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MEMORANDUM FOR: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for AD/CVD Operations

SUBJECT: Issues and Decision Memorandum for the Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan; Final Results of Antidumping Duty Administrative Review

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings ("SSBWPF") from Taiwan for the period June 1, 2003, through May 31, 2004. As a result of our analysis, we have made changes to the margin calculation as discussed below. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments and rebuttal comments by parties:

Issues Relating to Ta Chen
1. Affiliations
2. CEP Offset
3. Date of Sale
4. U.S. Inventory Carrying Costs
5. Treatment of Repacking Expense as Direct Selling Expense
6. Bonuses and Cost of Production

Issues Relating to Tru-Flow
7. Sales by Other Companies of Fittings Produced by Tru-Flow

Background

On July 11, 2005, the Department published the preliminary results of this administrative review in the Federal Register. See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan;

Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part ("Preliminary Results"), 70 FR 39735 (July 11, 2005). The period of review ("POR") is June 1, 2003, through May 31, 2004.

This review covers sales of certain SSBWPF made by two manufacturers/exporters, Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") and Tru-Flow Industrial Co., Ltd. ("Tru-Flow"). We invited parties to comment on our preliminary results. We received a case brief from petitioners Markovitz Enterprises, Inc. (Flowline Division), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc., (collectively, "petitioners") on August 10, 2005. We received a rebuttal brief from Ta Chen on August 15, 2005. We did not receive comments from Tru-Flow.

Discussion of the Issues

Issues Relating to Ta Chen

Comment 1. Affiliations

Petitioners argue that the Department interpreted 19 CFR 351.102 too narrowly in its Preliminary Results, absolving Ta Chen of its burden to report all of its affiliates. According to petitioners, the Department incorrectly relied upon the portion of the regulation that reads, "The Secretary will not find that control {and so affiliation} exists on the basis of these factors {among others, corporate or family groupings, franchise or joint venture agreements, debt financing, and close supplier relationships} unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." Petitioners argue that the Department's position seems to suggest that there could be no affiliation by Ta Chen with another company without record evidence that the other company either purchased subject merchandise from Ta Chen or its U.S. affiliate, or supplied Ta Chen or its U.S. affiliate with major inputs for such merchandise. Petitioners claim that even if Ta Chen's {alleged} affiliates dealt directly with other products and commercial activities, they could still have affected the production, pricing, or cost of Ta Chen's SSBWPF due to the fungibility of money and the ability of affiliates to shift revenues, funds, and expenses between and among one another. See petitioners' case brief dated August 10, 2005, at 6 ("case brief"). Furthermore, petitioners emphasize that it was Ta Chen's burden to demonstrate that its relationships with its {alleged} affiliates did not have the potential to affect the pricing or cost of the subject merchandise or foreign like product during the POR. Petitioners cite the statement concerning affiliated parties in the Department's Explanation of the Final Rules that "... where a control relationship exists, the respondent will have to demonstrate that the relationship does not have the potential to affect the subject merchandise or foreign like product." 62 FR 27296, 27298 (May 19, 1997).

Based on the reasons expressed above, petitioners argue that the Department is obligated to make findings as to whether or not Ta Chen was affiliated with a variety of companies during the POR. Specifically, petitioners claim that Ta Chen was affiliated with at least thirty-one companies,

stressing that petitioners, not Ta Chen, first identified these companies as affiliates. Petitioners ask the Department to find that Ta Chen is in fact affiliated with all of these companies, including Emerdex Stainless Flat Roll Products, Inc., ("Emerdex 1"), Emerdex Stainless Steel, Inc. ("Emerdex 2"), Emerdex Group, Inc. ("Emerdex 3"), Emerdex-Shutters ("Emerdex 4"), Dragon Stainless, Inc. ("Dragon"), Millenium Stainless, Inc. ("Millenium"), South Coast Stainless, Inc. ("South Coast"), DNC Metal, Inc., Billion Stainless, Inc. ("Billion"), PFP Taiwan Co., AMS Specialty Steel, Inc. ("AMS California"), AMS Specialty Steel, LLC (AMS North Carolina), AMS Steel Corporation, Stainless Express, Inc. (Stainless Express 1), Stainless Express Products, Inc ("Stainless Express 2"), SouthStar Steel Corporation ("SouthStar"), Estrela Specialty Steel, Inc., Estrela, LLC, TCI Estrela, KSI Steel, Inc., K. Sabert, Inc., Sabert Investments, Inc., Becmen Special Steels, Inc., Becmen Trading International, Inc., LHPJ International Inc., LPJR Investment, NASTA International, and a family trust. Regarding these companies, petitioners claim that Ta Chen failed to identify these companies, improperly denied affiliation, and refused to provide information on the issue of Ta Chen's affiliations and their commercial activities. See case brief at 12.

Petitioners elaborate on the alleged affiliations between Ta Chen, its President Robert Shieh, and several of the companies listed above. Regarding AMS California, petitioners point to Robert Shieh's Redemption Agreement with Barbara Anderson and Raymond Martin of AMS California to argue that Robert Shieh was in a control relationship with AMS California during the POR. According to petitioners, the agreement stated that Mr. Shieh would continue as AMS California's director, chief executive officer, chief financial officer, and secretary until AMS California's line of credit with Preferred Bank in Los Angeles as lender/secured party was satisfied by AMS California as debtor/borrower and therefore terminated. Petitioners emphasize that they provided documentation showing that as of June 23, 2004, AMS California's line of credit remained outstanding, and therefore conclude that Robert Shieh remained in the roles enumerated above as a director and officer in several capacities of AMS California for the entire POR. In addition, petitioners argue that there is no substantial evidence that Robert Shieh divested his shares of AMS California, and ask the Department to conclude that Ta Chen was affiliated with AMS California due to this control relationship. See case brief at 14.

Regarding SouthStar, South Coast, Stainless Express 2, and Billion, petitioners argue that these companies were affiliated with Ta Chen throughout the POR due to shared employees and/or officers. In addition, petitioners claim that there is no evidence that these three companies were inactive or defunct during the POR. See case brief at 15. Regarding Emerdex 1, 2, 3, and 4, petitioners point to the fact that the Department found these companies to be affiliated with Ta Chen in the 2002-2003 review, and urge the Department to reach the same conclusion in the present review due to shared officers and family relationships. See case brief at 16. Regarding Dragon, petitioners claim that the company shared an officer with Ta Chen's U.S. affiliate, Ta Chen International (CA) Corp. ("TCI"), and continued to have a consultancy agreement to manage some of TCI's facilities. See case brief at 17. Finally, regarding LPJR Investment and Millennium, petitioners claim that Ta Chen made conflicting statements as to TCI's dealings with these companies and did not carry its burden to show that any control relationships with

these companies did not have any impact on the production, pricing, or cost of the subject merchandise. Id.

Petitioners ask the Department to reject Ta Chen's assertions that Ta Chen has actively and cooperatively responded with full disclosure to the Department's requests for information on the grounds that Ta Chen did not carry its burden of proof as to any of the companies alleged to be affiliates. In addition, petitioners claim that Ta Chen was related to the companies in question under U.S. GAAP, but failed to report those related parties and transactions with them in Ta Chen's financial statements. As a result, petitioners claim that the Department should have rejected Ta Chen's financial statements as unreliable for the purpose of calculating accurate dumping margins. See case brief at 22-27.

Finally, petitioners ask the Department to assign the highest rate from any segment of this proceeding, 76.20 percent ad valorem, for Ta Chen's SSBWPF as total facts available with adverse inference on the basis that Ta Chen has not cooperated to the best of its ability by not carrying its burden of proof on the issue of affiliations and by failing to provide a reliable set of financial statements. Petitioners claim that Ta Chen's situation in this review cannot be legally distinguished from the U.S. Court of International Trade's ("CIT") decision in Shanghai Taoen Int'l Trading Co., Ltd v. United States, 360 F. Supp. 2d 1339 (CIT, 2005) ("Shanghai Taoen"). See case brief at 31.

Ta Chen argues that petitioners' claims that Ta Chen has not reported alleged affiliates, and that this affects the Department's ability to calculate the dumping margin, are wrong for the following reasons. Ta Chen states that it reported all affiliates involved with the subject merchandise in its September 9, 2004, Section A response, and points out that petitioners do not allege otherwise, but merely speculate that there might be affiliates who are not involved with the production or sale of the subject merchandise. Ta Chen states that it submitted for this review a 28-page discussion of parties that petitioners alleged are affiliates in the prior review period in its supplemental Section A questionnaire response ("SQR A") dated October 26, 2004, at 2-4, Exh. 2B. Ta Chen states that petitioners did not cite a single Department or court case where adverse inferences were imposed where there has been no demonstrated misreporting or omission that affects the data the Department must have to calculate a dumping margin. Further, Ta Chen points out that in the previous review the Department basically rejected these same affiliated party allegations repeated here.

Ta Chen states that its financial statements conform to GAAP, and that petitioners fail to demonstrate any material omission of related party transactions from Ta Chen's audited financial statements. Ta Chen observes that petitioners imply that TCI's relationship with Dragon Stainless affects the financial results of both companies, but Ta Chen states that TCI's payments to Dragon are reflected in the audited financial statement. Ta Chen asserts that the fact that Robert Shieh, the President of Ta Chen and of TCI, is a personal guarantor of a loan to AMS California does not mean that TCI's financial statement is inaccurate, as petitioners claim.

Department's Position

The Department finds that Ta Chen adequately reported the information necessary to determine its affiliations. Section 776(a) of the Act requires that the Department shall use facts otherwise available when necessary information is not on the record, or an interested party withholds requested information, fails to provide information by the appropriate deadline or in the manner requested, significantly impedes the proceeding, or provides unverifiable information. Nippon Steel Corp. v. U.S., 337 F.3d 1373, 1381 (Fed. Cir. 2003) (explaining that only after the Department has determined that necessary information is missing and before making an adverse inference, the Department assesses whether the respondent has acted to the best of its ability). Because Ta Chen adequately responded to the Department's questionnaires and provided the information necessary to determine affiliation, the Department will not resort to facts available. The Department analyzed petitioners' affiliation claims in the Memorandum to Richard O. Weible dated June 30, 2005, from Helen M. Kramer and Kristin Najdi, Case Analysts, on Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Petitioners' Allegations Regarding Ta Chen Affiliations ("Affiliations Memorandum") and in the Preliminary Results. We find petitioners' contention that Ta Chen has failed to meet its burden to demonstrate that the alleged relationships do not have the potential to affect the production or sale of the subject merchandise or the foreign like product is unsupported, because Ta Chen has demonstrated on the record of this proceeding that it does not control these companies. The Department further finds that those companies that were not involved in the sale, purchase, and manufacturing of the subject merchandise have no bearing on this review.

Section 771(33) of the Tariff Act of 1930, as amended ("the Act"), states that the Department considers the following as affiliated:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;
(B) Any officer or director of an organization and such organization;
(C) Partners;
(D) Employer and employee;
(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;
(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and
(G) Any person who controls any other person and such other person.

For purposes of affiliation, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents. Further, pursuant to the definition of "affiliated persons; affiliated parties" at 19 CFR 351.102(b), the Department "will not find that control exists on the basis of these factors unless the relationship

has the potential to impact decisions concerning the production, pricing, or cost of the *subject merchandise or foreign like product*." (emphasis added). In addition, temporary circumstances will not suffice as evidence of control.

Petitioners incorrectly allege that it is Ta Chen's burden of proof to disprove affiliation and, as it did not meet this burden of proof, the Department was obligated to apply adverse facts available. In its ruling in TIJID, Inc. v. United States, 366 F. Supp. 2d 1286, 1293 (CIT 2005) ("TIJID"), the CIT stated:

> In Mitsubishi Heavy Industries, Ltd. v. United States, 23 CIT 326, 54 F. Supp. 2d 1183, 1192 (CIT 1999), the court set forth the legal standard applicable under section 771(33)(F). The court held that two elements must be satisfied for affiliation to exist. First, two parties must be legally or operationally in a position to exercise restraint or direction over a third party. Second, the relationship with the third party must have the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.

In addition, the court ruled that "{i}n order for the Department to find that affiliation exists, the party alleging affiliation must successfully demonstrate that both elements have been fulfilled." Id. In TIJID, the court upheld the Department's finding that the parties were not affiliated because the party alleging affiliation, TIJID, "failed to demonstrate that the Hong Kong companies were involved in sales of the subject merchandise." Id. at 1295. Similarly, in this review the parties alleging affiliation, petitioners, have failed to demonstrate that these companies were involved with the subject merchandise.

Petitioners have raised the same arguments and inferences regarding alleged unreported affiliations that the Department considered and dismissed in the preceding review period. Petitioners' premises are first, that if Ta Chen does not report as affiliates companies that are unrelated to Ta Chen under Taiwanese GAAP and that Ta Chen contends it did not control during the POR, then Ta Chen is failing to cooperate to the best of its ability, and second, that because Ta Chen's audited financial statements do not report transactions with the allegedly affiliated companies, they do not conform to U.S. GAAP, and the Department should not rely upon them.

Petitioners' case brief relies heavily on Ta Chen's past stockholdings and directorships in AMS California. In SQR A, at 5, Ta Chen stated:

> ... Ta Chen requested and was provided period of review ("POR") financial statements ... from all companies with whom it has had some dealings in the POR (i.e., companies which had some activity during the POR). .... Ta Chen understands the *(sic)* some companies have been inactive, closed, or bankrupt (Stainless Express, Billion, Estrela, South Coast and South Star, as indicated on Exhibit 4A). Thus, Ta Chen found no financial statements available from these

> companies. AMS was not willing to provide financial statements, as it is not a party to this review, did not deal with Ta Chen relating to the subject merchandise, and Ta Chen did not have the control necessary over AMS to compel the statements from AMS.

In their Deficiency Comments dated December 21, 2004, at Enclosure 3, petitioners placed on the record of this review a facsimile message to TCI from Barbara Anderson, President of AMS North Carolina, dated May 10, 2004, from Ta Chen's May 11, 2004, submission in the prior POR, in which she refused TCI's request for financial statements on the grounds that AMS California/North Carolina is privately-held. Petitioners' Deficiency Comments also included Ta Chen's June 21, 2004, submission that included a chronology relating to the ownership of AMS at Exh. 1, in which in a facsimile dated June 18, 2004, Barbara Anderson stated (at 2):

> As previously stated, from 12/13/02 to the present, Ta Chen Holdings (B.V.I.) Ltd., nor any of its related or subsidiary companies, nor Robert Shieh, have had any ownership in or involvement in the activities of AMS Specialty Steel Inc., and have never had any ownership or involvement in the activities of AMS Specialty Steel LLC.
>
> Furthermore, AMS Specialty Steel has never engaged in the import and sale of buttweld pipe fittings or related products of any grade. Furthermore, AMS Specialty Steel is not, and was not ever involved in stainless steel coil or pipe, inputs to make buttweld pipe fittings.

Page 3 of the chronology states that on December 12, 2002, "AMS Specialty Steel redeems all 38,250 shares to obtain 100% ownership of the company."

In SQR A, at 11, Ta Chen denied that there was any ownership interest between AMS California and Ta Chen during this POR, stating:

> As established in prior reviews, the interest of Robert Shieh, President of Ta Chen, was divested from AMS before the POR. Neither Mr. Shieh, Ta Chen, Ta Chen BVI, nor TCI held any ownership interest in AMS during the POR.

Ta Chen further stated:

> As noted in prior reviews, the following individuals resigned the below positions: (a) James Chang, as a director of AMS; and (b) Dennis Chang, as a director at AMS. In addition, Robert Shieh withdrew financial support of this company before the POR. Ta Chen informed AMS of these resignations and withdrawals. It is up to AMS to update its records. Id. at 12.

This evidence establishes that neither Robert Shieh nor Ta Chen was a shareholder in AMS during the POR. The Department finds that if Ta Chen did not have AMS's financial statements, and neither Ta Chen nor its President, Robert Shieh, was able to compel AMS to provide a copy of them for release to the Department, then neither Ta Chen nor Robert Shieh controlled AMS during the prior POR. Most importantly, the Department finds that there were no sales of subject merchandise to this company during the POR, nor any evidence that this company supplied any inputs of production for subject merchandise. Accordingly, none of the affiliation criteria apply to Ta Chen and AMS California during this POR. With regard to affiliation criteria (F) and (G), there is no evidence that any relationship alleged by the petitioners has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise. Consistent with section 351.102(b) of the Department's regulations, the Department need not make a finding of control. Nonetheless, neither Ta Chen nor Robert Shieh can be found to have had control over these companies during this POR, and the statutory requirement under section 771(33)(F) or (G) of the Act is not met. Moreover, Robert Shieh was not legally or operationally in a position to exercise restraint or direction over AMS California even by virtue of his position as guarantor of AMS California's line of credit.

Petitioners attempt to establish the relevance of AMS California to this review by pointing to its inclusion in TCI's list of customers and vendors. However, there were no sales of subject merchandise to this company during the POR, nor any evidence that this company supplied any inputs of production for subject merchandise. Ta Chen explained in its Supplemental Questionnaire Response A-C dated March 1, 2005, at 8 ("SQR A-C"), that "TCI's customer list is of all TCI sells to (sic), past or present; there will be customers on the list who did not buy from TCI over the past 12 months." Further, none of the other AMS corporate entities based in North Carolina had any transactions with Ta Chen or TCI during the POR. It follows that none of the corporate and personal filaments running from AMS California to the companies and individuals involved in AMS North Carolina has any bearing on this review.

Petitioners also argue that Ta Chen and Emerdex 1 are affiliated parties because Robert Shieh, President of Ta Chen, is the brother of Jung Yao Hsieh, Secretary and Director of Emerdex 1, and TCI had the ability to monitor Emerdex 1's computer records during part of the current POR. Petitioners claim that this gave Ta Chen the ability to restrain or direct the activities of both Ta Chen and Emerdex 1 during the POR, and urge the Department to find that they are affiliated. However, Ta Chen denies that it controlled Emerdex 1 and reported that TCI sold only non-subject merchandise to Emerdex 1. Ta Chen explained that it monitored Emerdex 1's inventory, accounts receivable and finances to ensure payment of its invoices by Emerdex. See Affiliations Memorandum at 4. None of the Emerdex entities was either a purchaser of the subject merchandise or a supplier of major inputs for its production during the current POR. See SQR A-C at 10 and Exh. 10. Consequently, unlike the previous review period, when the Department determined that Ta Chen was affiliated to Emerdex 1 on the basis of a sale of subject merchandise, there is no indication during this POR that this relationship had the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. Petitioners rely solely on the fungibility of money in their claim that Ta

Chen's alleged control of Emerdex 1 had such potential. Petitioners have failed to point to any evidence that these companies are affiliated to Ta Chen.

Further, we find no evidence that the business activities of the companies petitioners allege are affiliated to Ta Chen, including several companies that are dissolved or commercially inactive, are related to the production or sale of the subject merchandise or the foreign like product. Ta Chen reported that it had no business transactions during this POR with most of the companies named by petitioners, as discussed in the Affiliations Memorandum. Consequently, these companies have no bearing on the Department's ability to calculate an accurate dumping margin, and there is no reason to reject Ta Chen's responses and resort to facts available with adverse inference, as argued by petitioners. Further, we find unwarranted petitioners' claim that Ta Chen has refused to provide information on its affiliation with NASTA International, the truck parts division of TCI. Ta Chen identified TCI as "a.k.a. ... d/b/a NASTA International, also d/b/a Sunland Shutters" in SQR A, Exhibit 2-B at 1. In standard commercial terminology, a.k.a. is the acronym for "also known as," and d/b/a is the acronym for "doing business as." Thus, these are divisions of TCI whose activities are encompassed in TCI's audited financial statements. There is no need, therefore, for the Department to consider whether these are affiliated parties because they are divisions of TCI.

Petitioners' claim that Shanghai Taoen is relevant to this issue is misdirected. In that case, the court noted that the Department applies total adverse facts available where missing "information is core, not tangential and there is little room for substitution of partial facts." Shanghai Taoen, F. Supp. 2d at 1348 n. 13. The court upheld the Department's application of total facts available with an adverse inference based upon the Department's determination that Taoen withheld information throughout the administrative review concerning the producers of its exports of crawfish tail meat, and that Taoen's explanations of the discrepancies between its questionnaire responses and U.S. Customs entry documents were not credible. Taoen's failure to report factors of production for one of its suppliers directly affected the Department's ability to calculate an accurate dumping margin. There is nothing comparable to these circumstances in the review of Ta Chen, where even if the Department found the companies cited by petitioners to be affiliated with Ta Chen, there would be no change in the dumping margin because these companies were not involved in the production or sale of the subject merchandise and few had any business transactions with Ta Chen during the POR.

Petitioners' argument that the Department should have rejected Ta Chen's financial statements as unreliable because they did not report related parties as required by U.S. GAAP is not supported by the statute. The statute instructs the Department to rely on a respondent's normal books and records kept in accordance with the home country GAAP, where such records reasonably reflect the costs associated with production and sale of subject merchandise. See section 773 (f)(1)(A) of the Act. Ta Chen provided its financial statements in its Section A response at Exh. 11, in which the auditors' report states that the financial statements are in conformity with "accounting principles generally accepted in the Republic of China." Section A Response, at A-164. Thus, in this case, the Department relied on Ta Chen's normal books and records kept in accordance with

Taiwanese GAAP, not U.S. GAAP, as alleged by petitioners. We note that petitioners do not claim that Ta Chen's financial statements are inconsistent with Taiwanese GAAP. We note also that the Department's affiliation definition is not entirely consistent with U.S. or Taiwanese GAAP definitions of related parties. Therefore, even if the Department found any of the companies petitioners allege are controlled by Ta Chen to be affiliated based upon section 771(33) of the Act, it does not necessarily mean that such an affiliation should be reported in Ta Chen's financial statements. Petitioners have not presented a compelling argument as to why Ta Chen's normal books and records are an insufficient basis from which to calculate the dumping margin. Finally, the Department's own research and analysis have revealed no basis to question the validity of Ta Chen's financial statements. With respect to Ta Chen's U.S. affiliate, TCI, we note that TCI provided an independent auditors' report stating that the financial statements are in conformity with "accounting principles generally accepted in the United States of America." See Section A Response, at A-196.

Comment 2. CEP Offset

Petitioners argue that Ta Chen has failed to meet its burden to establish its entitlement to a constructed export price (CEP) offset and that the Department should deny Ta Chen's claim for such an adjustment in the final results. Petitioners claim that Ta Chen improperly relied on services that are not actually performed in the home market at the allegedly different level of trade (LOT). Petitioners also argue that Ta Chen has not demonstrated that it performed more selling functions in the home market as compared to the U.S. market, and has failed to show that its home market sales were made at a more advanced LOT than its U.S. sales.

Petitioners note that the only services provided by Ta Chen to its home market customers that would be considered in the LOT analysis are the loading of fittings onto customers' trucks, assumption of credit risk, inventory maintenance, and certain tasks for which indirect selling expenses (ISE) were incurred, i.e., negotiating prices and payment terms, accepting orders, scheduling production, preparation of shipping and invoice documents, and customer entertainment. Petitioners claim that Ta Chen provided the following services for U.S. sales: inland freight to the port of exportation, inland insurance, Taiwanese brokerage, containerization and handling expenses, Taiwan harbor construction tax, marine insurance, ISE incurred for U.S. sales, inventory carrying costs (ICC) incurred in Taiwan, assumption of credit risk with TCI, bank charges, packing expenses, ocean freight and payment of U.S. customs duties.

Further, petitioners note that Ta Chen admitted that it did not provide after-sales services to its home market customers during the POR, as it initially claimed. Petitioners argue that because Ta Chen failed to report and quantify research and development (R&D) and technical service expenses, the Department should not consider these in its LOT analysis, citing Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review, 66 FR 14,887 (Mar. 14, 2001), and accompanying Issues and Decision Memorandum at Comment 3; and Certain Cold-Rolled Carbon Steel Flat Products from Turkey: Notice of Preliminary Determination of Sales at Less Than Fair Value, 67 FR 31,264, 31,267 (May 9, 2002).

Petitioners also allege that Ta Chen's claimed difference in the inventory holding period for home market and U.S. sales is not supported by the reported calculation of ICC.

Ta Chen argues that it undertakes fewer selling functions for sales to TCI than for its home market customers. Ta Chen explains that its home market sales involve more selling effort because it has seven customers, who are distributors or end-users, while it sells to only one customer in the United States, as TCI is a master distributor. Ta Chen claims that more effort per dollar of sales is required in the home market, as the volume of individual U.S. shipments of subject merchandise is about ten times the volume of individual sales in the home market. Ta Chen argues that it quantified travel, entertainment, and advertising expenses for its home market sales in its Sections B and C response dated October 7, 2004, at B-055 and B-057, and invoice processing costs for U.S. sales at C-258, and that these exhibits show that its selling costs for home market sales are almost three times its selling costs to TCI as a percentage of sales value. Ta Chen also argues that it provides just-in-time inventory service only to its home market customers, as this function is performed in the United States by TCI. Ta Chen claims that it provides technical services to home market customers that are not provided to TCI, and that the employee expenses for these services are included in the salary expense reported as part of the cost of production. Ta Chen also argues that it incurs sellers' risk on home market sales, but not on U.S. sales. Finally, Ta Chen claims that petitioners erroneously confused movement expenses and packing costs with selling functions associated with differences in LOT.

Department's Position

We have reexamined the record and our LOT analysis in the Preliminary Results and continue to agree with Ta Chen that its home market sales are made at a more advanced LOT than sales to TCI. Section 773(a)(7)(A) of the Act provides that differences in LOTs for which adjustments may be made involve the performance of different selling activities and a demonstrated effect on price comparability. Under special circumstances as described at 19 CFR 351.412(f), the Department may make a CEP offset using indirect selling expenses in the home market. The offset can only be applied where the respondent has succeeded in establishing that there is a difference in LOT between the CEP sales and the home market sales, NV is determined at a more advanced LOT than the CEP LOT, but the available data do not permit a determination on whether the difference affects price comparability, although the respondent has cooperated to the best of its ability.

In its antidumping questionnaire issued to Ta Chen on August 4, 2004, the Department explained at page 7 that "selling activities or services might include inventory maintenance, technical advice, warranty services, freight and delivery arrangements, advertising, and any other sales support activities." Ta Chen reported that its selling functions for home market sales included receiving customer inquiries, entertaining customers, negotiating prices and payment terms, issuing pro forma invoices, shipping on a just-in-time basis from inventory, scheduling customer pickups of merchandise at the factory in their own trucks, assuming credit risk of non-payment, and providing technical assistance (i.e., providing advice on product characteristics and customer needs, testing performance characteristics, reviewing customer complaints, and visiting

customers). Further, Ta Chen explained in its supplemental response dated March 1, 2005, at 4, that two employees worked exclusively on home market sales of SSBWPF. However, Ta Chen admitted (id. at 2) that it incurred no warranty expenses and did not provide after-sales service to its home market customers for SSBWPF during the POR. Also, Ta Chen reported a small amount of R&D as part of general and administrative expenses (id. at 4).

For U.S. sales made through its affiliate, TCI, Ta Chen reported that its selling activities consisted of accepting orders, scheduling production, and making arrangements for inland freight to the port, brokerage, containerization and Taiwan customs clearance. Ta Chen explained that it does not ship to TCI on a just-in-time basis, and that several months elapse between TCI's order and Ta Chen's shipment. Ta Chen further explained that TCI handles all the remaining selling functions for U.S. sales, including inventory maintenance and assumption of credit risk. Ta Chen reported that it does not have any sales personnel exclusively devoted to U.S. sales of SSBWPF because these products account for a very small percentage of total U.S. sales.

The record shows that Ta Chen engages in a medium level of selling activities for home market sales and a low level of selling activities for U.S. sales. In addition, inventory maintenance is at a higher level for home market sales than for U.S. sales, and Ta Chen assumes credit risk only for its home market sales. Ta Chen is correct that actual movement expenses are not meaningful in a LOT analysis. However, the Department does consider the intensity of effort related to making freight and delivery *arrangements*. In this regard, Ta Chen's level of activity is higher for U.S. sales than for home market sales. We conclude that the LOT of home market sales is different than the LOT for Ta Chen's CEP sales, and that on balance the LOT is more advanced in the home market. However, because there is only one LOT in the home market, the Department is unable to quantify the effect of the difference in LOT on prices. Therefore, for these final results, we are continuing to grant Ta Chen a CEP offset.

Comment 3. Date of Sale

Petitioners argue that Ta Chen incorrectly reported the invoice date as the date of sale in both markets, and that the essential terms of sale are agreed upon at the time of order confirmation because there are no subsequent changes except for clerical errors. Petitioners urge the Department to find that Ta Chen did not report the full universe of sales based upon the date of order confirmation.

Ta Chen points out that petitioners have made the same argument in the last ten annual reviews, and that the Department has rejected it every time. Ta Chen notes that if the Department switched between invoice date and purchase order (confirmation) date as the date of sale from one review to the next, then sales would be missed between reviews. Ta Chen argues that even if changes are rare, the terms of sale can change between order confirmation date and the invoice date. Ta Chen also points out that for the vast majority of U.S. sales there are only a few days between order date and invoice date, and it would not make much difference which date was used.

Department's Position

We disagree with petitioners' claim that Ta Chen incorrectly reported its date of sale. On page I-5 of the Department's August 4, 2004, questionnaire, the Department states: "the Department will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Department may use a date other than the date of invoice (e.g., the date of contract in the case of a long-term contract) if satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (e.g., price, quantity). (Section 351.401(i) of the regulations)."

Further, the Preamble to the Department's regulations clearly states that "we have continued to provide for the use of a uniform date of sale, which normally will be the date of invoice." See Preamble, 62 FR 27349. Moreover, the Preamble further states that "absent satisfactory evidence that the terms of sale were finally established on a different date, the Department will presume that the date of sale is the date of invoice." Id.

The Department has determined that, from the record evidence of this review, price or quantity may change between purchase order date and date of shipment. Ta Chen reported in its Section A Questionnaire Response, dated September 9, 2004, at 12, that price can change because of a misunderstanding or key punch error, and that quantity can change when Ta Chen does not have enough stock to fill an order. Ta Chen stated that it treated the invoice date as the date of sale and that it has taken the same approach in all prior reviews, with the Department's acceptance and verification. Ta Chen stated: "By consistently reporting sales on this basis from one review to the next, it is also insured that all sales are reported that should be." Id.

Therefore, despite the fact that the terms of sale are initially recognized in the order confirmation document, the invoice date is the most appropriate date to report as the date of sale because it reflects the final quantity and value of the subject merchandise eventually shipped to the United States. Furthermore, the Department's finding is consistent with the previous reviews regarding use of the invoice date as the date of sale. The Department does not find that the record contains sufficient evidence to compel a rejection of the regulatory presumption in favor of invoice date as the date of sale. For this review, the Department has not received documentary evidence from petitioners or Ta Chen supporting a change in the Department's finding that use of the invoice date as the date of sale is appropriate and correct regarding the date that material terms of sale were finally set. Therefore, as in the previous reviews, the Department will continue to use the date of invoice as the date of sale.

Comment 4. U.S. Inventory Carrying Costs

Petitioners argue that Ta Chen incorrectly excluded indent sales (i.e., U.S. sales shipped by Ta Chen directly to the first unaffiliated U.S. customer) from its ICC calculation. Although petitioners concede that indent sales do not physically enter into TCI's inventory, they argue that Ta Chen included the value of indent sales in TCI's cost of goods sold (COGS) to calculate the average number of days in inventory. Petitioners conclude: "Thus, given the methodology

chosen by Ta Chen to calculate its U.S. inventory – by relying on the inventory and costs for both indent and stock sales – inventory carrying costs should be reported for both the indent and stock sales. By limiting the reporting of U.S. inventory carrying costs to only stock sales, Ta Chen has understated its overall costs of holding inventory."

Ta Chen points out that it reported U.S. ICC based on inventory sold from TCI's warehouses and the COGS from such warehouses, citing its October 7, 2004, Section C response at 44 and Exhibit C-5 at C-238, and Exhibit 23 of Ta Chen's March 1, 2005, supplemental response, showing that indent sales were excluded.

Department's Position

We disagree with petitioners. In Exhibit 23 of Ta Chen's March 1, 2005, supplemental response cited by petitioners in footnote 78, Ta Chen clearly used only the COGS for butt-weld fittings excluding indent sales (column D) to calculate the average number of days in inventory.

Comment 5. Repacking Expenses

Petitioners point out that the Department failed to deduct TCI's U.S. repacking expenses as a direct selling expense incurred by Ta Chen on its U.S. sales. Petitioners cite the Department's Antidumping Manual, chapter 7, at 17-18, as stating that these expenses should be deducted from the CEP starting price as a direct selling expense.

Ta Chen did not comment on this issue.

Department's Position

We agree with petitioners. For the final results, we have included the expenses reported in the field REPACKU in the calculation of U.S. direct selling expenses.

Comment 6. Bonuses and Cost of Production

Petitioners argue that Ta Chen did not include the cost of certain employee and manager bonuses in the reported cost of production. Petitioners note that GAAP in Taiwan allow Ta Chen to deduct employee and manager bonuses directly from retained earnings, rather than reporting them as an expense on the income statement. Petitioners also note that the Department has previously found that Taiwanese GAAP is distortive in this instance, and that such employee and manager bonuses are a reportable cost of production. Petitioners cite the February 8, 2005, supplemental questionnaire response in which petitioners claim that Ta Chen did not respond to inquiries from the Department as to whether the bonuses were reported in the Section D response. Given petitioners' claim of unresponsiveness on the part of Ta Chen, petitioners argue that the Department should increase Ta Chen's reported general and administrative ("G&A") expenses by the amount of the bonuses.

Ta Chen cites to various record evidence in the original October 7, 2004, Section A-D questionnaire response indicating that Ta Chen did report the bonuses in the cost of production.

Department's Position

We agree with Ta Chen that the employee and manager bonuses were included in Ta Chen's G&A expense ratio, as reported. (See October 7, 2004, Section D response at D-37.) While we agree with petitioners' position that these employee and manager bonuses should be included in the cost of production, the record clearly demonstrates that Ta Chen has already done so. Thus, petitioners' proposed correction of further increasing the reported G&A expenses by the amount of the bonuses would result in improperly double-counting the bonuses. Therefore, we continued to rely on Ta Chen's G&A expense ratio as reported for the final results.

Issues Relating to Tru-Flow

Comment 7. Sales By Other Companies of Fittings Produced by Tru-Flow

Petitioners argue that Tru-Flow falsely certified that it had no sales or shipments of subject merchandise to the United States during this POR, falsely denied that it knew that its subject merchandise was sold in the United States by another Taiwanese exporter, and failed to cooperate to the best of its ability by not responding to the Department's Section A questionnaire. Petitioners urge the Department to apply facts available with an adverse inference to sales of Tru-Flow's subject merchandise sold by other Taiwanese exporters by ascribing to Tru-Flow the knowledge that its sales of finished subject fittings were destined for the United States. Petitioners claim that the falsity of Tru-Flow's denials of its affiliation with its sales agent, Censor International Corporation ("Censor"), is decisively documented and demonstrated. Petitioners conclude that the Department should not give any credibility to Tru-Flow's claims not to have known that its other outright (not tolled) sales of subject merchandise were destined for the United States, and that the Department should assign a dumping margin of 152.40 percent to such sales (reflecting the Department's preliminary finding of reimbursement and doubling of Tru-Flow's margin). Petitioners urge the Department to apply this margin to sales made by Ta Chen that were identified as manufactured by Tru-Flow.

Ta Chen counters that its unaffiliated suppliers (including Tru-Flow) do not know where Ta Chen sold the fittings they supplied, citing evidence on the record (Section A response dated September 9, 2004, at 19; Section B response dated October 7, 2004, at 34; SQR A at 6 and Exh. 10C; SQR B-D dated April 27, 2005, at 7 and Exh. D; Ta Chen April 20, 2005, submission at 1; and Tru-Flow submissions of March 23 and 30, 2005). Ta Chen points out that the extent to which it has subcontracted (tolled) or purchased fittings from other producers has not changed since the original investigation or the subsequent ten annual reviews, and that it has reported its sales of these fittings in the same way in all previous segments of this proceeding. Ta Chen observes that in all cases its dumping margin has been assigned to Ta Chen's sales of fittings purchased from Tru-Flow. Finally, Ta Chen observes that petitioners' claims, even if valid, are not significant

inasmuch as only 0.14 percent of Ta Chen's U.S. sales of subject merchandise involved fittings produced by Tru-Flow.

Department's Position

We disagree with petitioners' argument that Tru-Flow's failure to respond to the Department's requests for further information that would clarify its relationship to Censor has impeded the Department's ability to calculate a dumping margin in this review, such that the Department should invoke adverse inferences to impute knowledge to Tru-Flow that its sales of fittings to Ta Chen were destined for the United States. The exhibits on the record of this review illustrating the purchase orders, invoices and mill certificates issued for Ta Chen's purchases of certain types and sizes of fittings from other producers show that the documents do not include any identification of the ultimate destination of the fittings. Therefore, there is record evidence that Tru-Flow would not have known whether the fittings would be sold domestically, exported to the United States, or exported to a third country.

The Department's practice with regard to resellers is clearly established. In its clarification on the automatic liquidation regulation where a reseller has been involved in the chain of commerce, the Department stated:

> If, in the course of an administrative review, the Department determines that the producer knew, or should have known, that the merchandise it sold to the reseller was destined for the United States, the reseller's merchandise will be liquidated at the producer's assessment rate which the Department calculates for the producer in the review. If, on the other hand, the Department determines in the administrative review that the producer did not know that the merchandise it sold to the reseller was destined for the United States, the reseller's merchandise will not be liquidated at the assessment rate the Department determines for the producer or automatically at the rate required as a deposit at the time of entry.

See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003). Further, in Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and Singapore: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not To Revoke Order in Part, 68 FR 35623 (June 16, 2003), and the accompanying Issues and Decision Memorandum at Comment 29, the Department stated in its position regarding resellers:

> ... the first party in the chain of distribution with knowledge that its sales of subject merchandise are made for exportation to the United States, either directly to a U.S. purchaser or through a reseller, is the appropriate party subject to administrative review. Therefore, our practice is to focus on the first party in the chain of distribution with knowledge of the U.S. destination.

Accordingly, for these final results we have continued our consistent practice since the original less-than-fair-value investigation of including the fittings purchased outright from other producers in Ta Chen's sales for purposes of calculating a dumping margin. Furthermore, Ta Chen purchased fittings outright from more than one producer, and Tru-Flow was not identified as the sole source for a single product or sale in either market. Thus, even if it were justified, there is no feasible way of satisfying petitioners' demand that a separate dumping margin be applied to Ta Chen's sales of fittings produced by Tru-Flow.

Ta Chen has fully cooperated with the Department throughout this review, having responded timely to the Department's original questionnaire and four supplemental questionnaires. Conseqently, there is no rationale for resorting to facts available with adverse inference with respect to Ta Chen's sales.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of the review and the final weighted-average dumping margin for Ta Chen in the Federal Register.

AGREE _____ DISAGREE _____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date