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MEMORANDUM FOR: David M. Spooner
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, 2004, through May 31, 2005. As a result of our analysis, we have made only one minor correction to the margin calculation for the reasons discussed below. This correction did not affect the margin. 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:

1. Reliability of Ta Chen's Financial Statements
2. CEP Offset
3. CEP Profit Calculation
4. Calculation of Margin on Weight Basis
5. Alleged Calculation Errors

Background

On July 13, 2006, 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"), 71 FR 39663 (July 13, 2006). The period of review ("POR") is June 1, 2004, through May 31, 2005.

This review covers sales of certain SSBWPF made by one manufacturer/exporter, Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), and its U.S. affiliate, Ta Chen International (CA) Corp. ("TCI"). We invited parties to comment on our preliminary results. We received case briefs

from Markovitz Enterprises, Inc. (Flowline Division), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc., (collectively, "petitioners") and Ta Chen on August 14, 2006. We received rebuttal briefs from petitioners and Ta Chen on August 21, 2006.

Discussion of the Issues

Comment 1. Reliability of Ta Chen's Financial Statements

Petitioners argue that Ta Chen has not been a cooperative respondent acting to the best of its ability, and that adverse facts available should be used to calculate the dumping margin. First, petitioners claim that Ta Chen has not provided accurate and reliable financial statements for TCI and Ta Chen (i.e., the consolidated Taiwanese parent company) because TCI did not abide by the U.S. generally accepted accounting principles' ("GAAP") disclosure requirements for related parties and significant related party transactions. Second, petitioners allege that Ta Chen failed to report all affiliated persons to the Department pursuant to section 771(3) of the Tariff Act of 1930, as amended ("the Act"), and has not shown that each control relationship did not have the potential to affect the production, pricing, or cost of the subject merchandise or the foreign like product. In addition, petitioners claim that because the parties had filed numerous comments on these issues prior to the preliminary results, the Department had an obligation, under section 777(i)(1) of the Act, to provide a legal rationale for its decision in the preliminary results that adverse facts available should not be applied to Ta Chen. Petitioners also state that a decision made by the U.S. Court of International Trade ("CIT"), Marine Harvest (Chile) S.A. v. United States, 224 F. Supp. 2d 1364, 1375 (CIT 2002) ("Marine Harvest"), supports their position that the Department had an obligation to articulate its rationale for its decision in the preliminary results. Specifically, petitioners cite the following excerpt from the CIT's opinion:

> This Court has always recognized that the "{p}reliminary results are presumably less reliable than final results of investigations or administrative reviews." China Nat'l Arts and Crafts Imp. and Exp. Corp. v. United States, 15 CIT 417, 422, 771 F. Supp. 407, 412 (1991). The rationale is that "{p}reliminary results are reviewed and commented upon by interested parties before becoming final." Id. (citations omitted). "Hearings are held, if requested." Id. Commerce "uses the time between preliminary and final determinations to correct and adjust its preliminary findings and reach more accurate conclusions in the final determination." Id. (citation omitted).

Petitioners argue that although the general issue of related parties and affiliated persons has been raised in other segments of this proceeding, as a result of additional events, the record in the current segment is further developed. Petitioners cite Hot-Rolled Carbon Flat-Rolled Carbon-Quality Steel Products from Japan, 67 FR 2408 (January 17, 2002) and Issues and Decision Memorandum at Comment 10 to support their claim that the Department must issue its decision based on the record developed in each segment.

Petitioners contend that under Statement of Financial Accounting Standards number 57 ("SFAS

57") a company is required to disclose in its financial statements all material related party transactions, as well as all related parties, regardless of whether there have been any related party transactions. They claim that Ta Chen has not abided by these requirements in TCI's financial statements. Petitioners cite the Accountants' Handbook,[1] which defines related parties as individuals or companies with the ability to influence the financial transactions of each other. Petitioners allege that the purpose of requiring full disclosure of related parties is to allow the readers of financial statements to consider the actual or potential effects of each relationship on the reporting entity. Petitioners contend that in previous submissions Ta Chen has wrongly claimed that related party disclosures are confined only to instances where investors would benefit from knowing about the relationship, and that Ta Chen had incorrectly excluded personal investments by major shareholders and their immediate families that transact business with the company from its definition of related parties.

In addition, petitioners argue that neither TCI's auditors' report nor any subsequent communications by the company's outside auditors provide proof that TCI's financial statements are accurate or complete. Petitioners allege that a company's financial statements are the responsibility of the company's management, and that the auditors' opinion is based upon representations made by the company's management to their auditors. Petitioners contend that if the company provides incorrect or incomplete information to the auditors, the auditors have no reason to question the information. Petitioners assert that if Ta Chen had expanded its definition of a related party then the financial statements would not be wrong, and the auditors' opinion as to the companies that should be disclosed would have been more complete.

Petitioners refer to earlier submissions that detail its related party allegations and highlight the following:

1) In support of their claim that TCI and AMS Specialty Steel ("AMS California") were related during the POR, petitioners cite proprietary information regarding past assistance provided to AMS California. Petitioners allege that this assistance was also provided during the POR. Petitioners contend that Robert Shieh maintained executive roles with AMS California as well as Ta Chen, and that because of this and the alleged assistance, the parties were related during the POR. Petitioners maintain that because of this relationship Ta Chen is also related to 15 other companies through AMS California, and that the alleged assistance is a significant related party transaction.

2) Petitioners claim that TCI is related to Dragon Stainless, Inc., Millennium Stainless, Inc., and South Coast Stainless, Inc. due to shared management in the person of Kenneth Mayes, the principal figure in these companies. Petitioners claim that

[1] Accountants Handbook, Volume One: Financial Accounting and General Topics, D.R. Carmichael, Steven B. Lilien, and Martin Mellman, Ninth Ed., 1999, ("Accountants Handbook") Chapter 6, Financial Statements: Form and Content, at 6.8(a)(ii).

> publicly available corporate records show that during the period of review Kenneth Mayes, in addition to having management roles in these companies, was also listed as a vice president of TCI. In addition, petitioners allege that Ta Chen was required to disclose, but did not disclose, TCI's consultancy agreement with Mr. Mayes and other dealings TCI had with Dragon Stainless, Inc. during the POR.

Petitioners argue that Ta Chen has not met its obligation under section 771(3) of the Act to identify and fully report Ta Chen's affiliated persons and their involvement with the subject merchandise. Further, petitioners argue that under the Preamble of the Department's regulations, Ta Chen was required to report all affiliated persons, regardless of whether the affiliate had anything to do with the production, pricing, or cost of the merchandise under consideration, and that Ta Chen also had the burden of showing that a control relationship did not have the potential to affect the subject merchandise or foreign like products. Petitioners contend that Ta Chen must first identify as affiliates all persons where a control relationship is present, and then demonstrate that this control relationship did not have the potential to affect the subject merchandise or foreign like product. Petitioners assert that Ta Chen did not identify 37 affiliated companies that were discussed in detail in petitioners' comments dated October 11, 2005, October 12, 2005, November 12, 2005, November 22, 2005, December 12, 2005, January 18, 2005, April 10, 2006, and June 14, 2006. Petitioners identify companies they claim are affiliated with Ta Chen for various reasons, including shared family members (Emerdex Stainless Flat Roll Products, Emerdex Stainless Steel, Inc., Emerdex Group., Emerdex-Shutters, DNC Metal, Billion Stainless, PFP Taiwan, LPJR Investment, a family trust, Ta Chen Enterprises, and G.M.T.S International Co., Ltd.), shared officers and directors (Dragon Stainless, Millennium Stainless, South Coast Stainless, J.K. Industries W.H., Inc., AMS California, Southstar Steel Corp., Nirosteel, LLC, SouthStar Real Estate L.L.C., Estrela Specialty Steel, Inc., Estrela LLC, TCI Estrela International, Estrela International Corporation, Estrela International, Inc., Becmen, LLC, Becmen Specialty Steel, Inc., Becmen Trading International, KSI Steel, Inc., K. Sabert, Inc., Sabert Investments, and LHPJ International), employer or employee relationships (Stainless Express Products, Inc.), through direct or indirect stock ownership, or both, (AMS Specialty Steel, LLC, and QDII and QFII), and for other non-categorized reasons (AMS Steel Corporation, and NASTA International). Petitioners assert that by not disclosing these affiliated persons, Ta Chen has also avoided demonstrating that these companies did not affect, or have the potential to affect, the production, pricing, or cost of the subject merchandise. Therefore, petitioners argue that the Department was unable to assess the impact of these alleged affiliations on Ta Chen's reported U.S. sales, home market sales, and costs.

Based on the reasons discussed above, petitioners conclude that Ta Chen has failed to cooperate to its best ability with the Department, and therefore, as adverse facts available, Ta Chen should be assigned as a dumping margin the highest rate from any segment of this proceeding, which is 76.20 percent. Petitioners contend that without the full and timely reporting of the respondent's affiliations, adjustments relevant to the dumping analysis could not be addressed, such as special rules for major inputs, adjustments for differences in merchandise, identification of the proper body of sales for purposes of normal value, confirmation of all U.S. sales to the first unaffiliated buyers, and adjustments to U.S. price for direct and indirect selling expenses. Petitioners cite

Reiner Brach BmbH & Co. v. United States, 206 F. Supp. 2d 1323, 1333 (CIT) and Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003), as supporting their allegation that it is the interested party's obligation to create an accurate record and do the maximum it is able to do to provide the Department with the information requested to ensure an accurate dumping margin.

Ta Chen contends that contrary to petitioners' claim, the Department was not obligated to provide any legal rationale for its preliminary results with respect to the related party or affiliated persons issues in the preliminary phase of this review. Ta Chen argues that under section 777(i)(1) of the Act, the Department must only publish the facts and conclusions supporting its preliminary determination. Ta Chen states that according to section 777(i)(3) of the Act, the Department is required to address the legality of arguments made by the parties only in the final determination. In addition, Ta Chen states that if petitioners desired additional information they could have requested further disclosure from the Department regarding the preliminary results, which they were entitled to do but failed to request.

Ta Chen points out that the Department has rejected petitioners' related parties and affiliations arguments many times before. Ta Chen contends that petitioners have failed to address the Department's reasons for its prior rejections of their arguments, as well as to demonstrate that there is any distortion in the dumping margin calculation as a result. Ta Chen points to earlier submissions where it has disputed each of petitioners' claimed related and affiliated parties, including its submissions dated October 24, 2006, November 14, 2005, December 2, 2005, and March 2, 2006.

Ta Chen maintains that TCI's financial statements were prepared in accordance with U.S. GAAP and that the statements properly disclosed all related parties. Ta Chen argues that petitioners quote out of context the relevant GAAP on the issue of related parties and rely heavily on the notion that related parties are those that have the ability to influence one another. Ta Chen contends that the issue of whether to disclose a party as related in financial statements involves complex consideration and that Ta Chen has, in prior comments, submitted lengthy explanations by independent accounting professionals that explain in detail the applicable accounting standards and how they have been applied to Ta Chen's financial statements. Ta Chen claims the relevant GAAP (i.e., SFAS 57) requires disclosure of material related party transactions, and that this is a judgment of the accountant and auditor preparing the statement. Ta Chen contends that items are considered material if an omission or misstatement, both individually or in the aggregate, would make it probable that the judgment of a reasonable person relying on the information would change or be influenced by the omission or misstatement. Ta Chen contends that, according to SFAS 57 at paragraph 4, TCI was required to disclose related parties with whom it had no transactions during the reporting period only where that enterprise and TCI were under common ownership or management control, and the existence of that control could result in operating results or a financial position of the reporting entity significantly different from what would have been obtained absent the control relationship. Ta Chen maintains that petitioners have neither alleged nor demonstrated that these conditions were met. Ta Chen argues that SFAS 57 specifically rejects the requirement of disclosing all control relationships

because of the limited usefulness of such information, and that therefore materiality is a consideration when applying this standard.

Ta Chen disputes petitioners' premise that the Department should evaluate first whether an entity is affiliated with Ta Chen, and then consider the impact the alleged affiliate has on the production or sale of subject merchandise. Ta Chen contends that these two conditions cannot be evaluated in sequential order as petitioners assert they must, but rather that these conditions must be evaluated in conjunction with one another. Ta Chen cites the Department's regulations at
19 C.F.R. 351.102 and the preamble to those regulations as support for its contention. Ta Chen asserts that it would be a waste of time and resources if the Department had to evaluate questions of affiliation without taking into consideration their impact on subject merchandise.

Department's Position

We disagree with petitioners that Ta Chen has not cooperated to the best of its ability in this proceeding by not disclosing certain alleged related parties in TCI's financial statements, as well as certain affiliated parties as defined under section 771(3) of the Act, and that as a result certain "issues" may have arisen that remain hidden.

TCI's 2004 financial statements were audited by an independent accounting and auditing firm that issued an unqualified opinion on the statements. Specifically, the audit report states that the financial statements in the auditors' opinion "present fairly in all material respects the financial position of Ta Chen International (CA) Corp. as of December 31, 2004, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America." Implicit in this opinion is the auditors' attestation that proper disclosure of related parties and related party transactions has been made. An independent auditing firm whose business it is to express an opinion on whether financial statements are fairly presented according to the appropriate country's GAAP (in this case, the United States), who has direct access to the records and management of the respondent, and who has not otherwise been demonstrated to be in other than good standing, is in an appropriate position to judge these financial statements. Therefore, in order for the Department to reject the independent auditors' opinion and discredit the financial statements it would need to have compelling evidence to the contrary. We have not found such evidence in this case. Further, petitioners' claim that the auditor has no responsibility to question the information and to perform due diligence in an audit if the information provided by the company to the auditors is incorrect or incomplete is unfounded. The auditors' report on TCI's financial statements states: "an audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements." This means that by testing evidence related to disclosures, including those involving related parties, the auditors document that they did not blindly accept information provided by Ta Chen.

SFAS 57, which is the U.S. GAAP that governs disclosure requirements of related parties, states in paragraph 1 that "financial statements shall include disclosures of material related party

transactions," and in paragraph 4 that, even in the absence of material transactions, "if the reporting enterprise and one or more other enterprises are under common ownership or management control and the existence of that control could result in operating results or financial position of the reporting enterprise significantly different from those that would have been obtained if the enterprise were autonomous, the nature of the control relationship shall be disclosed even though there are no transactions between the enterprises." Further, paragraph 21 of SFAS 57 notes that a requirement to disclose all control relationships "would be burdensome particularly for closely held enterprises that might have numerous relationships with owners and their families, lenders, and possibly others that might be deemed to be 'control'" and that the "Board agreed that requiring disclosure of all control relationships might be of limited usefulness." Thus, inherent in SFAS 57 is a judgment element and the company does not need to disclose every relationship. When disclosing transactions between related parties, the auditor must conclude both that the parties are related according to SFAS 57 and that any transactions between them were material (i.e., their omission or incorrect statement would have affected a reasonable reader's opinion about the company). When deciding whether to disclose a party as being related when no transactions have occurred, the auditor must conclude that a control relationship exists, and that this control relationship had the potential to cause the reporting enterprise's operating results or financial position to be significantly different from what would have been obtained if the enterprise were autonomous. Therefore, in the context of assessing disclosures of affiliated parties in a financial statement prepared in accordance with financial accounting standards, a judgment as to whether or not a relationship should have been disclosed does not depend upon a factual finding, but rather opinions as to whether the auditors' decisions about disclosure were reasonable. This factor alone requires that there be very strong record evidence for the Department to overturn the independent auditors' opinion. As discussed below, we note that although petitioners have given limited evidence that the parties in question may have business or social relationships with TCI, they have not demonstrated significant influence between TCI and those companies to the point where that influence clearly could have resulted in operating results or financial position of TCI significantly different from what would have been obtained absent the influence.

We have evaluated petitioners' individual claims of undisclosed related parties and found that record evidence does not support a finding that the independent auditors' opinion with regard to TCI's financial statements should be overturned in light of the stipulations in SFAS 57. Petitioners' claims revolve mostly around alleged control relationships of enterprises due to common familial or management relationships (some current and some former), or both, among the enterprises, with some exceptions. For our analysis of petitioner's specific allegations of undisclosed related parties see the November 13, 2006, Memorandum from James Balog, Senior Accountant, through Neal M. Halper, Director, Office of Accounting, and Michael P. Martin, Lead Accountant, to Richard O. Weible, Director, Office 7: Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Petitioners' Allegations Regarding Ta Chen Stainless Pipe Co. Ltd., and Ta Chen International Corporation Related Parties ("Related Parties Memorandum").

Even if the Department were to find that TCI's financial statements had omitted certain related party information, we would not necessarily disregard Ta Chen's responses entirely. The

relevance of the omitted information to the information relied upon by the Department would have to be determined. Likewise, if affiliated parties as defined in section 771(33) of the Act were discovered, the relevance of the omitted information to the overall dumping analysis would have to be determined. After reviewing the case specific facts, the Department would then determine whether total or partial use of facts available was warranted. We would need some evidence that there were transactions or data relevant to the dumping analysis that the respondent failed or refused to provide. Petitioners have not shown that information relevant to our analysis was excluded from either TCI's or the consolidated financial statements. Finally, we note that having rejected the assertions of affiliation with the companies in question in this segment, as well as the fact that we have not directed Ta Chen to report information related to these companies, it would be difficult to assert that Ta Chen was hiding or withholding information from the Department and that the use of adverse facts available is warranted. In this case, it is not clear that the Department would apply total adverse facts available even if we found petitioners' assertions of non-disclosure of related parties in TCI's financial statements to be true.

In the prior review in this case, specifically in the June 30, 2005, Memorandum from Helen M. Kramer, Team Leader, through Abdelali Elouaradia, Program Manager to Richard O. Weible, Director: Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Petitioners' Allegations Regarding Ta Chen Affiliations ("2005 Affiliations Memorandum"), the Department addressed in detail petitioners' claims that Ta Chen did not disclose numerous affiliated parties to the Department pursuant to section 771(33) of the Act. In that memorandum, the Department determined that none of the alleged undisclosed affiliated parties was affiliated with Ta Chen. In this proceeding, petitioners reassert their claims that the parties that were addressed in the 2005 Affiliations Memorandum were affiliated with Ta Chen during the current POR. Petitioners also allege new undisclosed affiliated parties. In their case brief petitioners do not comment on the Department's findings in the 2005 Affiliations Memorandum. We have evaluated petitioners' individual claims of undisclosed affiliated parties and again find that the evidence does not support findings of affiliation between Ta Chen and any of the cited companies. For our analysis of petitioner's specific allegations of undisclosed affiliated parties see the November 13, 2006 Memorandum from James Balog, Senior Accountant, through Neal M. Halper, Director, Office of Accounting, and Michael P. Martin, Lead Accountant, to Richard O. Weible, Director, Office 7: Stainless Steal Butt-Weld Pipe Fittings from Taiwan: Petitioners' Allegations Regarding Ta Chen Stainless Pipe Co. Ltd, and Ta Chen International Corporation Affiliations.

Finally, we disagree with petitioners that the Department has not met its obligation under section 777(i)(1) of the Act. In the preliminary results, the Department properly published the facts and conclusions supporting our determination that adverse facts available should not be applied to Ta Chen. Moreover, pursuant to section 777(i)(3) of the Act and 19 CFR 351.309(b), we consider written arguments on the issues that are raised during a proceeding for the final results. This is fully consistent with the CIT's decision in Marine Harvest. Therefore, for the final results, we have considered the parties' case briefs and rebuttal briefs as well as their submissions prior to the preliminary results of review.

Comment 2. CEP Offset

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

Petitioners dispute the Department's findings in the Preliminary Results that in the home market, Ta Chen provides significant selling functions related to the sales process, marketing support, warranty and technical services, and inventory maintenance, which it does not provide for TCI in the U.S. market. Petitioners claim that the record shows that the only services actually 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.*, processing sales documents. Petitioners argue 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 incurred in Taiwan, assumption of credit risk with TCI and ultimately of the U.S. customer, bank charges, packing expenses, marine insurance, and U.S. customs duties.

Ta Chen argues that its home market sales involve more selling effort than the U.S. sales because it has seven customers in Taiwan and only one customer in the United States, its affiliate TCI. 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 also argues that it provides inventory and technical services, and incurs the seller's risk of nonpayment only for its home market sales, and not U.S. sales. Ta Chen states that three sales representatives are devoted exclusively to home market sales, and that for U.S. sales, its affiliate TCI performs the vast bulk of the selling activities for unaffiliated customers. Ta Chen points out that the petitioners' arguments are the same ones that the Department has rejected previously, and that the petitioners have not appealed this issue to the courts.

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, and 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.

Ta Chen reported that its selling functions for home market sales included meeting and entertaining customers, maintaining inventory and providing just-in-time delivery, assuming credit risk of nonpayment, addressing customer complaints, scheduling customer pickups of merchandise at the factory in their own trucks, providing technical assistance, and research and development. Ta Chen explained that it sells to seven customers in the home market, but to only one (TCI) in the United States.

For U.S. sales made to its U.S. 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, including payment of harbor tax. Ta Chen's terms of sale to TCI are C&I Taiwan, and Ta Chen reported that title transfers to TCI after the merchandise is loaded on board the vessel in Taiwan. Ta Chen reported that TCI is a master distributor and handles all the selling functions for sales to the first unaffiliated customer in the United States, including all communications with customers, U.S. customs duties, U.S. brokerage, U.S. inland freight, U.S. warehousing, inventory maintenance and assumption of risk of nonpayment. Thus, petitioners' claim that Ta Chen pays U.S. customs duties is incorrect, as substantiated by the sample Customs entry documents Ta Chen provided in its Section A response, showing that TCI is the importer of record.

Although Ta Chen's activities related to freight and delivery arrangements are somewhat greater for sales to TCI than for home market sales, the record shows that Ta Chen engages in a higher level of sales effort for home market sales than for U.S. sales. Ta Chen has more home market customers who purchase in smaller volumes than TCI and require more individual contacts. The greater sales effort involved is reflected in the larger sales staff devoted to home market sales, compared to one salesperson for the U.S. sales. Ta Chen assumes credit risk and provides technical services only for its home market sales. In addition, Ta Chen provides just-in-time delivery requiring a higher level of inventory maintenance only for home market sales, while orders for U.S. sales are filled mainly out of production runs. Therefore, because the home market selling functions related to sales process and inventory maintenance are greater than the selling functions performed for U.S. sales, we conclude that the LOT of home market sales is different from 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, and consistent with our practice in the recent prior administrative reviews of Ta Chen's sales, we are continuing to grant Ta Chen a CEP offset. See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless

Steel Butt-Weld Pipe Fittings From Taiwan, 70 FR 73727 (Dec. 13, 2005) and accompanying Issues and Decision Memorandum ("I&D Memo") at Comment 2, 70 FR 1870 (Jan. 11, 2005) and I&D Memo at Comment 4, 68 FR 69996 (Dec. 16, 2003) and I&D Memo at Comment 3, and 67 FR 78417 (Dec. 24, 2002) and I&D Memo at Comment 6.

Comment 3. CEP Profit Calculation

Ta Chen asks the Department to reconsider its prior position on the calculation of CEP profit. Ta Chen argues that TCI's imputed inventory and credit costs affect the profitability of U.S. sales, and that the failure to include them in the Department's calculation overstates CEP profit, and thus distorts the dumping margin calculation.

Petitioners argue that the Department correctly computed CEP profit, consistent with the Department's standard practice. Petitioners point out that the Department rejected this argument in the Preamble to the current regulations, stating that it "does not take imputed expenses into account in calculating cost. Moreover, normal accounting principles permit the deduction of only booked expenses, not imputed expenses, in calculating profit." Antidumping Duties; Countervailing Duties, 62 FR 27296, 27354 (May 19, 1997). Furthermore, according to petitioners, the Department's Policy Bulletin No. 97/1: Calculation of Profit for Constructed Export Price Transactions (Sept. 4, 1997), at 3, states that U.S. expenses in the total actual profit calculation are to "exclude from the calculation imputed amounts for credit expenses and inventory carrying costs." Petitioners argue that the Department considers actual interest expenses associated with financing activities of the company, and that the use of imputed expenses would double-count the company's cost of financing and so would artificially reduce the actual profit. Finally, petitioners note that the Court of International Trade (CIT) rejected Ta Chen's arguments regarding the Department's standard CEP profit calculation in its April 2006 decision of Ta Chen Stainless Steel Pipe, Ltd. v. United States, Slip Op. 06-47 (April 6, 2006) at 14 ("Ta Chen").

Department's Position

We agree with petitioners. The CIT has twice upheld the Department's methodology for calculating CEP profit in proceedings under the antidumping duty order on pipe fittings from Taiwan. In addition to Ta Chen, in Alloy Piping Products, Inc., et al., v. United States, Slip Op. 04-134 (Oct. 28, 2004) at 10, the CIT determined that "this court cannot find, however, that the 'imputed expenses represent some real, previously unaccounted for, expenses." Thus, given that the CIT has rejected this same claim by Ta Chen from previous reviews, the Department will continue to follow its standard practice and make no changes in its calculations for the final results of this review. See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittigs From Taiwan, 70 FR 1870 (Jan. 11, 2005) and I&D Memo at Comment 4.

Comment 4. Calculation of Margin on Weight Basis

Ta Chen argues that SSBWPF are sold on a per-piece, not per-weight, basis and that the Department should calculate the dumping margin and the DIFMERs (the percentages of cost differences between similar merchandise sold in the comparison and U.S. markets) on a per-piece basis to reflect market reality. Ta Chen claims that the Department's methodology in the Preliminary Results distorts the margin calculation because products with more than a 20 percent DIFMER on a per-piece basis are inappropriately deemed to be comparable because their per-kilogram DIFMER is under 20 percent.

Petitioners urge the Department to reject Ta Chen's argument, noting that in past reviews Ta Chen did not take issue with the Department's reliance on per-kilogram sales and cost data. Petitioners note that the Department's methodology in the preliminary results is consistent with the Department's practice in the two most recently completed reviews of Ta Chen's sales and in the less-than-fair-value investigations of SSBWPF from Italy, Malaysia and the Philippines. Petitioners state that the Department has remained consistent from review to review and from case to case, and that Ta Chen has given the Department no reason to depart from this methodology. Petitioners point out that the Department's calculations for steel products have consistently reflected sales and cost data on a per-kilogram basis. Petitioners cite the Department's reasoning in the I&D Memo at Clayson Steel Co. Comment 1, accompanying the Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not to Revoke in Part: Certain Corrosion- Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate From Canada, 66 FR 3543 (Jan. 16, 2001), where the Department explained:

> The usage of weight provides the Department with results which are both consistent and predictable in formulating the margin analysis. The Department has traditionally used weight as a standard unit measure in determining gross unit price because a large number of steel products are most commonly priced using weight as the standard measurement. Because weight is so commonly used in this manner, many companies track costs based on a weight unit measure for determining selling expenses, inputs and other information. Thus, the Department is able to make comparisons between steel products on a consistent unit basis by using a weight-based standard, which assists the agency in achieving the most accurate result possible, which is specifically the case here. Therefore, for purposes of consistency and predictability, the Department has chosen to use unit weight in calculating the dumping margins rather than price per unit piece of steel plate.

Petitioners also cite the Department's reasoning in the I&D Memo at Viraj Comment 13 accompanying Certain Stainless Steel Flanges From India; Final Results of Antidumping Duty Administrative Review, 66 FR 48244 (Sept. 19, 2001), in which the Department rejected Viraj's argument that the dumping margin should be calculated on a per-piece basis.

Department's Position

We agree with petitioners. In the I&D Memo at Viraj Comment 13 cited above, the Department stated:

> Since we need to make comparisons between merchandise which is similar but not identical, where models compared are of different weights (though otherwise similar merchandise), we find using weight as a common denominator for price and cost to be a reasonable and accurate method of basing price comparisons, and one which is in keeping with general Department practice in this order.

The same review of stainless steel flanges from India also addressed Ta Chen's argument concerning DIFMERs in I&D Memo at Viraj Comment 14, where the Department found that Viraj had failed to demonstrate its assertion that per-kilogram costs distort the DIFMER test results. The Department stated:

> Viraj's examples merely show that in these two instances, Viraj's suggested per-piece comparison would involve the elimination of comparisons which the Department's established per-kilogram approach allows. We note also that our comparison uses the 20% DIFMER test to eliminate comparisons of merchandise with substantially different cost of manufacture. Therefore, we disagree with Viraj and have continued to calculate per-kilogram costs for DIFMER in these final results.

Unlike Viraj, Ta Chen has not even offered any examples of comparisons of similar merchandise that were affected in this review by the Department's per-kilogram methodology in support of its claim that this methodology is distortive. Therefore, we find no justification to depart from our consistent practice of using per-kilogram values.

Comment 5. Alleged Calculation Errors

Petitioners allege that the Department failed to deduct certain U.S. expenses in its preliminary results, and urge the Department to include as deductions from U.S. price Ta Chen's reported other discounts (OTHDISU) and other direct selling expenses (DIRSELU). Ta Chen responds that there are no such variables in the databases.

Department's Position

We agree in part with petitioners. In its response dated December 12, 2005, to the Department's first supplemental questionnaire (SQR 1), Ta Chen reported at 21 that it had changed the name of the OTHDISU field to BILLADJU (billing adjustments). Ta Chen explained that in a small number of instances, U.S. customers underpaid the invoiced amount, but TCI did not bill them for the difference because the discrepancies were very small. Ta Chen reported these price adjustments as positive amounts in the U.S. sales database. For the Preliminary Results the

Department inappropriately included them in the variable for price adjustments (GUPADJU) that is added to gross unit price. As these underpayments by Ta Chen's customers resulted in a change in the price charged for the subject merchandise, for the final results we have categorized these underpayments as discounts in the DISCREBU field and deducted them from U.S. price.

The direct selling expenses petitioners referred to as DIRSELU were warehouse expenses that Ta Chen reported in the field called USWAREHU. This is explained in SQR 1at 28. In the preliminary results the Department correctly included these expenses in the variable INTLMOVEU, composed of the sum of international and U.S. movement expenses, which was deducted from gross unit price. Therefore, there was no error requiring correction.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and making no change to the calculated dumping margin. 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 _____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date