of antidumping duties owed by TCI has occurred. Petitioners argue that the public listing of Ta Chen's stock with the Taiwan Stock Exchange in October 1996 and [* * *] motivated [* * *] initial decision to reimburse the antidumping duties for the earlier pipe and fittings reviews, and make it more likely that reimbursement will continue in subsequent reviews. Petitioners contend that

respondent's claim that [* * *] took personal responsibility for reimbursing antidumping duties to avoid disclosure of TCI's relationship with a certain U.S. customer is unconvincing. Petitioners contend that the events revolving around this customer were not unique and the potential antidumping liability resulting from these events ultimately is no different than any other debt or corporate expense incurred by Ta Chen.

Petitioners maintain that a finding of reimbursement from an earlier period raises a rebuttable presumption that reimbursement will continue. Petitioners note that the Department has found that "it has the proper authority to establish a rebuttable presumption where a respondent was previously found to have engaged in reimbursement activities." See Dutch Carbon Steel, 63 FR at 13214. Petitioners argue that such a shifting of the burden of proof to a respondent is appropriate, given that the relevant evidence is solely within the hands of the respondent. Id.

Department's Position[2]*:* We agree with petitioners. Based on record evidence, we have determined that [* * *], on behalf of Ta Chen, has agreed to reimburse TCI for any dumping duties on pipe fittings for the 92-94 POR. This agreement to reimburse as to an earlier segment of the proceeding raises a rebuttable presumption that the agreement is still in effect during the POR. Carbon Dutch Steel, 63 FR at 13214. That presumption has not been overcome in this segment of the proceeding. Accordingly, we find that the agreement to reimburse is still in effect.

We agree with petitioners that the Department's regulation on reimbursement is consistent with the statute and supported by recent judicial precedent. See Hoogovens I, 4 F.Supp. at 1216-17. Although there is dicta in Torrington, 127 F.3d at 1079, n.2, suggesting that the Federal Circuit may view the reimbursement regulation as punitive rather than remedial, that statement is only dicta and has

---

[2] In its comments responding to the Department's preliminary determination, the respondent provided additional comment on the CEP offset issue. On November 20, 2000, the Department rejected respondent's comment on the CEP issue because the Department at the time requested comments only regarding the reimbursement issue. Also, included in the respondent's rebuttal brief were attachments pertaining to the reimbursement issue which the Department reviewed and determined constituted new factual information. On November 30, 2000, the respondent was asked to resubmit its brief without the new information. On December 5, 2000, respondent submitted a letter objecting to the Department's rejection of its new factual information, claiming that the Department should have exercised its discretion and accepted this information. Ta Chen cited to certain cases involving the Department's obligation to give a respondent notice and an opportunity to correct deficient questionnaire responses. First, it is undisputed that the information at issue is untimely new factual information under 19 C.F.R. 351.301(b)(2). While the Department does occasionally exercise its discretion to accept new factual information it declined to do so here because there was not sufficient time to verify the information. Finally, the cases cited by Ta Chen are inapposite as we are not dealing with deficient questionnaire responses.

no binding or precedential effect. See Hoogovens II, 93 F.Supp. at 1307 n.4. The Hoogovens II court therefore did not disturb the Hoogovens I finding that the reimbursement regulation is a permissible and reasonable construction of the statute.

There is sufficient record evidence demonstrating that there is an agreement to reimburse by the [* * *], acting on behalf of Ta Chen, payment of the antidumping duties for TCI. The statements made in Ta Chen's and TCI's audited financial statements indicate that [* * *], the [* * *]of both companies, has committed to personally reimburse TCI for any antidumping duties ultimately paid in the stainless steel butt-weld pipe fittings administrative reviews. [* * *] is also one of the [* * *] stockholders of Ta Chen. Thus, [* * *] has a financial interest in reimbursing these duties as [* * *] controls both Ta Chen and TCI by virtue of [* * *] stock ownership and positions within the companies and we find he is acting on behalf of Ta Chen in reimbursing these duties. Because [* * *]'s strong financial interest in reimbursing these duties, we find suspect respondent's claim that the agreement represents simply a 'personal commitment.' Rather, the record demonstrates that [* * *], by virtue of his position as Ta Chen's [* * *] and a [* * *] individual shareholder Ta Chen, acted on behalf of Ta Chen, the producer, in reimbursing these duties to TCI. Moreover, Ta Chen has admitted that [* * *] agreed to reimburse TCI, as least for the 92-94 POR. See Ta Chen's Nov. 30, 2000 Rebuttal Brief, at 2.

We agree with respondent that the Department must make final determinations based on the record before it, not based on speculation and conjecture. However, there is clear evidence that there is an agreement to reimburse antidumping duties for the antidumping review periods 1992 through 1994. The Department has previously created a rebuttable presumption that the agreement to reimburse is still ongoing unless the party with the burden of persuasion can demonstrate otherwise. See Carbon Dutch Steel, 63 FR at 13214; See also PSC from Mexico, 64 FR at 26936.

In the present case, Ta Chen's audited financial statement for the fiscal years ending October 31, 1997, and October 31, 1998, clearly indicates that an agreement for reimbursement is in place. There is no evidence of a change in the antidumping liability on TCI's books for antidumping duties for any of the periods for which financial statements are on the record in this administrative review, nor is there any other evidence on the record that the agreement is no longer in effect. Thus, we conclude that the agreement for reimbursement for the antidumping duties for the 1992-1994 antidumping reviews establishes a rebuttable presumption that respondent is still engaged in reimbursement activities and that presumption has not been overcome in this POR.

Both the Courts and the Department have recognized that the regulation on reimbursement may apply to a situation in which the U.S. importer is related or affiliated to the foreign exporter or producer. See Hoogovens I, Hoogovens II, Korean CTVs, and PSC from Mexico. The Department has also previously interpreted the reimbursement regulation to include reimbursement by parties acting on behalf of the exporter or producer. See PSC from Mexico, 64 FR at 26936-37.

Contrary to respondent's arguments, this interpretation of the reimbursement regulation does not

constitute the promulgation of a new substantive rule, which requires the compliance with the notice and comment requirements of the APA nor does this application constitute a "retroactive" application in violation of the APA. Id. We addressed this same argument in PSC from Mexico where we stated:

> The Department also disagrees with respondents' claim that application of the new policy in this review constitutes "retroactive" application in violation of the APA. " [* * *]he general principle is that when as an incident of its adjudicatory function, an agency interprets a statute, it may apply that new interpretation in the proceeding before it. [* * *]. The same is true of applying a new interpretation of a regulation. Thus, application of the new policy in this review is permissible.

PSC from Mexico, 64 FR at 26937. In this case, the argument that this is a new interpretation of the regulation requiring APA rule-making is even weaker, given that the Department has already applied the concept of a related party acting "on behalf of the producer or exporter" in another case - PSC from Mexico.

In addition, the Department has previously determined that the reimbursement regulation can apply in an administrative review even though duties have not yet been assessed. See Dutch Carbon Steel, 61 FR at 48470. The Department has also held that an agreement to reimburse is sufficient to trigger the regulation as evidenced by the required reimbursement certification itself. Id.; See also 19 CFR 351.402(f)(2).

Under the Department's regulation on reimbursement, if a producer agrees to reimburse all antidumping duties, then the entire amount of the antidumping duties to be assessed will be added in determining the dumping margin pursuant to 19 CFR §351.402(f), regardless of whether a larger or smaller deposit of estimated antidumping duties has been posted. Thus, if a producer or reseller agrees to reimburse all antidumping duties, then the entire amount of the antidumping duties to be assessed, as reflected in the initial calculation of whether dumping is occurring in that POR, will be added in determining the dumping margin for final assessment, pursuant to 19 CFR 351.402(f). As discussed above, the evidence of record indicates that the [* * *]corporate official (and [* * *] shareholder) of Ta Chen has agreed to reimburse TCI for antidumping duties. Therefore, the regulation would appear to apply.

For the reasons set forth above, we have determined that [* * *] commitment to reimburse the antidumping duties covers the current administrative review as the commitment has a clear effect on Ta Chen's period of review contingencies. Specifically, Ta Chen's management, after having noted the potential liabilities of prior review periods arising from dumping duties makes clear that the case's "ultimate outcome will not have an adverse effect on TCIC's financial statements because [* * *] committed to bear any loss that may result from this case. Accordingly, no provision has been made in the accompanying financial statements for this contingency." (emphasis added) It could not be more clear that Ta Chen based its decision not to enter the prior period dumping liability (which has not yet been assessed) on its current financial statements because the commitment to reimburse is in place.

Additionally, TCI has relied upon this commitment because the evidence on the record indicates that TCI did not enter a contingent liability on its books for dumping duties for either of the periods for which financial statements are on the record in this administrative review.

Based on our finding of reimbursement of antidumping duties by Ta Chen to TCI in this administrative review, as discussed above, we have determined that the dumping margin of [* * *]for Ta Chen in these final results of review should be doubled. We have made the appropriate changes to our SAS program. Therefore, the final dumping margin in this review is [* * *].

2. **Treatment of U.S. Repacking Expenses**

Comment 2: In their rebuttal brief, petitioners note that U.S. repacking expenses (REPACKU) should have been included in the calculation of CEP selling expenses (CEPSELL) because they are U.S. direct selling expenses.

Department's Position: While petitioners should have raised this issue in their original brief, the Department agrees that U.S. repacking expenses are more appropriately included in U.S. direct selling expenses (DIREXPU) rather than in U.S. packing expenses (PACKU). Accordingly, we are making this change to be consistent with our past practice and to ensure the greatest degree of accuracy in our calculations. In Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590 (July 1, 1999) ("*Antifriction Bearings from France*"), the Department stated that it views repacking expenses as direct selling expenses that the respondent incurs as a result of the sale. Accordingly, the Department deducts such expenses from U.S. price pursuant to section 772(d)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), which directs us to deduct from the CEP "...expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties." See also Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 63 FR 33320, 33339
(June 18, 1998), and Porcelain-on-Steel Cookware from Mexico, 64 FR at 26942. This treatment of U.S. repacking expenses has been upheld in RHP Bearings Ltd. v. United States, 110 F. Supp.2d 1043 (CIT 2000), and NTN Bearing Corp. of Am. v. United States, 104 F. Supp. 110 120 (CIT 2000).

Accordingly, we have added U.S. repacking expenses (REPACKU) to direct selling expenses (DIREXPU) in our SAS program. Such expenses are then included in the calculation of CEP selling expenses for purposes of applying the CEP profit ratio.

3. **Calculation of Constructed Export Price ("CEP") Adjustments**

Comment 3: Respondent claims that bank charges incurred in Taiwan and time-on-the-water were inappropriately included in the CEP adjustments and profit allocated to the CEP adjustments. Specifically, respondent notes that bank charges incurred in Taiwan (CREDIT1U) are included in direct selling expenses (DIREXPU), which are included in CEP selling expenses (CEPSELL) for the profit adjustment. Respondent notes that time-on-the-water was [* * *] days and that inventory time in the U.S. was [* * *] days (see Exhibit 32 of Ta Chen's March 10, 2000, response and Exhibit 2 of Ta Chen's May 16, 2000, response, respectively). Respondent then states that the reported inventory carrying costs can be reduced by [* * *], or [* * *]percent, to eliminate inventory carrying costs associated with time-on-the-water. Respondent contends that, since these costs did not involve activities in the United States, they should not be included in the CEP adjustments. In support of its position, respondent cites Stainless Steel Butt-Weld Pipe Fittings from Taiwan, 63 FR 67855, 67856 (1998); Antifriction Bearings from France, 64 FR 35590, 35619 (1999); and Thai Pineapple Canning Industrial Corp. v. U.S., Slip Op. 99-42 at 24 (CIT May 5, 1999).

Petitioners concede that Ta Chen is correct in stating that the Department erroneously included bank charges incurred in Taiwan in CEP selling expenses. However, petitioners argue that the Department should reject respondent's argument regarding time-on-the-water because the Department only considered the inventory carrying costs associated with TCI's [* * *], which does not take into consideration the days that the product spent on the water (see TCI Exhibit 6A of the Department's U.S. sales verification report[3]).

Department's Position: We agree with respondent and petitioners in part on both points. The Department's regulations at 19 CFR 351.402(b) state that " [* * *]n establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid." As described by Ta Chen, and reviewed by the Department at verification, the bank charges to which respondent refers (CREDIT1U) relate to TCI's payments to Ta Chen and are incurred in Taiwan and paid in New Taiwan Dollars (see Ta Chen's October 13, 1999, response, at page 25, and Section XIV.A of the Department's home market verification report). Therefore, these bank charges are inappropriately included in direct selling expenses in the calculation of CEP selling expenses for purposes of the CEP profit adjustment. Thus, we have deducted CREDIT1U from direct selling expenses for purposes of the CEP profit adjustment for the final results. Likewise, for EP sales reclassified as CEP sales, we have determined that it is appropriate to deduct the time-on-the-water period of [* * *] days from the sale-specific credit period used in the calculation of imputed credit (IMPCREDI) since such costs are not associated with commercial activity

---

[3] See *U.S. Sales Verification in the Administrative Review of the Antidumping Duty Order on Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan for the Period 6/1/98-5/31/99* from Sally Craig Gannon and Alex Villanueva to the File (October 13, 2000) ("the Department's U.S. sales verification report").

in the United States. This change is not appropriate for sales originally reported as CEP sales since the shipment date reported for these sales is the shipment date from TCI's warehouse in the United States.

Similarly, we agree with respondent that time-on-the-water is an in-transit cost that should not be included in the reported inventory carrying costs of TCI. As stated in Antifriction Bearings France, 64 FR at 35619, in-transit inventory carrying costs are indirect selling expenses relating to the sale to the affiliate and, consequently, are not associated with U.S. economic activity or related to the resale of the merchandise. However, respondent indicates in Footnote 2 of its brief that the average U.S. inventory period of [* * *] days, which is used in the calculation of inventory carrying costs for purposes of adjusting CEP, does *not* include the [* * *] days associated with time-on-the-water for [* * *] sales. If the [* * *] days were included in the [* * *]days, then it would not have been necessary to add the [* * *] days to the [* * *] days in respondent's calculation of the percentage of the total inventory carrying costs generated by the time-on-the-water. Therefore, we agree with petitioners that no modification of the inventory carrying cost calculation for purposes of adjusting CEP is necessary for the final results.

4. **Minor Corrections to Database from Verification**

The following minor corrections to the database were presented by Ta Chen or TCI at their respective verifications. The Department verified the accuracy of these changes (see the Department's home market and U.S. sales verification reports). Therefore, we have made the appropriate adjustments to our SAS program for the final results to account for these database corrections.

a. **Foreign Inland Freight**

For Ta Chen invoice numbers [* * *] and [* * *], the total foreign inland freight (DINLFTPU) amounts should be NT$ [* * *] and NT$ [* * *], respectively. See Section I.A of the Department's home market verification report. Therefore, for EP sales with INVOICEU [* * *], the foreign inland freight charge should be the allocation factor [* * *] multiplied by the weight per piece (WTPCU) (see TC Exhibit 12A to the Department's home market verification report). For all CEP sales from the Tampa warehouse, the foreign inland freight charge should be the allocation factor [* * *] multiplied by the weight per piece (WTPCU) (see TC Exhibits 15 and 33 of the Department's home market verification report).

b. **Manufacturer**

For reducing tees eight inches and above, the manufacturer (MFRH/U) should be Liang Feng. See Section I.D of the Department's home market verification report.

c. **U.S. Warehousing Expense**

In the course of conducting the U.S. sales verification, the Department discovered that TCI's calculation of the warehouse cost per one-dollar shipment of [* * *] for the Tampa warehouse contained an error. (This factor is multiplied by the gross unit price and reported under the variable DIRSELU.) TCI acknowledged that a rent amount of US $ [* * *] should have been reported for [* * *], thereby increasing the total rent expenses for the Tampa warehouse during the POR. The resulting corrected warehouse cost per one-dollar shipment for the Tampa warehouse is [* * *]. See Section XI.C and TCI Exhibit 11 of the Department's U.S. sales verification report.

d. **U.S. Bank Charges**

For all CEP sales from the Tampa warehouse (indicated by a "T" in INVOICEU), the U.S. bank charges (CREDIT2U) should be reduced by [* * *] percent. See Section I.A of the Department's U.S. sales verification report.

e. **Ocean Freight and U.S. Brokerage Charges**

For TC invoice number (INVOICEU) [* * *]/TCI invoice number (INVOICETCI) [* * *], ocean freight charges (OCNFRT2U) and U.S. brokerage charges (USBROKU) need to be increased by [* * *] percent.[4] See Section I.B of the Department's home market verification report.

f. **U.S. Repacking Expense for Tampa Warehouse**

The allocation factor for U.S. repacking expense (REPACKU) for TCI's CEP sales from the Tampa warehouse should be [* * *], instead of [* * *]. (This factor is multiplied by the gross unit price (GRSUPRU). See Section I.C of the Department's home market verification report.

5. **Correction of Ministerial Errors in SAS Program**

a. **Reformatting of Entry Date**

Comment 4: Petitioners contend that, in the preliminary results margin program, the U.S. sales' date of entry (ENTRYDTU) was incorrectly not formatted into SAS data. According to petitioners, because this date was not in a recognizable SAS format, the SAS program could not rely on this variable in determining whether there were any sales outside the POR.

---

[4] In its minor correction, Ta Chen recommends increasing these charges by [***] percent. However, after reviewing the figures provided at verification, the Department has determined that the more precise multiplier noted here ([***] percent) must be used in order to result in the corrected figures provided by Ta Chen in TC Exhibit 17 to the Department's U.S. sales verification report.

Department's Position: We agree with petitioners that the entry date (ENTRYDTU) was not correctly formatted into SAS data for the preliminary results. We have reformatted ENTRYDTU into a SAS date (prior to running the SAS programs) for the final results.

b. **Definition of CEP Sales**

Comment 5: Petitioners contend that, in the preliminary results model match program, the Department incorrectly defined CEP sales as being sales that had a date within *the window period*. According to petitioners, the correct manner to test for reviewable U.S. CEP sales is to determine which sales are within the POR.

Department's Position: We agree with petitioners that CEP sales should be defined as sales with a date within the POR, rather than within the window period. We have made the necessary correction to the SAS program for the final results.

DISCUSSION OF THE ISSUES:

1. **Resales of Purchased Fittings**

Comment 6: Petitioners claim that the Department should adjust Ta Chen's dumping margin to consider Ta Chen's purchases of other Taiwanese manufacturers' subject fittings. Petitioners note that Ta Chen has stated that all fittings, whether produced by Ta Chen, subcontracted out, or purchased from another manufacturer, are marked to show Ta Chen as the manufacturer. Petitioners further note that the cost of the purchased fittings has been incorporated into Ta Chen's reported COP/CV data. According to petitioners, Ta Chen admitted that, even though it purchased other Taiwanese manufacturers' subject fittings, TCI based its cash deposits of estimated antidumping duties at Ta Chen's dumping margin upon entry into the United States. Petitioners contend that, in light of Ta Chen's own statements, Ta Chen appears to have committed Customs fraud at the time it entered purchased stainless steel butt-weld pipe fittings into the United States by claiming and paying Ta Chen's zero cash deposit dumping duty rate on those fittings. For purchased fittings, petitioners maintain that Ta Chen should have designated the actual manufacturer of the fittings at the time of entry and deposited the appropriate dumping duties.

In order to consider the dumping duties that should have been deposited on these purchased fittings, petitioners thus propose that the Department weight the final margin for Ta Chen to reflect the proportional share of Ta Chen's fittings and other manufacturers' fittings resold in the United States by Ta Chen. Utilizing data taken from TC Exhibits 6 and 10 of the Department's home market verification report, petitioners calculate that [* * *] percent of Ta Chen's sales were purchased from Liang Feng and [* * *] percent from Tru Flow. Petitioners suggest that the Department use the following formula to calculate Ta Chen's total margin of dumping:

(Ta Chen's final margin x [* * *] percent) + (Liang Feng's margin based on [* * *] x [* * *]percent) + ([* * *] x [* * *] percent)

Petitioners claim that this method of accounting for the effect of purchased fittings is conservative because the value of purchased fittings (the price between the supplier and Ta Chen) was divided by Ta Chen's total sales, including the mark-up by Ta Chen on the purchased fittings, thereby understating the numerator.

Petitioners contend that the Department cannot simply remove the sales of purchased fittings from the database for the following reasons: 1) Ta Chen never paid the required deposits on the entries of these subject fittings; 2) for [* * *] also produced the same product on its own or via tolling; and 3) Ta Chen's submitted cost data incorporates not only Ta Chen's own production and tolled fittings, but also the purchased fittings. According to petitioners, due to this "blending" of self-produced, tolled, and purchased fittings, the Department's only option is to blend the proportionate shares in Ta Chen's final margin.

Petitioners cite various cases in support of their position that the Department can use a blended rate. Petitioners note that, in Ferrovanadium and Nitrided Vanadium from the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review, 62 FR 65656 (Dec. 15, 1997), the Department calculated a combined rate for two producers/exporters, with one of the producers assigned a facts available rate. Petitioners further note that the Department calculated multiple cash deposit rates for various combinations of producer/exporter channels of distribution in Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea, 64 FR 15530 (Mar. 31, 1999).

Petitioners then state that the Department faced a similar situation in Jia Farn Mfg. v. United States, 817 F. Supp. 969, 973-975 (Ct. Int'l Trade 1993) ("Jia Farn"), wherein the Court upheld the Department's jurisdiction over subject merchandise produced by various Taiwanese manufacturers still under order but routed through Jia Farn, a Taiwanese manufacturer. As stated by petitioners, Jia Farn had received a de minimis margin in the original investigation and, thus, was excluded from the antidumping duty order on sweaters of man-made fiber from Taiwan. According to petitioners, the Court essentially agreed with the Department that the subject of antidumping orders is the merchandise, rather than companies, and that only the merchandise manufactured by Jia Farn was excluded from this order. Therefore, petitioners maintain, the Department found that merchandise entered by Jia Farn that originated from another manufacturer subject to the antidumping duty order was subject to the suspension of liquidation and the cash deposits of the manufacturer. Petitioners contend that the instant situation is similar in that the subject fittings purchased by Ta Chen from other manufacturers are subject to the cash deposit rates of those manufacturers, not of Ta Chen.

Respondent argues that the Department should reject petitioners' claims regarding purchased fittings.

Respondent rebuts petitioners' calculated percentages for the outside manufacturers by stating that petitioners erroneously relied on figures for Ta Chen's purchases of fittings for worldwide sale, as opposed to U.S. sale. Respondent maintains that only [* * *] percent of Ta Chen's U.S. sales involve purchased fittings which is shown on page 11 of its March 10, 2000, response. Respondent notes that the fact that Ta Chen's percentage of worldwide sales of purchased fittings significantly exceeds the percentage for U.S. sales only further confirms that legitimate commercial considerations, rather than U.S. dumping law concerns, underlie those U.S. sales of purchased fittings.

Respondent notes that Ta Chen has purchased and resold fittings from Tru Flow and Liang Feng in particular during and since the time of the original investigation (see Ta Chen's September 20, 1999, response at page 4-5; October 13, 1999, response at pages 11 and 30; and August 23, 2000, response at page 6). Respondent maintains that Ta Chen has reported these purchases in this review in the same manner that it has since the original pipe fittings investigation (and even since the original stainless steel pipe investigation, which preceded the fittings investigation). Respondent cites Welded Stainless Steel Pipe from Taiwan, 57 FR 53705, 53715 (1992), which states that " [* * *]f the product was purchased {by Ta Chen} in its finished state, DOC simply weight-averages the purchased product with the product produced by Ta Chen" for purposes of Section D. According to respondent, sales of such purchased pipe were treated in the same way as Ta Chen's sales of it own-produced pipe for purposes of Sections B and C.

Respondent cites Forged Stainless Steel Flanges from India, 58 FR 68853, 68855-56 (1993), in which it claims that the purchase prices for the small quantity of subject merchandise the producer purchased for resale were weight-averaged with the producer's own costs to determine Section D costs. According to respondent, resales of purchased fittings {flanges} were treated the same as the producer's sales of its own product for purposes of Sections B and C. Respondent also contends that DOC has often given manufacturers who also purchased some subject merchandise just one dumping rate for all sales as both the manufacturer/exporter and reseller/exporter. Respondent supports this claim by citing Live Cattle From Canada, 64 FR 56739, 56747 (1999), and Roller Chain from Japan, 63 FR 63671, 63702 (1998).

Respondent further argues that the Department did not request that Ta Chen treat these fittings purchases any differently than it did. Respondent maintains that Ta Chen has been reporting these purchases in this same way for ten years now and that this method of reporting has been reflected in Ta Chen's cost accounting system since before the antidumping petition was filed. Respondent questions why petitioners are only now concerned about such purchases, when in the past they have expressed no concern.

Finally, respondent contends that Jia Farn supports Ta Chen. Respondent states that this case only held that "the exclusion of a firm from the {antidumping} order applies only when the firm acts in the same capacity as when it was excluded from the order." Id. at 973. According to respondent, the Jia Farn case involved a different issue--the extent to which a company was excluded from the antidumping

order--as opposed to the instant issue concerning the appropriate method to calculate a dumping margin for purchased product. Respondent notes that, more importantly, the record indicates that Ta Chen has reported its purchasing and reselling of fittings since the time of the original investigation and that Ta Chen has not changed the extent of such activity since that time. Respondent argues that, in contrast, the respondent in Jia Farn was only a manufacturer in the original investigation but became a major reseller of other manufacturers' subject merchandise after it was excluded from the antidumping order.

Department's Position: We disagree with petitioners in part on this issue. When addressing this issue in the past, the Department has considered the following factors: 1) whether the sales of merchandise purchased from other producers, and then resold by the respondent, can be separated out from the sales produced by respondent; and 2) whether the producer who sold the products to the respondent for resale had knowledge that its merchandise was destined for the U.S. market. See Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order, 63 FR 50867, 50876 (Sept. 23, 1998); Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy, 64 FR 43152, 43154 (Aug. 9, 1999); and Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy, 65 FR 7349, 7356-57 (Feb. 14, 2000);

Regarding the first consideration, the Department is able to segregate many, but not all, of the purchased fittings from those that Ta Chen produced or subcontracted. For example, Ta Chen has indicated with certainty for most of its purchased products, under the variable MFRH/U, from which producer the subject fittings were purchased. For all products except [* * *] fittings, if they are of a size [* * *] inches [* * *], the products were purchased from either Liang Feng or Tru Flow. For all of these products of a size [* * *] inches [* * *]-- except [* * *] and [* * *]--Ta Chen has distinguished with certainty in its database whether a specific sale was of fittings purchased from Liang Feng or Tru Flow. This is because, for each product type, *all* of Ta Chen's purchases of fittings in sizes [* * *] inches [* * *] were from one or the other producer. However, for [* * *] and [* * *] in sizes [* * *] inches [* * *], Ta Chen purchased the fittings from either Liang Feng or Tru Flow. It is unclear from Ta Chen's U.S. sales database (submitted on August 24, 2000) whether it has identified the actual producer of a specific sale as either Liang Feng or Tru Flow or simply indicated that the sale was indeed purchased from one of the two producers. For [* * *] of a size [* * *] inches [* * *], Ta Chen knows that they were either subcontracted or purchased from [* * *]; pursuant to the Department's request, Ta Chen identified the producer as [* * *] in the MFRH/U field, but the Department is unable to distinguish from the database whether the sale was of *subcontracted* or *purchased* fittings. Therefore, for any sales of purchased [* * *] and [* * *] in sizes [* * *] inches [* * *] and any sales of [* * *] in sizes [* * *] inches [* * *], the Department is unable to determine with certainty either the producer or whether the product was subcontracted or purchased.

Regarding the second consideration (noted in the first paragraph above), Ta Chen has maintained in its responses to the Department and at verification that its subcontractors, who provide purchased fittings for resale, have no knowledge that these fittings will be sold into the United States market (see Ta Chen's March 10, 2000, response, at page 25, and Ta Chen's May 16, 2000, response, at page 12). Because the fittings purchased by Ta Chen may be resold in the home, U.S., or third-county markets, Ta Chen's subcontractors (Liang Feng and Tru Flow) do not know to which market their fittings are destined. The Department questioned one of Ta Chen's subcontractors, Liang Feng, directly on this issue at verification. Liang Feng stated in response that, other than the volumes and other specifics in Ta Chen's proforma invoices, it receives no other documentation or information regarding individual orders from Ta Chen; therefore, Liang Feng has no knowledge as to the identity of Ta Chen's customer (see the Department's home market verification report at page 23). Liang Feng provided an example of the preform invoices it receives from Ta Chen (see TC Exhibit 18B to the Department's home market verification report). One page contained the line item "Delivery: Aug. 10, 1999 Ex Taiwan." Liang Feng explained that "Ex Taiwan" means that the product will be exported but that Liang Feng does not know the ultimate destination. Additionally, Ta Chen has also indicated in its responses to the Department that ASTM specifications are common for products destined to markets other than the United States (see Ta Chen's May 16, 2000, response, at pages 12-13). As a result, there is no record evidence that either of Ta Chen's unaffiliated suppliers had knowledge that their products were destined for the U.S. market.

The Department disagrees with petitioners that Jia Farn is similar to Ta Chen's situation with respect to resold purchased fittings. In Ta Chen's case, Ta Chen has explained that it has purchased and subcontracted the subject fittings from Liang Feng and Tru Flow, for the purpose of rounding out its product line, since the time of the original investigation (see Ta Chen's May 16, 2000, response at page 27 and August 23, 2000, response at page 6). Additionally, the percentage of its total U.S. sales of the subject fittings accounted for by the purchased fittings is small. Furthermore, unlike in Jia Farn, there is no evidence of knowledge of the destination of the fittings on the part of the outside manufacturers.

Therefore, although the Department is able to separate out a significant portion of the sales of purchased fittings, we have determined that it is not appropriate to extract such sales from Ta Chen's U.S. sales database because we have no evidence on the record that the outside producers had knowledge that their subject fittings were destined for sale by Ta Chen in the U.S. market. However, Section 771(16) of the Act defines "foreign like product" to be " [* * *]he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise." Thus, consistent with the Department's past practice, we have restricted the matching of products which Ta Chen has identified *with certainty* that it purchased from an outside producer and resold in the U.S. market to identical or similar products

purchased by Ta Chen from the *same outside producer* and resold in the home market.[5]

2. **CEP Profit Adjustment Calculation**

Comment 7: Respondent argues that the CEP profit adjustment basically created the 8.03 percent dumping margin in the preliminary results by making U.S. sales appear overly profitable relative to home market sales. Respondent notes that the reduction in the net U.S. price for the allocated profit ranged from [* * *] percent to [* * *] percent. Respondent takes issue with the Department's methodology for allocating profit wherein the profit rate on U.S. and home market sales, based only on actual costs, is multiplied by the costs associated with U.S. activity which include imputed costs. Respondent maintains that this "inconsistent" treatment of costs, combined with the unique circumstances of its case, distorted the allocation of profit to U.S. activity and that the imputed costs, which are treated as actual costs in the dumping margin calculation (fully netted from price), should have been similarly treated in the calculation of the profit rate.

Respondent further argues that simply accounting for the actual interest costs of TCI overall does not lead to an accurate calculation of profit of fittings in particular. Respondent states that TCI's reported interest cost is about [* * *] percent of sales revenue and [* * *] percent of cost of goods sold for all products, of which a small portion is fittings (see Ta Chen's September 21, 1999, response at page 154; March 10, 2000, response at page 254; and August 23, 2000, response at page E189). Respondent notes that fittings represent about [* * *] percent of TCI's overall sales. However, according to respondent, TCI's warehouse sales of the subject fittings had an extremely long average inventory time of [* * *] days, resulting in an inventory carrying cost of [* * *] percent of the cost of goods sold at TCI's [* * *] percent short-term cost of borrowing. Respondent states that, when this cost is added to the reported imputed credit cost, the combined costs far exceed [* * *] percent of the cost of goods sold. Therefore, respondent maintains, such costs should be included in the calculation of the net profit of the fittings in order to result in an accurate calculation of the true profitability of Ta Chen's fittings sales.

Respondent cites Thai Pineapple Canning Industry, v. U.S., Slip Op. 2000-17 at 20 (CIT Feb. 10, 2000), indicating that this case supports the position that actual inventory and credit costs of sales must be used in the calculation of CEP profit if those costs differ significantly from a simple allocation of a company's interest costs over its sales. Respondent also cites Thai Pineapple Canning Industry, v. U.S., Slip Op. 2000-17 at 20 & 28 (CIT Feb. 10, 2000); Canning Industrial Corp. v. U.S., Slip Op. 99-42 at 29 (CIT May 5, 1999); and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18440 (Comment 34) (1997) ("Carbon Steel Flat Products from Korea"). According to respondent, these cases support the position that the ". . .statute's objective is

[5] Such purchased products identified with certainty include all of Ta Chen's products in sizes [***] inches [***], except for [***], [***], and [***] in those sizes.

determining a fair and accurate value of U.S. profit. . .” which should not “. . .unduly skew the U.S. profit computation against importers because the computation would exclude their heaviest expense category, leaving them with a disproportionately high dumping margin.” In citing U.S. Steel Group v. U.S., 2000 U.S. App. LEXIS 21528 (Fed. Cir. Aug. 25, 2000), respondent notes that the dumping margin calculations already reflect elsewhere the high inventory carrying and credit costs incurred on U.S. sales and should do so as well in the CEP profit calculation.

In maintaining that the Department has treated the actual and imputed costs inconsistently in its CEP profit calculation,[6] respondent cites Circular Welded Non-Alloy Steel Pipe from Korea, 63 FR 39071, 39072 (1998). According to respondent, this case states that “ [* * *]hen calculating CV profit we applied the profit rate to a cost of production figure exclusive of certain selling expenses. . .” and that “ [* * *]e did this because the profit rate was also calculated on a basis exclusive of the same selling expenses.” Respondent cites Carbon Steel Flat Products from Korea, 62 FR at 18440, indicating that this and the above-cited court decisions reject the view that the statutory phrase “total actual profit” (as it relates to the calculated profit rate) means profit excluding imputed expenses when distortions result, as they do in the instant case. Respondent maintains that the CEP profit statutory language itself, as stated in 19 U.S.C. § 1677a(f) (1994), rejects that view when read in full. According to respondent, the statute defines “total actual profit” as “total profit,” with the “actual” requirement applying to the subsequent phrase qualifying that the profit is to be on the sale of the subject merchandise (as opposed to the respondent’s overall profit rate on all products). Respondent cites Thai Pineapple Canning Industrial Corp. v. U.S., Slip Op. 99-42 at 27 (CIT May 5, 1999) in support of this view.

Respondent maintains that the errant CEP profit methodology used in the preliminary results finds Ta Chen’s U.S. prices to be far more profitable ([* * *] percent of cost) than Ta Chen’s home market prices ([* * *] percent of cost) and yet also finds dumping. Furthermore, respondent contends that this methodology finds Ta Chen’s U.S. sales to be staggeringly profitable--in sharp contrast to other reports at the time that U.S. market prices for fittings were at unprofitable levels. In support of this contention, respondent cites the views of the International Trade Commission at 19, Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, ITC Inv. No. 731-TA-864-867 (Prelim.) (Feb. 2000). Contributing to the distortion in the calculation of actual profits, respondent notes, is the fact that about [* * *] percent of the combined U.S. and home market sales are U.S. sales.

Respondent indicates that focusing on the “far more significant” actual inventory carrying and credit costs of specific sales, rather than the “more minor” interest costs, will eliminate the more serious distortions. In order to avoid any possibility of double-counting expenses, respondent suggests a

---

[6] As noted, respondent believes that the overstated profit rate ignored U.S. inventory and credit costs and was then multiplied by U.S. costs, which included the previously-ignored U.S. inventory carrying and imputed credit costs.

methodology for the Department to use in adjusting TCI's actual interest costs downward for the portion that reflects inventory carrying and credit costs. Using figures from TCI's financial statement ending October 31, 1998, respondent calculates that [* * *] percent of TCI's interest costs resulting from asset financing can be attributed to inventory and credit costs. Therefore, according to respondent, TCI's interest costs as a percent of sales can be multiplied by the remaining [* * *] percent in order to calculate that portion of the interest cost attributed to other than inventory and credit financing. Respondent states that adding the remaining portion of TCI's interest costs to the inventory carrying and credit costs of individual sales will disallow double-counting. [7]

Petitioners reject respondent's claim that the Department overstated the CEP profit, maintaining that the Department consistently considered the same costs in determining the CEP profit ratio and in the calculation of the CEP profit. Petitioners further maintain that the Department's methodology was consistent with Title VII of the Act and the Department's standard practice. Petitioners note that the Department has faced this same issue in a number of other cases and has found that its CEP profit calculation is accurate pursuant to its regulations, policy and case precedent.

Petitioners state that the Department rejected an argument from a commenter in the preamble to its current regulations which suggested that the Department ". . .should deduct all expenses, including imputed expenses, in calculating the CEP profit deduction." According to petitioners, the Department stated in response that it ". . .does not take imputed expenses into account in calculating cost. . ." and that ". . . [* * *]oreover, normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit." See Antidumping Duties; Countervailing Duties, Preamble to the Regulations, 62 FR 27296 (May 19, 1997) (Final Rule).

Petitioners maintain that the Department's *Policy Bulletin No. 97/1: Calculation of Profit for Constructed Export Price Transactions* (Sept. 4, 1997) articulates and demonstrates the Department's practice of excluding imputed expenses in the calculation of actual profit. According to petitioners, this bulletin states that imputed amounts for credit expense and inventory carrying costs should be excluded from the calculation of U.S. expenses in the total actual profit calculation. Petitioners note that the Department elaborates on its policy in an accompanying footnote by stating that imputed interest amounts need not be included in the profit calculation since actual interest (i.e., net interest expense from the COP and CV databases) has already been accounted for in the computation of "actual profit" under section 772(f) of the statute. The Department then further states in this footnote that, when allocating a portion of the actual profit to each U.S. CEP sale, imputed credit and inventory carrying costs will be included as part of the total U.S. expenses allocation factor, consistent with section 772(f)(1) which defines the term "total U.S. expenses" as those described under section

---

[7] Respondent notes that any petitioner claim that imputed costs should be ignored in the calculation of profit because of the fungible nature of money, in addition to ignoring that these costs are real costs, would also support ignoring such costs in the allocation of any imputed profit to U.S. sales.

772(d)(1) and (2). Petitioners contend that, pursuant to 19 U.S.C. § 1677a(f), the use of actual expenses is the most preferred method for determining total actual profit.

Petitioners further maintain that the Department's policy of considering actual, and not imputed, expenses in the overall profit calculation is mathematically sound. According to petitioners, because the Department considers actual interest expenses associated with the financing activities of the company, using imputed expenses would effectively double-count the company's cost of financing and artificially reduce the overall actual profit. Petitioners claim that the CEP methodology used by the Department in this review and stated in its policy bulletin has been consistently applied in other cases, and they cite Certain Stainless Wire Rods from France: Final Results of Antidumping Duty Administrative Review, 63 FR 30185, 30194 (June 3, 1998). Petitioners note also that the Department's preliminary margin program in this review clearly articulated its CEP profit calculation methodology (see *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Ta Chen, 7th Administrative Review, Margin Calculation Program, Preliminary Results, last updated March 20, 2000,* at lines 510 and 521).

Petitioners further cite Antifriction Bearings from France, 64 FR at 35623, stating that the Department rejected respondent NSK's argument in that case that it was unlawful for the Department to exclude imputed expenses (credit and inventory carrying costs) from the calculation of the total actual profit and then apply the profit ratio to a value that included imputed expenses to calculate CEP profit. According to petitioners, the Department noted that " [* * *]t is our practice to exclude imputed selling expenses in calculating the total actual profit for sales of the subject merchandise and the foreign like product" (citing Notice of Final Results of Antidumping Duty Administrative Review; Canned Pineapple Fruit from Thailand, 63 FR 7395 (Feb. 13, 1998). Thus, petitioners contend, the Department stated that it would follow Policy Bulletin 97.1 and not alter its CEP profit calculation methodology.

Petitioners take issue with Ta Chen's citation of several cases in support of its contention that the actual inventory carrying and credit costs must be used in the calculation of CEP profit if those actual costs differ significantly from a simple allocation of a company's interest costs over its sales. Petitioners contend that the opinion in Thai Pineapple Canning Industry Corp. v. United States, Slip Op. 00-17 (CIT Feb. 10, 2000), at pages 20 and 28 noted by Ta Chen, in fact approved the Department's CEP profit calculation and discussed the assessment rate for entries made after the final less-than-fair-value determination, respectively. Petitioners state that in Thai Pineapple Canning Industry Corp. v. United States, Slip Op. 99-42 (CIT May 5, 1999), at page 29 noted by Ta Chen, the court likewise was considering the use of a single assessment rate. Furthermore, petitioners claim that in Carbon Steel Flat Products from Korea, 62 FR at 18440, the Department actually decided against Ta Chen's position on this issue by noting that " [* * *]e disagree with respondent that imputed credit and inventory carrying costs should be added to the total expenses used in the denominator in the CEP profit calculation." Finally, petitioners maintain that in U.S. Steel Group v. United States, _F.3d_, Court No. 99-1342 (Fed. Cir. Aug. 2, 2000), the majority held that the Department reasonably interpreted "total expenses" in the calculation of CEP profit to include total U.S. and home market movement expenses, even as the

majority allowed "total U.S. expenses" to exclude movement expenses. Thus, according to petitioners, the majority in effect upheld the Department's CEP profit methodology as far as movement expenses were concerned.

Petitioners further note that it is important to state clearly that the Department has not reached a distortive result, as Ta Chen suggests, in faithfully following the CEP profit methodology called for by the statute, the regulations, and applicable judicial and administrative precedent. Petitioners contend that Ta Chen's "simplistic" comparisons of percentage figures to Ta Chen's dumping margin are incorrect and fail to consider all of the relevant factors of a dumping proceeding, e.g., below-cost sales in the home market, comparison of U.S. prices to constructed value, product matches, and the Department's well-established policy of not offsetting negative and positive dumping margins.

Department's Position: We disagree with respondent that the Department's methodology used in calculating the CEP profit adjustment in this review has resulted in a distortion of CEP profits and have, therefore, not adjusted the preliminary calculation. The Department has clearly articulated its policy on the CEP profit adjustment calculation, and the theory underlying it, in various cases and in its Policy Bulletin 97.1. This policy bulletin carefully details the Department's methodology in calculating the CEP profit adjustment and the Department's reasoning behind that methodology. As referred to by petitioners, footnote #5 of this bulletin states:

> Note that the unit cost figures in (3) {cost of U.S. merchandise} and (4) {cost of home market merchandise} above include net interest expense from the COP and CV data bases. Thus, there is no need to include imputed interest amounts in the profit calculation since we have already accounted for actual interest in computing "actual profit" under section 772(f). In step two below, however, when allocating a portion of the actual profit to each U.S. CEP sale, we will include imputed credit and inventory carrying costs as part of the total U.S. expenses allocation factor. This is consistent with section 772(f)(1) which defines the term "total U.S. expenses" as those described under section 772(d)(1) and (2).

In Carbon Steel Flat Products from Korea, 62 FR at 18440, the Department affirms the methodology later provided in the above-referenced policy bulletin. Regarding Step 1 of the CEP profit adjustment calculation,[8] the Department states that " [* * *]e disagree with respondent that imputed credit and inventory carrying costs should be added to the total expenses used in the denominator in the CEP profit allocation." The Department further notes that, regarding the total profit earned by the foreign producer, " [* * *]ecause it is the 'actual' profit, this amount reflects the actual interest expense incurred by the producer." Regarding "Step 2" of the CEP profit adjustment calculation, the Department states that " [* * *]e agree with petitioners that imputed credit and inventory carrying costs should be included in the definition of total United States expenses used in the

[8] See *Policy Bulletin 97.1*.

allocation of profit to CEP sales, consistent with section 772(f)(1), and have revised our methodology for these final results."

Likewise, as correctly noted by petitioners, in Antifriction Bearings from France, 64 FR at 35623, the Department states that " [* * *]t is our practice to exclude imputed selling expenses in calculating the total actual profit for sales of the subject merchandise and the foreign like product." In this same notice, the Department refers to its response to a comment in the preamble of the new regulations at section 351.402 (see Final Rule, 62 FR at 27354). In this response, the Department declined to adopt a suggestion that it include imputed expenses in the total selling expenses used to derive total profit to avoid double-counting. In the preamble, the Department stated that it "...does not take imputed expenses into account in calculating cost" and that " [* * *]oreover, normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit."[9]

3. **Reclassification of Export Price ("EP") Sales to CEP Sales**

Comment 7: For the final results, petitioners maintain that the Department should reaffirm its preliminary finding that Ta Chen's sales originally reported as EP transactions meet the standard for CEP classification because the first sale to an unaffiliated customer occurred between TCI and the U.S. purchaser. In support of this position, petitioners cite AK Steel Corp. v. United States, _F.3rd_, Court No. 99-1296 (Fed Cir. Sept 12, 2000), stating that the Court determined in this case that when a contract for sale is between a U.S. affiliate of a foreign producer or exporter and an unaffiliated U.S. customer, the sale must be classified as a CEP sale. Petitioners contend that the Department concluded in its preliminary results that the sales originally reported by Ta Chen as EP sales were CEP sales because the sale to the first unaffiliated customer was made between TCI and the unaffiliated U.S. customer. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Intent To Not Revoke in Part, 65 FR 41631. Petitioners further maintain that the Department should make the additional required deductions for CEP sales (e.g., inventory carrying costs, U.S. indirect selling expenses, CEP profit, etc.).

Respondent did not comment on this issue.

Department's Position: We agree with petitioners. Ta Chen reported both EP and CEP sales to the United States in its Section C database. After careful analysis, the Department preliminarily determined that all of Ta Chen's reported U.S. sales should be classified as CEP sales in accordance with section

---

[9] Although not obligated to do so, we note that the Department ran a test program which added imputed credit and inventory carrying costs to the total expenses used in the calculation of the CEP profit ratio. The Department found the resulting change in the CEP profit ratio to be insignificant in comparison to the ratio resulting from its normal calculation (i.e., which does not include these costs in the total expenses).

772(b) of the Act, based on our finding that the subject merchandise was first sold by TCI after having been imported into the United States. As respondent did not comment on this issue, we continue to consider all of Ta Chen's sales as CEP sales.

Having determined that such sales are CEP sales, we based CEP on packed prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, U.S. inland freight, foreign brokerage and handling, U.S. brokerage and handling, containerization expenses, marine insurance, harbor construction tax, international freight, U.S. customs duties, and warehousing expenses. We agree with petitioners that, having reclassified these EP sales to CEP, all appropriate CEP adjustments must be made. In accordance with section 772(d)(1) of the Act, we have deducted those selling expenses associated with economic activity occurring in the United States, including direct selling expenses (imputed credit expenses and bank charges), discounts, and indirect selling expenses.[10] We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

3. **Short-Term Interest Rate Used in Calculation of U.S. Credit and Inventory Carrying Costs**

Comment 8: Petitioners contend that the Department should continue to recalculate Ta Chen's U.S. credit and inventory carrying costs for CEP sales using Ta Chen's U.S. dollar-denominated short-term borrowing rate of [* * *] percent. Petitioners maintain that TCI, rather than Ta Chen, extends credit to the U.S. customer because TCI invoices, and receives payment from, the customer. Likewise, petitioners contend that TCI [* * *] the subject merchandise at the [* * *]and, therefore, incurs the inventory carrying cost.

Respondent argues that the Department should weight-average Ta Chen's cost of U.S. dollar borrowing with TCI's cost of U.S. dollar borrowing, resulting in an interest rate of [* * *] percent. Respondent states that Ta Chen's average interest rate on its U.S. dollar borrowings during the POR was [* * *] percent (see Exhibit 16 of Ta Chen's October 13, 1999, response). According to respondent, weight-averaging this percentage with TCI's rate of [* * *] percent results in a combined rate of [* * *] percent. Respondent claims that this combined interest rate should be used for imputed

[10] For EP sales reclassified as CEP sales, we deducted a time-on-the-water period of [**] days in the calculation of the imputed credit cost, which is also used in the CEP profit adjustment calculation (see the discussions under #3 above in the "Changes Since the Preliminary Results" section and below under Issue #4 "Short-Term Interest Rate Used in Calculation of U.S. Credit and Inventory Carrying Costs**"**). For EP sales reclassified as CEP sales, we did not deduct an U.S. inventory carrying cost because that cost is accounted for in the calculated imputed credit cost (see the discussion below under Issue #4 "Short-Term Interest Rate Used in Calculation of U.S. Credit and Inventory Carrying Costs**"**).

U.S. costs because money is considered fungible and the capital/borrowing structure of individual subsidiaries is subject to the control of the parent (as indicated by the Department's precedent). Respondent states later in its rebuttal brief that petitioners seek to double-count interest in the dumping margin calculation by including both TCI interest costs from TCI's financial statement and a calculated TCI inventory carrying and credit interest cost (see the discussion under Issue #2 "CEP Profit Adjustment Calculation" above).

Department's Position: We agree with respondent that the appropriate interest rate to use in the calculation of U.S. credit and inventory carrying costs is the weighted-average of Ta Chen's cost of U.S. dollar borrowing with TCI's cost of U.S. dollar borrowing, resulting in an interest rate of [* * *] percent. As stated in Policy Bulletin 98.2 entitled, "Imputed Credit Expenses and Interest Rate," for the purposes of calculating imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction. Policy Bulletin 98.2 cites LMI-LA Metalli Industriale, S.p.A. v. United States, 912 F. 2d 455, 460-61 (Fed Cir. 1990) as the authority for this statement. We have made the appropriate changes in our analysis, incorporating [* * *] percent as the short-term borrowing rate.

5. **U.S. ISEs**

Comment 9: Petitioners contend that Ta Chen incorrectly based its U.S. ISEs on TCI's October 31, 1998, income statement, rather than its October 31, 1999, income statement (see Exhibit 14 of Ta Chen's March 10, 2000, response). According to petitioners, the latter financial statement should be used to calculate U.S. ISEs because it covers seven months of the POR versus the five months covered by the October 31, 1998, financial statement. Petitioners request that the Department use TCI's 1999 operating expenses (see Exhibit 16 of Ta Chen's August 23, 2000, response) less Section C expenses reported elsewhere and antidumping legal fees. In order to estimate the latter amounts, petitioners recommend using a percentage of total operating expenses based on Ta Chen's calculation for the October 31, 1998, fiscal year, or [* * *] percent. Petitioners then advocate adding TCI's 1999 interest expense to this subtotal, resulting in the total TCI expenses, which are then divided by TCI's total 1999 net sales. Petitioners calculate the resulting percentage as [* * *], to be multiplied by gross unit price.

Respondent argues that Ta Chen reported TCI's operating expenses for TCI's most recent fiscal year, which ended during the POR (i.e., October 31, 1998), and that the Department never requested Ta Chen to revise this approach. Respondent further notes that, for its Section D response, Ta Chen used its general and administrative ("G&A") and interest costs for the fiscal year ending October 31, 1998, as well. At the Department's request, Ta Chen revised these costs based on the fiscal year ending October 31, 1999 (see Exhibit 9 of Ta Chen's August 23, 2000, response); however, according to Ta Chen, it continued to report the G&A and interest costs based on the fiscal year ending October 31, 1998, even though the costs based on the next fiscal year were *lower*. Ta Chen contends that

petitioners improperly seek to include the expenses associated with the many additional warehouses and sales branches TCI added after the POR in the calculation of U.S. ISEs. Furthermore, respondent states that petitioners fail to offer any support for their estimate for the fiscal year ending October 31, 1999, of TCI's costs exclusive of legal fees and costs reported elsewhere in the Section C listing. Respondent argues that petitioners should have raised this argument earlier in the proceeding when there would have been time to factually address it. Respondent notes that, if the Department makes any such adjustment, at most it should average the data from the two fiscal years. Respondent states later in its rebuttal brief that petitioners seek to double-count interest in the dumping margin calculation by including both TCI interest costs from TCI's financial statement and a calculated TCI inventory carrying and credit interest cost (see the discussion of Issue #2 above).

Department's Position: The Department verified the data submitted by respondent for its U.S. ISEs and found no discrepancies (see Section XII of the Department's U.S. sales verification report and TCI Exhibit 12). The Department also verified the data submitted by respondent for its G&A and interest expenses and found no discrepancies (see Sections XIX and XX of the Department's home market verification report and TC Exhibits 23 and 24, respectively). Petitioners' proposed calculation for U.S. ISEs incorporates an estimate of the antidumping legal fees and Section C expenses reported elsewhere for the fiscal year ending October 31, 1999. Because it is the Department's preference to utilize actual, verified data for the final results, we have continued to use respondent's calculation of U.S. ISEs for the final results. Basing the U.S. ISEs on the 1998 fiscal year data is also consistent with the Department's use of the verified 1998 fiscal year data for Ta Chen's G&A and interest expenses (as reported in the Section D databases).

6. **Decision Not to Revoke Order in Part**

The Department's regulations establish procedures for the revocation of antidumping orders under 19 CFR 351.222. On June 30, 1999, Ta Chen, in its capacity as a Taiwanese producer and exporter of subject merchandise, requested that the Department revoke the antidumping duty order on the subject merchandise from Taiwan. Ta Chen stated that it sold the subject merchandise at not less than normal value for a period of at least three consecutive years, including the current period under administrative review, and that it sold the subject merchandise in commercially-significant quantities to the United States during each of these three years.[11] Ta Chen also stated that it would not sell the subject merchandise at less than normal value to the United States in the future and agreed to reinstatement of the order against Ta Chen, as long as any exporter or producer is subject to the order, if the Department concludes that Ta Chen sold the subject merchandise at less than normal value subsequent to the revocation.

---

[11] The Department requested that Ta Chen provide volume and value data on its exports and sales of subject merchandise for the three consecutive years. Ta Chen provided this data in its June 5, 2000, submission.

The three review periods on which Ta Chen is basing its request for revocation consist of: 1) the period from 6/1/96 through 5/31/97, for which the Department found a de minimis margin of 0.343 percent; 2) the period from 6/1/97 through 5/31/98, for which no administrative review was conducted; and 3) the period from 6/1/98 through 5/31/99, for which the Department is currently conducting an administrative review. Under section 351.222(d) of our regulations, the Department may revoke a company from an antidumping order, based on three years of no dumping--even if the middle year was not subject to an administrative review, provided that there were sales in commercial quantities during that year.

Pursuant to the Department's preliminary finding of an [* * *] percent dumping margin, we concluded for the preliminary results that the criteria for revocation had not been satisfied (i.e., a de minimis margin). Based on the dumping margin of [* * *] percent calculated for these final results of review, the Department has determined that the criteria for revocation have not been satisfied and intends *not* to revoke the antidumping duty order in part, as it applies to Ta Chen.

RECOMMENDATION:

Based on our analysis of both the comments received and our own findings, we recommend adopting all of the above changes and positions and adjusting the model match and margin calculation programs, accordingly. If these recommendations are accepted, we will publish our final results of review, including Ta Chen's final weighted-average dumping margin and our determination *not* to revoke the order in part for Ta Chen, in the Federal Register.

AGREE____ DISAGREE____

_____

Troy H. Cribb
Assistant Secretary
for Import Administration

_____

Date

ATTACHMENT 1

MARGIN AND MODEL MATCH
SAS CALCULATIONS

I. FINAL RESULTS OF REVIEW

Total Quantity Sold in the U.S.:	[* * *]kg
Total Value Sold in the U.S.:	$ [* * *]
Total PUDD:	$ [* * *][12]
Doubled Weighted-Average Margin:	12.84%[13]

II. CALCULATION OF UNITED STATES PRICE

GRSUPRU = Gross Unit Price

A. Construct of **DISCREB** (Discounts and Rebates) Aggregate Variable:

DISU= Discounts
DISCREB = DISU

B. Construct of **FGNMOVE** (Foreign Movement Expenses) Aggregate Variable:

DINLFTPU = Inland Freight - Plant/Warehouse to Port of Exit
DBROKU = Brokerage and Handling
OCNFRT1U = Containerization Expenses
MARNINU = Marine Insurance
EXPDTU = Harbor Construction Tax

FGNMOVE = (DINLFTPU + DBROKU + OCNFRT1U + MARNINU + EXPDTU)*EXRATE

A. Construct of **USMOVE** (U.S. Movement Expenses) Aggregate Variable:

DIRSELU = Warehousing Expense

---

[12] This number reflects the doubling of the margin resulting from the Department's reimbursement determination.

[13] This margin reflects the doubling of the margin resulting from the Department's reimbursement determination.

OCNFRT2U = International Freight
USDUTYU = U.S. Customs Duty
USBROKU = U.S. Brokerage and Handling
INLFPWU = U.S. Inland Freight from U.S. Harbor to TCI Customer or TCI Warehouse
INLFWCU = U.S. Inland Freight Costs

USMOVE = DIRSELU + OCNFRT2U + USDUTYU + USBROKU + INLFPWU + INLFWCU

D. Construct of **DIREXPU** (U.S. Direct Expenses) Aggregate Variable:

CREDIT1U = Bank Charges
CREDIT2U = Bank Charges
CREDITU = (CREDIT1U * EXRATE) + CREDIT2U
REPACKU = U.S. Repacking Expenses
IMPCREDI = Credit Expenses

DIREXPU = (CREDIT1U * EXRATE) + CREDIT2U + IMPCREDI + REPACKU

A. U.S. Commissions Variable:

COMMISU = COMMU

A. Construct of **INDEXUS** (U.S. Indirect Expenses) Aggregate Variable:

INDIRSU = Indirect Selling Expenses Incurred in the United States
INVCARU = Inventory Carrying Costs Incurred in the United States

INDEXUS = INDIRSU + INVCARU

G. Calculation of values for use in the CEP profit calculation:

U.S. Expenses:

COGSU = GNACV + INTEXCV + PACKU + TOTCOMCV * QTYUNITU
REVENU = ((GRSUPRU - DISCREB) * QTYUNITU / EXRATE
SELLEXPU = (DIREXPU - IMPCREDI + COMMISU + INDIRSU) * QTYUNITU / EXRATE
MOVEXP = (FGNMOVE + USMOVEU) * QTYUNITU / EXRATE

Home Market Expenses:

COGSH = (RCOP + PACKINGH) * QTYUNITH
MOVEEXPH = MOVEH * QTYUNITH
REVENUH = ((GRSUPRH - DISCREBH) * QTYUNITH
SELLEXPH = (COMMISH + DSELCOP + ISELCOP) * QTYUNITH

CEP Profit Ratio Calculation:

TOTREV = TOTREVH + TOTREVU
TOTCOGS = TOTCOGSH + TOTCOGSU
TOTSELL = TOTSELLH + TOTSELLU
TOTMOVE = TOTMOVEH + TOTMOVEU
TOTEXP = TOTCOGS + TOTSELL + TOTMOVE
TOTPROFT = TOTREV - TOTEXP

IF TOTPROFT LE 0 THEN CEP RATIO = 0 ELSE
CEPRATIO = TOTPROFT / TOTEXP

H**.** Calculation of U.S. Price, Including Application of CEP Profit Ratio:

CEPSELL = DIREXPU + COMMISU + INDEXUS
CEPROFIT = CEPRATIO * CEPSELL
NETPRIU = GRSUPRU - CEPROFIT - COMMISU - DIREXPU - DISCREB
+ DTYDRWU - FGNMOVE - INDEXUS - USMOVEU

III. CALCULATION OF NORMAL VALUE

GRSUPRH = Gross Unit Price

A. Construct of the **MOVEH** (Home Market Movement Expenses) Aggregate Variable:

INLFTCH = **0**

MOVEH = 0

B. Construct of the **DISCREBH** (Home Market Discounts and Rebates) Aggregate Variable:

DISCREBH = 0

C. Construct of the **DIRSELH** (Home Market Direct Expenses) Aggregate Variable:

CREDITH = Credit Expenses

DIRSELH = CREDITH

D. Home Market Commissions Variable:

COMMISH = 0

A. Construct of the **INDSELH** (Home Market Indirect Expenses) Aggregate Variable:

INDIRSH= Indirect Selling Expenses Incurred by Ta Chen
INVCARH = Inventory Carrying Costs

INDSELH = INDIRSH + INVCARH

IF COMMISH GT 0 THEN INDSEL2H = 0
ELSE INDSEL2H = INDSELH

A. Construct of **PACKINGH** (Home Market Packing Expenses) Aggregate Variable:

PACKINGH = PACKH

G. Calculation of Home Market Price:

NETPRIH = GRSUPRH - COMMISH - DIRSELH - DISCREBH - MOVEH - PACKINGH

IV. CALCULATION OF COST OF PRODUCTION (COP)

A. COP Price Adjustments:

SELLCOP = INDIRSH
DSELCOP = 0
ISELCOP = INDIRSH
ISEL2COP = INDSEL2H
MOVECOP = 0

B. Net Cost of Production:

NPRICOP = GRSUPRH - DISCREBH - MOVECOP

C. COP Data for Use in Cost Test:

TOTCOM = TOTCOM
GNA = GNA
INTEX = INTEX
RCOP = TOTCOM + GNA + INTEX

TOTCOP = COMMISH + RCOP + SELLCOP + PACKINGH

V. CALCULATION OF CONSTRUCTED VALUE (CV)

A. Calculation of CV Profit Variables:

HMVALUE = NPRICOP * QTYUNITH
COPVALUE = TOTCOP * QTYUNITH

PRATECV = (TOTVAL -TOTCOP) / TOTCOP

A. Calculation of CV:

TOTCOMCV = TOTCOMCV
GNACV = GNACV
INTEXCV = INTEXCV

INDDOL = ISELCV * EXRATE
IND2DOL = ISEL2CV * EXRATE
COMDOL = COMISHCV * EXRATE

CVPROFIT = (GNACV + INTEXCV + TOTCOMCV + COMISHCV +DSELCV + ISELCV + PACKU) * PRATECV

TOTCV = CVPROFIT + GNACV + INTEXCV + TOTCOMCV + COMISHCV + DSELCV + ISELCV + PACKU

CV = TOTCV - COMISHCV - CREDITCV - DSELCV

VI. FOREIGN UNIT PRICE IN DOLLARS (FUPDOL) FOR CEP SALES

A. Calculation of Offsets:

IF (COMMISU GT 0) AND (COMDOL EQ 0) THEN
OFFSETH = MIN(COMMISU, INDDOL)
ELSE
IF (COMMISU EQ 0) AND (COMDOL GT 0) THEN
OFFSETU = MIN(COMDOL, INDEXUS)
ELSE
IF (COMMISU GT COMDOL) AND (COMDOL GT 0) THEN
OFFSETH = MIN(IND2DOL, (COMMISU - COMDOL))

B. FUPDOL for Normal Value:

FUPDOL = ((NV + DIFMER + PACKU) * EXRATE) - OFFSETH

C. FUPDOL for Constructed Value:

FUPDOL = (CV * EXRATE) + COMMISU + DIREXPU + OFFSETU - OFFSETH

FUPDOL = (CV * EXRATE) - OFFSETH

A. Calculation of U.S. Price and Individual Margins:

USPR = NETPRIU
QTY = QTYUNITU
UMARGIN = FUPDOL - USPR
EMARGIN = UMARGIN * QTY
VALUE = USPR * QTY
PCTEMARG = (UMARGIN / USPR) * 100