

FINAL RESULTS OF DETERMINATION PURSUANT TO COURT REMAND

Alloy Piping Products, Inc., Flowline Division, Markovitz Enterprises, Inc., Gerlin, Inc., and Taylor Forge Stainless Inc., v. United States of America and the U.S. Department of Commerce

Slip Op. 04-134, Consol. Court No. 02-00124 (CIT October 28, 2004)

SUMMARY

On October 28, 2004, the United States Court of International Trade (“the Court”) issued an order in Alloy Piping Products, Inc., Flowline Division, Markovitz Enterprises, Inc., Gerlin, Inc., and Taylor Forge Stainless Inc., v. United States of America and the United States Department of Commerce Slip Op. 04-134, Consol. Court No. 02-00124 (“Remand”). The Court remanded part of the case to the Department of Commerce (“the Department”) and requested that the Department reopen the record, seek additional relevant information regarding employee bonuses, and recalculate the general and administrative (“G&A”) expenses of Ta Chen Stainless Steel Pipe, Ltd. (“Ta Chen”). The Court also directed the Department to reconsider Ta Chen’s U.S. indirect selling expenses.

We have re-examined the record for the June 1, 1999, through May 31, 2000, administrative review period, and addressed the remanded issues in accordance with the Court’s October 28, 2004, order. With respect to Ta Chen’s G&A expenses, the Department reopened the record and sought additional information from Ta Chen regarding its employee bonuses and has recalculated the company’s G&A expenses to include bonus payments to employees as compensation expenses in the G&A calculation.

The Department also reconsidered Ta Chen’s U.S. indirect selling expenses. Upon re-examination of the record, the Department has found that it correctly considered all of Ta Chen’s

indirect selling expenses for fiscal year 1999. In its Final Results,¹ the Department relied upon Ta Chen's computerized sales file which contained only its operating expenses. The operating expenses do not include Ta Chen's financing expenses.² After re-examining the record and considering the comments received regarding the Draft Results,³ the Department has determined that had it included Ta Chen's financing expenses (interest expenses) in the U.S. indirect selling expenses calculation, it would have double-counted these interest expenses as they are already accounted for in the imputed inventory and credit costs. Therefore, the Department has not revised Ta Chen's U.S. indirect selling expense calculation to include Ta Chen's financing expenses with Ta Chen's operating expenses.

BACKGROUND

On December 21, 2001, the Department published its Final Results. This administrative review covered the period of review ("POR") June 1, 1999, through May 31, 2000. Both Ta Chen and the Petitioners⁴ contested various aspects of the Final Results.

On October 28, 2004, the Court issued its opinion and remanded the following two parts of the Final Results to the Department for reconsideration:

¹ See Notice of Final Results of Antidumping Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan and accompanying Issues and Decision Memorandum, 66 FR 65899, 65900 (December 21, 2001) ("Final Results")

² See Remand, at 31, Plaintiff's Rule 56.2 Motion For Judgment on the Agency Record, at 40 (September 20, 2002) ("Petitioners' Motion").

³ See Letter from Alex Villanueva, Program Manager, to Interested Parties Regarding Remand Determination in the Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, dated January 27, 2005 ("Draft Results").

⁴ Alloy Piping Products, Inc., Flowline Division, Markovitz Enterprises, Inc., Gerlin, Inc., and Taylor Forge Stainless Inc., ("Petitioners").

(1) With respect to the Department's calculation of Ta Chen's G&A expenses, the Court instructed the Department to reopen the record, seek additional relevant information regarding employee bonuses, and recalculate the G&A expenses of Ta Chen. Specifically, the Court instructed the Department to consider the employee bonuses distributed directly from shareholders' equity, and paid by the company to its employees and management in its recalculation of the G&A expenses.

(2) With respect to the issue concerning indirect selling expenses, the Court ordered the Department to reconsider the indirect selling expenses submitted by Ta Chen, and to account for all of Ta Chen's U.S. selling expenses incurred during fiscal year 1999.

On January 27, 2005, the Department issued a draft remand determination to the parties for comment. See Draft Results.

DISCUSSION

In its remand to the Department, the Court instructed the Department to reopen the record, seek additional relevant information regarding employee bonuses, and recalculate the G&A expenses of Ta Chen as well as reconsider Ta Chen's U.S. indirect selling expenses. As discussed more fully below, the Department has recalculated the G&A expenses for Ta Chen to include bonuses made to employees as well as bonuses made to directors and supervisors. The Department also reviewed both Ta Chen's U.S. operating expenses and its U.S. financing expenses and has not made any changes with regards to the indirect selling expenses calculated in the Final Results.

1. The Department has reopened the record, has sought additional relevant information

regarding employee bonuses, and has recalculated Ta Chen's G&A expenses.

In accordance with the Court's instructions, the Department requested from Ta Chen information regarding its change in stockholder's equity with regard to employee bonuses as they appeared in Attachment 23 of its April 6, 2001, submission. See Ta Chen's April 6, 2001, submission, Attachment 23, Pub.Doc. No. 15, Prop. Doc. No. 48. Specifically, the Department sought information regarding Ta Chen's accounting of its employee bonuses and the relevance of these bonuses to the G&A calculation originally submitted by Ta Chen on December 10, 2004. The Department also asked Ta Chen to explain why it did not include these employee bonuses in the calculation of Ta Chen's G&A expenses during this review. In addition, the Department requested that Ta Chen re-submit its cost of production and constructed value data to include the "bonuses to employees-cash" and "bonuses to employees-stock" expenses as they appeared in the Statement of Changes in Stockholder's Equity for fiscal year 1999. See The Department's December 10, 2004, supplemental questionnaire.

On December 17, 2004, Ta Chen responded to the Department's request for information. Ta Chen explained that the Taiwan Incorporation Act allows Ta Chen to pay bonuses to employees by distributing part of the company's retained earnings. See Ta Chen's December 17, 2004, submission, at 1. Ta Chen explained that because it regards these expenses as retained earnings, it did not report these expenses in the cost of production reported to the Department. See Ta Chen's December 17, 2004, submission at 2. The information provided by Ta Chen unequivocally demonstrates that Ta Chen paid employee bonuses from the stockholder's equity. See Ta Chen's December 17, 2004, submission at 1 and Exhibit C.

Although Ta Chen's assertions may be correct regarding its accounting of these expenses, in past cases the Department has determined that it is distortive not to include the cost of bonuses in the cost of production for dumping purposes. Specifically, the Department has noted that the U.S. Generally Accepted Accounting Principles ("GAAP") requires employee bonuses to be reported as an expense on the income statement and not as a deduction from retained earnings on the balance sheet. See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8922 (Comment 8) (February 23, 1998) ("Taiwan Semiconductors"). In order to avoid a distortion of the dumping margin calculation in Taiwan Semiconductors, the Department increased the cost of production and constructed value data by including these bonus payments. Id. Similarly, in these final results we are increasing Ta Chen's G&A expenses by the amount paid for employee bonuses.

Additionally, the Department will be including in its G&A calculation, amounts Ta Chen paid to supervisors and directors.⁵ While the Court only directed the Department to seek additional relevant information concerning employee bonuses, the Department, upon further review of both Attachment 23 of Ta Chen's April 6, 2001, submission and Exhibit D of Ta Chen's December 17, 2004, submission, discovered additional line items that reflect bonuses paid to Ta Chen's supervisors and directors. See Ta Chen's April 6, 2001, submission, Attachment 23, Pub. Doc. No. 15, Prop. Doc. No. 48. Since the Department was not previously aware that bonus payments had been made to supervisors or directors, it did not specifically request Ta Chen to submit this information in its December 10, 2004,

⁵ While the Department was not specifically instructed to include bonuses to directors/supervisors by the Court, inclusion of these amounts is consistent with the statutory intent that margins be calculated as accurately as possible.

request for additional information. See The Department's December 10, 2004, supplemental questionnaire. However, this information was previously placed on the record by Ta Chen during the administrative review proceeding. See Ta Chen's December 17, 2004, submission, at Exhibit D; Ta Chen's April 6, 2001, submission, Attachment 23, Pub. Doc. No. 15, Prop. Doc. No. 48.

In addition to including bonuses paid to employees, it is also the Department's practice to include bonuses paid to directors and supervisors in the calculation of the cost of production and constructed value. Specifically, in its Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") from Taiwan, 64 FR 56803, 56321 at Comment 13 (October 19, 1999) ("DRAMs from Taiwan"), the Department found that bonuses paid to directors, employees and supervisors should be included in the calculation of the cost of production and constructed value. Accordingly, in these final results, the Department also included bonus payments to directors and supervisors in Ta Chen's G&A calculation.⁶ Upon consideration of Ta Chen's December 17, 2004, submission we find that the G&A ratio calculation should be [* * *], which includes information related to employee bonuses, as well as bonuses to Ta Chen's directors and supervisors.⁷

⁶ See DRAMs From Taiwan, at Comment 13.

⁷ The Department used this information on bonuses to directors and supervisors, which was in the amount of [***] NTD in thousands, and added it to the employees bonuses. The Department next used that amount, [***] NTD in thousands and added it to the total G&A expense of [***] NTD in thousands for the fiscal year ending on October 31, 2004. The Department then divided [***] NTD in thousands by the total cost of goods sold for all products for the year ending on October 31, 2004, to derive the revised [***] figure for G&A. We note that based on the information provided by Ta Chen in its December 17, 2004, submission and a review of attachment 23 of Ta Chen's April 21, 2001, submission, Ta Chen payment of bonuses to employees-stock was [***]. Therefore, we have not included an amount for bonuses to employees-stock in our G&A expense recalculation.

INTERESTED PARTIES COMMENTS

Comment 1: The Department's calculation of G&A expenses should include bonus payments paid to both employees and directors/supervisors.

In the Department's Draft Results, the Department calculated Ta Chen's G&A expenses using bonus payments made to both employees and directors/supervisors. The Petitioners concur with this calculation. While the Court only specified that employees bonus payments from stockholders' equity should be included in Ta Chen's G&A expenses, the Petitioners agree with the Department's decision to include all bonuses paid, whether to employees or to directors/supervisors in calculating the company's G&A expenses. Petitioners agree that the Department's actions were entirely consistent with the case precedent cited by the Department, and that excluding any bonuses paid to employees and directors/supervisors would be distortive. Furthermore, Petitioners provide judicial precedent⁸ and state that the Department's fundamental obligation to calculate the most accurate dumping margins possible encourage actions like that taken by the Department in calculating Ta Chen's G&A expenses, i.e., including bonus payments made to both employees and directors/supervisors.

Ta Chen did not comment on this issue.

Department's Position:

The Department agrees with Petitioners that its calculation of Ta Chen's G&A expenses should include both bonus payments made to employees as well as those made to directors/supervisors.

2. The Department has reconsidered Ta Chen's U.S. Indirect Selling Expenses

⁸ Examples of cases cited by the Petitioners include: Gilmore Steel v. United States, 585 F. Supp. 670, 674 (CIT 1984); Koyo Seiko Co., Ltd. v. United States, 746 F. Supp. 1108, 1110-1 (CIT 1990); and Serampore Industries Pvt. Ltd. v. United States Department of Commerce, 696 F. Supp. 665, 673 (CIT 1988).

The Court concurred with the Petitioners' argument regarding the Department's calculation of indirect selling expenses, noting that it appears "that the agency took that year's interest expense only for TCI operations (and not for financing) into account." See Remand, at 31. The Court further agreed that "the U.S. indirect selling expenses submitted by Ta Chen were wrong and should be corrected." Id. Citing Petitioners' Motion, at 40. Accordingly, the Court directed the Department to reconsider all of Ta Chen's indirect selling expenses. Id. at 36.

In our Draft Results, we reconsidered Ta Chen's U.S. indirect selling expenses and initially agreed that Ta Chen's U.S. indirect selling expenses of [* * *] percent should be increased by Ta Chen's financing expenses (interest expenses). See Draft Results at 7-8. Therefore, we added this financing expense ([* * *] percent) to Ta Chen's reported U.S. indirect selling expenses ([* * *] percent).

On January 27, 2005, the Department provided Ta Chen and Petitioners with the Draft Results and requested that parties submit comments on its Draft Results by February 1, 2005. On February 1, 2005, Ta Chen submitted comments on the Draft Results⁹ and argued that the Department double-counted interest costs by adding them to the overall constructed export price ("CEP") deduction for indirect selling expenses while also deducting them from CEP as imputed inventory and credit costs. Upon further review of the record and Ta Chen's comments,¹⁰ the Department concurs with Ta Chen's

⁹ Petitioners also submitted comments on February 1, 2005, agreeing with the Department's findings from the Draft Results. With regard to the calculation of Ta Chen's U.S. indirect selling expenses, Petitioners agreed with the Department's Draft Results, which are addressed below.

¹⁰ Ta Chen argues that the Department double counted costs by including both imputed and actual interest in the Department's calculation of Ta Chen's dumping margin. Ta Chen notes that both the Department and the Court have previously recognized such double counting as impermissible and that the Department has even told the Court that by considering actual interest costs, it should not

reasoning that in our Draft Results, we double-counted interest expenses by adding interest expenses in the calculation of Ta Chen's imputed indirect selling expenses because these expenses were already accounted for in Ta Chen's inventory and credit expenses. See Ta Chen's Section B, C, and D Questionnaire Response, dated December 26, 2000, page 25 and Exhibit 11 (inventory expenses) and page 21 and Exhibit 24 (credit expenses) and 11, Pub. Doc. 22, Prop. Doc. 4. Including Ta Chen's financing expenses (interest expenses) with Ta Chen's operating expenses would result in double-counting of interest and, thus, would not render a more accurate dumping margin as explained below.

In their brief to the Court, Petitioners suggest that the Department's Final Results indicate that the Department did not include financial expenses in the calculation of Ta Chen's U.S. indirect selling expense. Specifically, Petitioners stated:

In the final results, the Department stated that “{b}ecause the Department is using fiscal year 1999 financial data as the basis for U.S. indirect selling expenses, we are using Ta Chen's fiscal year 1999 expense.” Thus, the Department **believed** that the U.S. indirect selling expenses reported by Ta Chen in its computerized U.S. file reflected both operating and financial expenses of TCI,{Ta Chen International} as reflected in TCI's 1999 financial statements.¹¹ *{emphasis added}*

Responding to Petitioners' argument, the Court agreed that it appeared that such expenses had been omitted. See Remand at 31. In the Final Results, however, no financing expenses were omitted. The Department's standard questionnaire instructed Ta Chen to calculate imputed inventory and credit costs (interest expenses) using the company's short-term borrowing rate. See Ta Chen's Section B, C,

consider imputed interest costs because such an action would lead to a double counting of costs. Ta Chen concludes by emphasizing that the Department's decision to add interest costs to indirect selling expenses while also accounting for imputed interest costs is akin to double-counting and is thus impermissible.

¹¹ See Petitioner's Motion, at 39.

and D Questionnaire Response, dated December 26, 2000, page 25 and Exhibit 11 (inventory expenses) and page 21 and Exhibit 24 (credit expenses) and 11, Pub. Doc. 22, Prop. Doc. 4. Ta Chen followed the standard questionnaire instructions and included these interest expenses in their calculation of imputed inventory and credit costs, which were subsequently used in calculating Ta Chen's dumping margin. See Final Results Margin Calculation Program, dated December 10, 2001, Pub. Doc 86, Prop. Doc. 34.

In the Department's Final Results, in order to avoid double-counting of expenses, we did not add the financial interest expense to the U.S. indirect selling expense because the imputed inventory and credit expenses reported by Ta Chen already captured an amount for interest expense. Therefore, we agree with Ta Chen that the inclusion of its financial interest expenses in the calculation of its U.S. indirect selling expenses in the Draft Results resulted in the double-counting of interest expenses. Accordingly, we find that it is inappropriate to add these financial interest expenses to Ta Chen's U.S. indirect selling expense as to do so without making a corresponding adjustment for the financing expenses already embedded in the imputed expenses would generate inaccurate results.

For these reasons, the Department did not add Ta Chen's interest expenses to Ta Chen's U.S. indirect selling expenses percent.

Comment 2: The Petitioners argue that the Department should include Ta Chen's financing expenses in calculating U.S. indirect selling expenses.

The Petitioners agree with the Department's inclusion of Ta Chen's financing expenses in calculating U.S. indirect selling expenses in the Draft Results.

Department's Position:

As explained above, the Department disagrees with Petitioners that it should have included Ta Chen's financing expenses in calculating U.S. indirect selling expenses.

Comment 3: Ta Chen argued that the Department impermissibly double-counted costs by considering both imputed and actual interest in its January 27, 2005, draft remand decision.

Ta Chen argues that the Department double-counted interest costs by considering both imputed and actual interest expenses in the Department's calculation of Ta Chen's dumping margin. Ta Chen notes that both the Department and the Court have previously recognized such double-counting as impermissible and that the Department has even told the Court that by considering actual interest costs, it should not consider imputed interest costs because such an action would lead to a double-counting of costs. Ta Chen concludes by emphasizing that the Department's decision to add interest costs to indirect selling expenses, while also adjusting for imputed interest costs, is akin to double-counting and is thus impermissible.

Department's Position:

For reasons set forth above, we agree with Ta Chen and have not included Ta Chen's 1999 U.S. interest expense in its U.S. indirect selling expenses calculation.

CONCLUSION

In conclusion, the Department has reopened the record, sought additional relevant information regarding employee bonuses and recalculated the G&A expenses of Ta Chen. The revised G&A expenses are now [* * *], which includes bonuses to both employee and directors/supervisors. The Department has also reconsidered Ta Chen's U.S. indirect selling expenses and has determined that there is no need to add financial interest expenses to Ta Chen's U.S. indirect selling expenses. Thus,

the Department has not changed Ta Chen's U.S. indirect selling expenses reported figure of [* * *] percent.

WEIGHTED-AVERAGE DUMPING MARGIN

As a result of this remand, the Department has recalculated the dumping margin for Ta Chen.

The weighted-average dumping margin is as follows:

Manufacturer/Exporter	Weighted-average margins (percent)	
	Final	Determination on Remand

Ta Chen.....	6.11.....	6.10

FINAL RESULTS OF REMAND DETERMINATION

Upon a final and conclusive court decision, the Department will issue amended final review results and liquidation instructions to the U.S. Customs and Border Protection ("CBP") identifying an antidumping duty rate of 6.10 percent for Ta Chen's exports of subject merchandise to the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan for the period June 1, 1999, through May 31, 2000.

Barbara E. Tillman
Acting Assistant Secretary
for Import Administration

Date