

MEMORANDUM FOR: Carole A. Showers
Acting Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

Summary

We have analyzed the case brief of respondent Ta Chen Stainless Pipe Co., Ltd. (“Ta Chen” or “Ta Chen Taiwan”) in the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings (“fittings”) from Taiwan for the period June 1, 2007, through May 31, 2008. Flowline Division of Markovitz Enterprises, Inc., Shaw Alloy Piping Products, Inc., Core Pipe (formerly known as Gerlin, Inc.) and Taylor Forge Stainless, Inc. (collectively “petitioners”) did not submit any case or rebuttal briefs. We recommend that you approve the positions described 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 by Ta Chen:

1. Purchased Fittings
2. Calculation of General and Administrative (“G&A”) Expenses
3. Ta Chen’s Raw Material and Conversion Cost Variances
4. Constructed Export Price (“CEP”) Offset
5. Basis of Dumping Margin Calculation
6. Calculation of CEP Profit Ratio

Background

On July 8, 2009, the Department of Commerce (“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, Notice of Intent To Rescind in Part, and Notice of Intent Not To Revoke

Order in Part, 74 FR 32532 (July 8, 2009) (“Preliminary Results”). The period of review (“POR”) is June 1, 2007, through May 31, 2008.

This review covers sales of certain fittings made by one manufacturer/exporter, Ta Chen, and its U.S. affiliate, Ta Chen International (CA) Corp. (“TCI”). We invited interested parties to comment on our Preliminary Results. We received a case brief from Ta Chen (“Ta Chen’s Brief”) on August 10, 2009. We did not receive any other case or rebuttal briefs.

Discussion of the Issues

Comment 1: Purchased Fittings

Ta Chen states that the Department’s findings in the Preliminary Results with respect to purchased fittings are incorrect. Ta Chen states that while the purchased subject fittings were all twelve inches, it does not mean that all twelve inch subject pipe fittings were purchased.

Ta Chen further states that the production process for subject fitting caps is different than the production process for other subject fittings because fitting caps are produced from sheet rather than pipe. Ta Chen states that it either subcontracted the production of fitting caps or purchased other twelve inch subject fittings.

Department’s Position:

In re-examining this issue for these final results, we find that record evidence shows that 12-inch cap fittings were subcontracted during the POR rather than purchased. See, e.g., Ta Chen’s second supplemental section D questionnaire response, dated April 3, 2009, exhibit Q13c at 4. Therefore, we have adjusted the program for the preliminary results to identify Ta Chen as the producer of 12-inch cap fittings products. See Memorandum from John K. Drury to the File, Analysis Memorandum for the Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Ta Chen Stainless Pipe Co., Ltd., dated December 7, 2009 (“Analysis Memorandum”).

Comment 2: Calculation of General and Administrative (“G&A”) Expenses

Ta Chen objects to the Department’s adjustments to the company’s G&A expense ratio in the preliminary results for inventory losses or expenses related to an employee’s death. Ta Chen argues that inventory losses are the result of a revaluation and do not relate to production. Therefore, Ta Chen concludes that the losses should not be included in the G&A expense calculation. Ta Chen also asserts that the expenses related to a death were non-operating expenses pursuant to generally accepted accounting standards (“GAAP”) in Taiwan. Because these expenses are considered non-operating expenses, Ta Chan concludes that they should be excluded from the company’s G&A expense ratio calculation.

Department’s Position:

In examining this issue for the final results, we found that, contrary to Ta Chen's assertion, the Department did not make an adjustment to Ta Chen's G&A ratio for inventory valuation losses. The only adjustments made to the company's G&A expense ratio were for expenses related to a death and gains realized on the disposal of assets. See Memorandum from LaVonne Clark to Neal M. Halper, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Ta Chen Stainless Steel Pipe Co., Ltd., dated June 30, 2009 ("Prelim Cost Memo"). Because the Department did not make the adjustment for inventory losses that Ta Chen claimed was erroneous, this argument is moot.

However, we continue to find that the non-operating expenses related to a death should be included with the company's G&A expense ratio. A non-operating expense is an expense incurred on activities not relating to the core operations of the business. While it is common for GAAP to direct that financial statements be prepared such that non-operating expenses or revenues are classified separately to allow the users to examine the performance of the business while ignoring effects of financing or irrelevant issues, it does not mean that such costs are unrelated to the general operations of the company. The on-line site Investopedia[®] explains, "non-operating expenses may take a variety of forms. The most common type relate to interest charges or other costs of borrowing. A firm may also categorize any costs incurred from restructuring or reorganizing, currency exchange, charges on obsolescence of inventory, as non-operating expenses. Expenses relating to employee benefits, such as pension contributions would also be considered as a non-operating."¹ Barron's Dictionary of Finance and Investment Terms defines non-operating income deductions as "a class of items comprising the final section of a company's income statement, which, although necessarily incurred in the course of business and customarily charged before arriving at net income, are more in the nature of costs imposed from without than costs subject to the control of everyday operations."² Thus, because we find the non-operating expenses in question relate to the general operations of Ta Chen as a whole, we have continued to include these expenses in the numerator of Ta Chen's G&A expense ratio. See Memorandum from LaVonne Clark to Neal Halper, Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Ta Chen Stainless Steel Pipe Co., Ltd., dated November 5, 2009.

Comment 3: Ta Chen's Raw Material and Conversion Cost Variances

Ta Chen asserts that the Department's adjustment in the preliminary results to the company's reported costs, as a result of the Department's recalculation of the company's raw material and conversion cost variances, is contrary to Ta Chen's normal books and records. Ta Chen contends that the variances recorded in the company's normal books and records are reasonable, and, as such, the reported costs should not have been adjusted in the preliminary results.

¹ <http://www.investopedia.com/terms/n/non-operating-expense.asp>

² Downes & Goodman, Dictionary of Finance and Investment Terms 271 (2d ed. 1987) (emphasis added).

Department's Position:

In the preliminary results of this administrative review, we adjusted Ta Chen's reported costs to reflect the raw material cost variances that occurred within the POR. We also excluded variances resulting from purchased products from Ta Chen's variable conversion cost variances. See Prelim Cost Memo. Section 773(f)(1)(A) of the Tariff Act of 1930, as amended ("the Act"), states that cost shall normally be calculated on the records of the exporter or producer of the merchandise if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise.

We determine that Ta Chen's raw material variance ratios, used in its normal books and records to adjust standard raw material costs to actual costs, are unreasonable for this review period because they include variances of the pipe and the fittings plants that occurred prior to the POR. Significant price variations occurred prior to, and during, the POR and we find that the inclusion of the variances as recorded by Ta Chen does not meet the statute's requirement of reasonably reflecting the costs associated with producing the merchandise under consideration. Rather, the variances in question relate to merchandise produced in prior periods. Therefore, for purposes of these final results, we have continued to adjust Ta Chen's reported material costs to reflect only those raw material variances that occurred within the POR.

Additionally, record evidence confirms that Ta Chen, in its normal books and records, assigns any purchase price variances incurred on purchased products among all products, whether purchased or produced. See Prelim Cost Memo. We find that Ta Chen's normal methodology is unreasonable because the purchase price variances on purchased goods assigned to the manufactured products are unrelated to the production of those products. Therefore, for purposes of these final results, we have continued to adjust Ta Chen's reported variable conversion costs of produced merchandise to exclude the purchase price variances on purchased goods.

Comment 4: Constructed Export Price ("CEP") Offset

Ta Chen insists that the Department erred by failing to make a CEP offset in the Preliminary Results. Ta Chen avers that its sales in the home market are at a more advanced level of trade ("LOT") than Ta Chen's sales to its U.S. affiliate, TCI. Ta Chen states that TCI's purpose in the United States is to act as a selling organization to unaffiliated customers, as well as to provide a warehousing function for just-in-time delivery to those customers. Ta Chen further states that TCI assumes the responsibility for the selling functions in the United States, similar to those selling functions provided by Ta Chen to its home market customers. TCI's provision of these selling functions, according to Ta Chen, relieves Ta Chen of the need to provide these selling functions to the U.S. customers. The differences between the two markets in terms of selling functions, according to Ta Chen, are the LOT differences that would be expected in the case of a mature commodity product like the subject merchandise. Ta Chen also

claims that TCI incurs large selling and inventory carrying expenses and is responsible for the risk of non-payment by U.S. customers.

Ta Chen also claims that transportation and packing costs are separately reported and accounted for in the questionnaire responses, and that considering them again in the LOT analysis would be double counting. Ta Chen further argues that these costs are not really LOT-related, and are less important than selling, inventory, and payment risk in terms of selling functions in a LOT analysis. Ta Chen concludes that the Preliminary Results comparison between home market and U.S. sales without a CEP offset adjustment is unfair.

Department's Position:

After re-examining record evidence in light of the comments by Ta Chen, we continue to find that the Normal Value ("NV") LOT is not more advanced than the CEP LOT. Therefore, we will not apply a CEP offset to Ta Chen's NV.

In analyzing the respective LOTs for home market sales and U.S. CEP sales, the Department's practice is to "examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer." See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From Romania: Preliminary Results of the Antidumping Duty Administrative Review, 72 FR 44821, 44824 ("HRS from Romania") (August 9, 2007) (unchanged in final results, Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 71357 (December 17, 2007)); Certain Pasta from Italy: Notice of Preliminary Results and Partial Rescission of Tenth Antidumping Duty Administrative Review, 72 FR 44082, 44084-85 (August 7, 2007) (unchanged in final results, Certain Pasta from Italy: Notice of Final Results of the Tenth Administrative Review and Partial Rescission of Review, 72 FR 70298 (December 11, 2007)). If the home market sales are at a different LOT than CEP sales and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which NV is based and home market sales at the LOT of the export transaction, the Department makes a LOT adjustment under 19 U.S.C. § 1677b(a)(7)(A). See HRS from Romania at 44824. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, the Department adjusts NV under section 1677b(a)(7)(B) (the CEP offset). See id. Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See 19 C.F.R. § 351.412(c)(2). Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing. See id. It is within this framework that the Department conducts its LOT analysis.

In its brief, Ta Chen asserts that TCI "incurs enormous selling and inventory carrying expenses There is no purpose to TCI bearing such expenses if they did not relieve Ta Chen Taiwan of the burden of such functions." Ta Chen's Brief at 2. Ta Chen's reliance on the relevance of "selling expenses" as an indicator of "selling functions" is inappropriate with respect to the LOT analysis because it assumes that the expense data reported by Ta Chen are an accurate depiction of the level of intensity in which the selling activities are performed. Selling expenses

do not translate directly into selling activities, nor do they necessarily capture the degree to which the selling activities are performed.

The Department's focus on selling activities rather than selling expenses is supported by the statute, which specifies that a difference in LOTs "involves the performance of different selling activities." See 19 U.S.C. § 1677b(a)(7)(A). The Statement of Administrative Action to the Uruguay Round Agreements Act also specifies that "Commerce will grant such {LOT} adjustments only where: (1) there is a difference in the level of trade (i.e., there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets); and (2) the difference affects price comparability." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, p. 829, reprinted in 1994 U.S.C.C.A.N. 3773, 4168 ("SAA"). Finally, the Department's regulations similarly follow the language in the statute, specifying that we will determine that sales are made at different LOTs if they are made at different marketing stages or their equivalent. See 19 C.F.R. § 351.412(c)(2). Thus, the Department's analysis of selling activities/functions is grounded in the statute and regulations, unlike the analysis proffered by Ta Chen, for which it cites no authority.

Although the Department does consider selling expenses, it does not consider them to the exclusion of the selling activities themselves. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy, 67 FR 3155 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 37. The Department believes that a strict reliance on the amounts of the reported selling expenses is not a reliable measure of the relative levels of intensity in which each selling activity is performed. Performance of a selling activity at the same level of intensity in two markets could, in theory, incur very different expenses. Additionally, expenses in a particular field might be allocated to a variety of selling activities. One cannot tell from the relative expenses incurred the degree to which a selling activity was actually performed.

The Court of International Trade ("CIT") has also expressed concerns with using a purely quantitative analysis. See Prodotti Alimentari Meridionali, S.R.L. v. United States, 26 CIT 749, 754 (Ct. Int'l Trade 2002) ("Prodotti"). In Prodotti, the respondent reported ten customer categories in its home market as the basis for identifying sales at different LOTs in the chain of distribution. Rather than adopt the respondent's grouping, the Department developed a methodology to analyze the various selling functions of a particular seller by assigning a ranking factor (i.e., high, medium, low) to a selling function solely based upon the number of observations for which a direct expense associated with the selling function actually occurred. The Department explained that this particular analysis did not determine the final LOT, but that it instead used a more general qualitative approach. See id. at 753-54. Noting that "the court questions the usefulness of this quantitative analysis for any purpose, {the respondent} has not explained how the analysis adversely affected the margin other than to state that the analysis was 'distorted,'" the CIT declined to remand on the issue. Id. at 754.

The CIT has also addressed the issue within the context of this antidumping duty order. See Alloy Piping Products, Inc., et al v. United States, Slip Op. 09-29 (Ct. Int'l Trade 2009).

The CIT stated that “the focal point of Commerce’s LOT adjustment analysis is on the *selling activities* performed in each market.” *Id.* at 9. “If Commerce . . . in reviewing an administrative determination, were to narrow the focus of its LOT analysis to selling expenses, it could act contrary to law and cause misleading results. Expenses do not necessarily translate directly into activities, nor do they capture the intensity of the activities. Moreover, expenses related to several selling activities may fall under a single expense field.” *Id.* at 13.

It is the Department’s standard practice to conduct a LOT analysis of selling activities for CEP sales under 19 C.F.R. § 351.412(c)(1) after deducting the selling expenses for CEP sales under § 772(d) of the Act. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review*, 71 FR 62082, 62084 (October 23, 2006) (unchanged in final results, *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 72 FR 18204 (April 11, 2007) (“For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act”); *see also* 19 C.F.R. § 351.412(c)(1)(ii). Under § 772(d) of the Act, selling expenses incurred by Ta Chen in support of its sales to TCI are not deducted. Thus, to the extent that activities related to such expenses are performed by Ta Chen in support of Ta Chen’s sales to its affiliate TCI, the Department has included them in the CEP LOT. The Department will not consider selling activities provided by Ta Chen in support of TCI’s sales to unaffiliated U.S. customers as these are associated with the selling expenses that must be deducted under § 772(d) of the Act, regardless of their location in the reported expense fields.

Analysis of Selling Activities, the Four Selling Function Categories

The Department has analyzed Ta Chen’s selling activities in four selling function categories: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. *See* Memorandum from John K. Drury to the File, Analysis Memorandum for the Preliminary Results of the 2007-2008 Administrative Review of the Antidumping Duty Order of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Ta Chen Stainless Pipe Co., Ltd., dated June 30, 2009, at pages 12-18 (providing a thorough review of each of the components of the four categories) (“Preliminary Analysis Memorandum”). For the sales process and marketing support category, we have included the following selling activities: customer contact, order acceptance, risk of non-payment, payment processing, market research, and travel and entertainment. The freight and delivery category includes packing and loading as well as freight and delivery. The inventory maintenance category includes warehousing services, while the warranty and technical services category includes customer complaints, technical assistance, and after-sale services.

For the sales process category, we find that two of the selling activities reported by Ta Chen are of identical intensity (order acceptance and customer contact), one is higher in the home market (payment processing), one is likely to be more intense in the home market (risk of non-payment), and we believe that evidence on the record indicates a higher level of the selling activity for travel and entertainment occurs for U.S. sales. *Id.* at 14-15, 16-18. As stated in the

Preliminary Analysis Memorandum, we are unable to make a determination with respect to market research. Id. at 17.

Based on the evidence on the record, we determine that the selling activities in the sales process category are, on the whole, equal in both the home market LOT and CEP LOT.

For the freight and delivery category, we find that for packing, there are no selling activities incurred by Ta Chen that are not otherwise accounted for by the labor and packing expenses reported by Ta Chen. However, we find that the level of selling activities for handling and freight and delivery are more intense for U.S. sales to TCI. Id. at 15, 17. Thus, based on the evidence on the record, the selling activities in this category are more intense in the CEP LOT than the home market LOT.

For the inventory maintenance and warranty and technical service categories, we find that the intensity of these selling functions is the same. Id. at 15-16, 17-18. Therefore, based on the evidence on the record, the selling activities in these categories are the same for both LOTs.

Ta Chen claims that its home market LOT is more advanced because its affiliated reseller, TCI, acts “(a) as a selling organization to unaffiliated U.S. customers, and (b) {provides} a warehouse inventory function for just-in-time delivery to customers in the United States, as well as (c) assuming the risk of loss of customer non-payment.” Ta Chen’s brief at 2. Ta Chen also claims that these activities “make all the difference in the nature of sales and really are basically the key selling function LOT differences that one would expect to see for LOT differences in such mature, commodity products.” Id. We agree with Ta Chen that TCI acts as a selling organization, and provides a warehouse inventory function for U.S. customers. However, the Department’s analysis concerns Ta Chen’s provision of selling functions to TCI, not TCI’s provisions of selling functions to its customers. As for the “risk of loss of customer non-payment,” we have analyzed this selling function above and do not find any differences to be sufficient to alter our LOT analysis.

Ta Chen also states that “transportation and packing costs are separately reported and accounted for in the questionnaire responses (such that it is double counting to consider them again). And anyway, they are not really LOT related, and certainly far less so than the selling, inventory and payment risk, as to importance in regards to functions associated with LOT.” Id. Concerning the issue of “double-counting,” the Department is not using these expenses twice in the calculation of the dumping margin. Rather, the LOT analysis attempts to determine the relative levels of selling activities incurred by Ta Chen in providing these services to both markets and not the cost incurred by Ta Chen for the service itself.

As to Ta Chen’s claim that the reported activities associated with transportation and packing costs “are not really LOT related,” we disagree with Ta Chen that these activities are not relevant to our LOT analysis. Transportation activities often are an integral part of the terms of sale to a customer and the effort expended by the company in providing or arranging for these services to a customer can be significant. While the selling activities associated with packing

that are not accounted for in the packing labor and material costs reported to the Department in a separate expense field may often be insignificant, such selling activities may exist under certain circumstances. As noted above, we found that the selling activities for the freight services provided Ta Chen provided to its customers were significant and at a higher level of intensity than the activities associated with freight services provided to its customers in the home market. We found that there were no differences in activities related to packing for Ta Chen's U.S. and home market customers.

Finally, Ta Chen states that the Department's preliminary results reduce "U.S. price for selling and inventory carrying costs on U.S. sales, but effectively {makes} no adjustment as to home market (Taiwan) sales. This is not a fair, apples-to-apples comparison." *Id.* Again, Ta Chen attempts to equate the selling functions provided by TCI to its U.S. customers to those provided by Ta Chen to its home market customers. This is not the proper comparison. The Department's practice has been to analyze the selling functions performed by the respondent for sales to its U.S. affiliate. In this case that would be Ta Chen's sales to TCI. See, e.g., Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review, 71 FR 76978 (December 22, 2006) and accompanying Issues and Decision Memorandum at Comment 3; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part, 65 FR 11767 (March 6, 2000) and accompanying Issues and Decision Memorandum at Comment 2.

In summary, based on the Department's thorough examination of the claimed selling activity and consideration of Ta Chen's comments, we believe that the home market LOT is not at a more advanced stage than the CEP LOT. Therefore, we are not granting a CEP offset to Ta Chen's NV.

Comment 5: Basis of Dumping Margin Calculation

Ta Chen states that the subject fittings are sold on a per-piece basis, and not by weight. Thus, Ta Chen argues that it is illogical to calculate the dumping margin on a per-kilogram basis, as done in the Preliminary Results. Ta Chen requests that the Department calculate the margin on a per-piece basis.

Department's Position:

We disagree with Ta Chen. In Certain Stainless Steel Flanges From India; Final Results of Antidumping Duty Administrative Review, 66 FR 48244 (Sept. 19, 2001) and accompanying Issues and Decision Memorandum at Comment 13, the Department, in rejecting a respondent's argument that the dumping margin should be calculated on a per-piece basis, stated as follows:

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.

Ta Chen has not offered any examples of why the Department's per-kilogram methodology is distortive. Therefore, we find no justification to depart from our consistent practice of using per-kilogram values in this proceeding.

Comment 6: Calculation of CEP Profit Ratio

Ta Chen asserts that the Department erroneously failed to adjust for TCI's inventory carrying costs and imputed credit costs when calculating the CEP profit ratio. Therefore, according to Ta Chen, the CEP profit deducted from the U.S. price is overstated. Ta Chen states that such costs need to be accounted for in the CEP profit rate calculation, as they are real costs. Ta Chen asserts that evidence on the record demonstrates that these costs exceed the amount of the adjustment made for "actual" interest costs, and they therefore are not fully accounted for.

Ta Chen states that any claimed double counting can be avoided either by adjusting only for inventory carrying and credit costs, rather than the "actual" (accounting) company-wide interest costs, or by reducing the "actual" interest costs for the percentage of Ta Chen's assets that are accounts receivable inventory that might generate imputed credit or inventory carrying costs. See Ta Chen's Brief at 3.

Department's Position:

For purposes of these final results, the Department has determined to continue to calculate CEP profit based on actual expenses as directed by the statute and our regulations.

The Department is required in its determination of constructed export price to identify and deduct from the starting price in the United States market an amount for profit allocable to selling, distribution, and further manufacturing activities in the United States. Specifically, the statute identifies "the profit allocated to the expenses described in paragraphs (1) and (2)." See 19 U.S.C. § 1677a(d)(3). "Paragraphs (1) and (2)" refer to (1) direct and indirect selling expenses; and (2) the cost of any further manufacture or assembly in the United States. See 19 U.S.C. § 1677a(d)(1), (2). The statute also contains a special rule for determining profit, which provides as follows:

(f) Special rule for determining profit

(1) In general

For purposes of subsection (d)(3) of this section, profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.

(2) Definitions

For purposes of this subsection:

(A) Applicable percentage

The term “applicable percentage” means the percentage determined by dividing the total United States expenses by the total expenses.

(B) Total United States expenses

The term “total United States expenses” means the total expenses described in subsection (d)(1) and (2) of this section.

(C) Total expenses

The term “total expenses” means all expenses in the first of the following categories which applies and which are incurred by or on behalf of the foreign producer and foreign exporter of the subject merchandise and by or on behalf of the United States seller affiliated with the producer or exporter with respect to the production and sale of such merchandise:

- (i) The expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.
- (ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise.
- (iii) The expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.

(D) Total actual profit

The term “total actual profit” means the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph.

19 U.S.C. § 1677a(f).

The SAA states that “the total profit is calculated on the same basis as the total expenses.” SAA at 825. Moreover, “no distortion in the profit allocable to U.S. sales is created if total profit is determined on the basis of a broader product-line than the subject merchandise, because the total expenses are also determined on the basis of the same expanded product line. Thus, the larger profit pool is multiplied by a commensurately smaller percentage.” *Id.* By regulation, the Department has determined that “in calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production.” *See* 19 C.F.R. § 351.402(d)(1).

The Department considers imputed selling expenses (such as imputed credit and inventory carrying costs) to be types of selling expenses encompassed by 19 U.S.C. § 1677a(d)(1) and 19 U.S.C. § 1677a(d)(2). *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2126-2127 (January 15, 1997) (“*Antifriction Bearings*”); *see also Silver Reed America, Inc. v. United States*, 679 F. Supp. 12 (Ct. Int’l Trade 1988), *reh’g granted*, 683 F. Supp. 1393 (Ct. Int’l Trade 1988) (sustaining the Department’s authority under pre-URAA law to deduct imputed selling expenses from exporters sales price).³ For this reason, in determining “total United States expenses,” the Department includes imputed selling expenses because the statute defines “total United States expenses” as equaling the selling expenses described in sections 772(d)(1) and (d)(2) of the Act.

In its determination of “total actual profit,” however, the Department does not include imputed selling expenses because “normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit.” *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27354 (May 19, 1997). The Department has also explained that its calculation of profit already includes net interest expenses and that, as a result, there is no need to include imputed interest expenses in determining total profit. *See Antifriction Bearings* at 2126-27. The Department’s decision to use only actual expenses, not imputed expenses, in determining profit is buttressed by the statute itself, which specifically refers to “total actual profit.” *See* 19 U.S.C. § 1677a(f)(2)(D).

In its determination of “total expenses,” the Department also does not include imputed selling expenses. As is evident from the statute itself, the Department’s determination of “total actual profit” is based upon its determination of total actual expenses. That is, the Department determines profit “with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph” (i.e., the subparagraph which defines “total expenses”). 19 U.S.C. § 1677a(f). The SAA echoes the statute, noting that “total actual profit” is to be calculated “on the same basis” as total expenses. *See* SAA at 825, reprinted in 1994 U.S.C.C.A.N. at 4164.

³ The URAA amendments did not require a change in the Department’s practice with regard to its treatment of imputed selling expenses as types of selling expenses that are properly deducted from the starting price used to establish constructed export price.

The link between “total actual profit” and “total actual expenses” ensures that, regardless of the product line used to determine profit, a *pro-rata* amount of profit will be allocated to selling, distribution, and further manufacturing activities in the United States because, as indicated by the SAA, higher profit amounts that result from the use of broader product lines result in a proportionately smaller amount of allocated profit. See id. As with “total actual profit,” the Department does not include imputed selling expenses in its calculation of total expenses so as to avoid double-counting. See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 62 FR 18476, 18479 (April 15, 1997) (“Although the actual and imputed amounts may differ, if we were to account for imputed expenses in the denominator of the constructed export price allocation ratio, we would double count the interest expense incurred for credit and inventory carrying costs because these expenses are already included in the denominator.”). Therefore, contrary to Ta Chen’s claim, these expenses are not “real” costs. Rather, they are meant to serve as a proxy for the opportunity costs already captured in the calculation of total profit.

The CIT has also held that imputed expenses do not need to be limited to, or less than, the total amount of recognized net financial expenses included in the “total expenses” denominator because the imputed expenses in the numerator are gross expenses, while the recognized financial expenses in the denominator are net of interest income, which itself may not be allocable to U.S. selling activities. See Ta Chen Stainless Steel Pipe, Ltd. v. United States, 427 F. Supp. 2d 1265, 1277 (Ct. Int’l Trade 2006) (“Ta Chen 2006”). Furthermore, in Alloy Piping Products, Inc. v. United States, 28 CIT 1805 (Ct. Int’l Trade 2004) (“Alloy Piping 2004”), the Court rejected Ta Chen’s argument that there was an “enormous” discrepancy between imputed expenses, which “total 17.3 percent whereas actual interest costs are 1.37 percent.” Alloy Piping 2004, 28 CIT at 1811. The Court held that it “cannot find...that the ‘imputed expenses represent some real, previously unaccounted for expenses’ because the actual interest cost, 1.37 percent, is allocated to selling expenses, which are included in the figure for ‘total expenses.’” Id. The Court also held “that imputed expenses are greater than actual expenses does not necessarily engender an actionable distortion.” Id. Thus, even with a twelve-fold difference between the imputed and actual expenses, the Court in Alloy Piping 2004 found there to be no distortion.

Similarly here, the Department concludes that the differences in imputed costs and actual expenses reported by Ta Chen does not distort the calculation of CEP profit. In its case brief, Ta Chen makes no effort to demonstrate, identify or quantify any distortion. Ta Chen’s Brief at 3. Ta Chen’s claim that the Department could avoid double-counting by reducing the actual interest costs by the alleged percentage of Ta Chen’s total assets related to accounts receivable or finished goods inventory (see Ta Chen’s Brief at 3) is without merit. First, were the Department to include imputed expenses in the denominator (i.e., total expenses), as suggested by Ta Chen, then the Department would be double-counting for such expenses because the total expenses figure (discussed above) already accounts for these amounts. Second, notwithstanding Ta Chen’s suggestion that we add imputed expenses to our calculation of total U.S. selling expenses (i.e., the numerator of the CEP profit ratio calculation), which is contrary to our practice and statutory guidance as discussed above, reducing the actual interest costs as suggested by Ta Chen is not more accurate. Credit costs are a function of a company’s actual short-term borrowing rate (or interest rate) and the amount of time the customer takes to remit payment for sales.

Therefore, a company that extends long payment terms to its customer would thereby incur more imputed credit expenses. Imputed inventory carrying costs are based upon a company's actual short-term borrowing rate, the average time merchandise remains in inventory, and, in most cases, the total cost of manufacture for each product. Hence, the longer merchandise with a high cost of production remains in inventory, then the greater its opportunity cost, i.e., imputed inventory carrying costs.

Thus, imputed expenses may reasonably exceed the amount of recognized financial expenses in the denominator (total expense calculation used to derive the CEP profit ratio) without the existence of a distortion. Although the CIT in Ta Chen 2006 did recognize that the imputed expenses in the numerator are gross expenses, while the recognized financial expenses are net of interest income, the Court also recognized in principle that the imputed expenses are an approximate amount, and that "there is no apparent reason why all such costs – whatever their magnitude – would not be fully and accurately reflected in Ta Chen's consolidated financial statements." Ta Chen 2006, 427 F. Supp. 2d at 1272, n.13.

The Department's calculation of CEP profit is explained in the Preliminary Analysis Memorandum. See Preliminary Analysis Memorandum at 22-23. In short, the mean of the variable SELLEXPU from log line 2330 becomes TOTSELLU in the Department's macro calculation program. In order to determine whether double-counting might arise were the Department to add imputed credit and inventory carrying expenses to the SELLEXPU field, we examined the record to see if there were any borrowings by Ta Chen during the POR. We note that Ta Chen had borrowings during the POR. See Ta Chen's sections B – D response, dated October 16, 2008, at exhibit B-4. Additionally, TCI had borrowings during the POR. See Ta Chen's section A response, dated September 30, 2008, at exhibit A16.

The presence of double counting is dependent upon a net interest expense that is greater than zero. If a portion of the net interest expense is a result of borrowing in the United States by the U.S. affiliate, it is more likely that these borrowings already finance the opportunity costs of sales of subject merchandise to some degree, and increases the likelihood of double-counting at least to some degree. Thus, the inclusion of imputed credit and inventory carrying costs in the "total expenses" denominator, as Ta Chen advocates, would result in double-counting. The "total expenses" denominator already includes financial expenses from borrowings in both the home market and the United States, a portion of which can be reasonably assumed to finance the credit and inventory carrying opportunity costs of the sales of subject merchandise in the United States. The inclusion of the surrogate imputed costs in the denominator would mean that the denominator contains two sets of figures financing the same opportunity costs, one actual and the other imputed (but a surrogate for the actual). By definition, this is double-counting.

Thus, in this case, the Department finds that record evidence supports the application of our standard methodology, which properly accounts for a producer-exporter's financial expense in all parts of the CEP profit equation. For the reasons set forth above, we find that the exclusion of imputed costs in our standard CEP profit calculation does not render Ta Chen's actual costs inaccurate. Hence, we continue to find that an adjustment to our calculation of Ta Chen's CEP profit is not warranted.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and changes to the dumping calculation. 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 _____

Carole A. Showers
Acting Deputy Assistant Secretary
for Import Administration

Date