

Ta Chen Stainless Steel Pipe Co., Ltd. v. United States

Consol. Court No. 05-00094 Slip Op. 07-87 (CIT May 30, 2007)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The Department of Commerce (“the Department”) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”) in Ta Chen Stainless Steel Pipe Co., Ltd. v. United States, Consol. Court No. 05-00094, Slip Op. 07-87 (CIT May 30, 2007) (“Ta Chen”). In Ta Chen, the Court remanded the case for the Department “to complete its analysis concerning those entities affiliated with Ta Chen within the meaning of 19 U.S.C. § 1677(33)(A)-(E).” Ta Chen, Slip Op. 07-87 at 50-51. The Department notes that the Court affirmed the Department’s determinations as to the other claims raised by plaintiffs and defendant-intervenors.¹ —

In accordance with the Court’s instructions,² we have completed our analysis concerning those entities alleged to be affiliated with Ta Chen within the meaning of 19 U.S.C. § 1677(33)(A)-(E). Specifically, the Court recognized the following 18 entities as having been identified by the domestic industry as affiliated under the following respective subsections of the

¹ Specifically, the Court affirmed the following determinations by the Department in its Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, 70 Fed. Reg. 1,870 (January 5, 2005) (“Final Results”): (1) that application of total adverse facts available to sales of Ta Chen Stainless Steel Pipe Co., Ltd. (“Ta Chen”) was unwarranted, Ta Chen at 31; (2) that application of partial adverse facts available with respect to Ta Chen’s two affiliates was warranted, id. at 34; (3) that Ta Chen’s financial statements were reliable, id. at 38; and (4) that certain companies were not affiliated with Ta Chen under sections 771(33)(F) and (G) of the Tariff Act of 1930, as amended (“the Act”), 19 U.S.C. § 1677(33)(F) and (G), id. at 44-45.

² The Court ordered the Department to report its results on remand to the Court by August 3, 2007. Ta Chen, Slip Op. 07-87 at 51. On July 20, 2007, the Court granted a 60-day extension of time to file the remand results, making the final remand results due October 2, 2007. On June 6, 2007, Petitioners submitted comments addressing the Court’s instructions to the Department.

statute: under subsection (33)(A) those parties include PFP Taiwan Co., Ltd. (“PFP”), DNC Metals, Inc. (“DNC”) and Billion Stainless, Inc. (“Billion”); upon subsection (33)(B) AMS Specialty Steel, Inc. (“AMS California”), Millenium Stainless, Inc. (“Millenium”), South Coast Stainless, Inc. (“South Coast”), KSI Steel, Inc., K Sabert Inc., Sabert Investments, Inc., Southstar Steel Corporation (“Southstar”), Estrela Steel Inc. (“Estrela 1”) and Estral, LLC (“Estrela 2”); upon subsection (33)(D), Stainless Express, Inc. (“Stainless Express 1”), Becmen, LLC., Becman Specialty Steels, Inc., Becmen Trading International, Inc. and Southstar; upon subsection (33)(E) AMS California, AMS Specialty Steel, LLC SOSID #552293 (“AMS North Carolina 1”) and AMS Specialty Steel, LLC SOSID #0654511 (“AMS North Carolina 2”). See Ta Chen, Slip Op. 07-87 at 50-51 & n.27. Accordingly, the Department has provided an analysis of these entities below.³

The Department finds that AMS California is affiliated with Ta Chen pursuant to section 771(33)(E) of the Act. However, we continue to find that there is no evidence to conclude that the business activities of AMS California during the first six and half months of the POR related to subject merchandise or that AMS California had direct transactions with Ta Chen as either a customer or supplier of any product related to the production of subject merchandise.

Additionally, the Department finds that the other 17 companies are not affiliated with Ta Chen in accordance with sections of 771(33)(A)-(E) of the Act. Because the Court affirmed the

³ The Department did not perform an analysis of the potential affiliation of the NASTA International, the Hsieh Family Trust, or LPJR Investment, LLC entities because they were only alleged by the domestic industry to be affiliated with Ta Chen under section 771(33)(F) of the Act, and there were no facts on the record supporting a finding of affiliation under 771(33)(A)-(E). Because the Court found “no error in the ITA’s conclusion that no further affiliation analysis was necessary concerning companies alleged to be affiliated with Ta Chen by virtue of ‘control’ pursuant to subsections 1677(33)(F) and (G),” Ta Chen, Slip Op. 07-87 at 43-44, the Department has not performed any further analysis of these entities.

Department's findings with regard to the companies allegedly affiliated with Ta Chen under section 771(33)(F) and (G) of the Act, the Department has not included an application of these subsections of the statute in its analysis.

II. ANALYSIS

During the course of the administrative review, the Department collected substantial information regarding Ta Chen's potential affiliation with multiple entities. In the Affiliation Memo, the Department provided a detailed explanation of the facts on the record regarding each entity. See Memorandum For Jeffrey May, Deputy Assistant Secretary for Import Administration from Joseph Welton, Analyst, Through Edward C. Yang, Director, AD/CVD Enforcement, Group III, Office IX, dated June 29, 2004 ("Affiliation Memo"). In accordance with the Court's instructions, the Department's affiliation analysis for each entity below is limited to addressing the criteria under 771(33)(A)-(E) of the Act. See Ta Chen, Slip Op. 07-87 at 50-51. Therefore, on remand, the Department did not consider the affiliation criteria of sections 771(F) or (G) of the Act in conducting the affiliation analysis for any entity.

The Department determined that it was unnecessary to reopen the record to gather more information from the parties prior to completing the affiliation analysis provided herein, as the record contained adequate factual information to allow the Department to complete its analysis for all of the entities in question, with the exception of some Estrela companies discussed below. Therefore, the Department completed its affiliation analysis for each entity utilizing the data on the record of the Final Results originally presented in the Affiliation Memo.

A. *Statutory Provisions*

Section 771(33) of the Act states that the Department considers the following as affiliated:

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

B. Company-Specific Analysis

South Coast

Record Evidence

The record contains a Uniform Business Report (“UBR”) from the State of Florida which identifies William K. Mayes as the President of South Coast as of June 12, 2002 (first month of Period of Review (“POR)), and January 30, 2003 (eighth month of POR). Petitioners also submitted to the record a UBR from Secretary of State of the State of Florida dated March 6, 2002 (three months prior to the POR) which identified William Kendall Mayes as a Vice-President and Registered Agent of Ta Chen International (“TCI”), Ta Chen’s wholly-owned U.S. subsidiary. TCI’s March 6, 2003, UBR was signed by Robert Shieh, the President of Ta Chen.

On December 19, 2003, Ta Chen submitted record statements from Mr. Mayes stating that Mr. Mayes “incorporated South Coast Stainless, Inc. in August 2001. This company was incorporated to eventually merge Dragon Stainless, Inc. (“Dragon”) and Millenium Stainless into one company. This company was never active, and is not now. It was incorporated solely to

eventually take over the assets of Dragon and Millenium.”⁴ See December 19, 2003, submission at 5. In its April 14, 2004, submission, Ta Chen stated that South Coast was not involved with subject merchandise in any way. See April 19, 2004, submission at 19.

Determination

The UBRs filed by South Coast with the State of Florida indicate that Mr. Mayes was President of South Coast during the entire POR. The UBRs filed by TCI with the State of Florida indicate that Mr. Mayes was also a Vice-President of TCI throughout the entire POR. Based on the UBRs filed by South Coast with the State of Florida, TCI and South Coast shared an officer, Mr. Mayes, during the POR. Therefore, pursuant to section 771(33)(B) of the Act, we find that Mr. Mayes is affiliated with both TCI and South Coast, but we do not find that South Coast, through its shared officer, Mr. Mayes, is automatically affiliated with Ta Chen (whether or not Mr. Mayes is also affiliated with Ta Chen). In order to find an affiliation between South Coast and Ta Chen, the Department would need to consider issues of control under sections 771(33)(F) and (G) of the Act. However, in accordance with the Court’s order, the Department’s affiliation analysis on remand is limited to addressing the criteria under sections 771(33)(A)-(E) of the Act. See Ta Chen, Slip Op. 07-87 at 50-51.

Millennium

Record Evidence

The record contains UBRs which Millennium filed with the Department of State of Florida on May 20, 2002 (prior to the POR) and January 30, 2002 (during the POR), which

⁴ Ta Chen later claimed that its use of the word “inactive” at this time referred in fact to commercial inactivity, rather than South Coast’s status in the Florida corporate registry. (See May 11, 2004, submission at 8).

identify William K. Mayes as President of Millennium and Donna Richey as Vice-President, Secretary, and Treasurer of Millennium. As noted above in the analysis of Southcoast, Mr. Mayes was a Vice-President of TCI. In our analysis of Dragon's relationship with Ta Chen⁵ (through TCI), the Department found (and Ta Chen did not dispute) that Ms. Richey was a sales employee of TCI throughout the POR. See Affiliation Memo at 10, 12. On April 14, 2004, Ta Chen claimed that at no time during the POR was Millennium involved in the sale or production of subject merchandise.

Determination

The UBRs filed by Millennium with the State of Florida clearly indicate that Mr. Mayes was President of Millennium and Ms. Richey was Vice-President of Millennium during the entire POR. Mr. Mayes was also a Vice-President of TCI throughout the entire POR and Ms. Richey was an employee of TCI throughout the entire POR. The evidence indicates that Millennium and TCI shared an officer during the entire POR, and that TCI and Millennium shared an employee throughout the POR.

Therefore, pursuant to section 771(33)(B) of the Act, we find that Mr. Mayes is affiliated with both TCI and Millennium and pursuant to section 771(33)(D) of the Act, we find that Ms. Richey is affiliated with both TCI and Millennium. However, we do not find that Millennium, through its shared officer, Mr. Mayes, and its shared employee, Ms. Richey, is automatically affiliated with Ta Chen. In order to find an affiliation between Millennium and Ta Chen, the Department would need to consider issues of control under sections 771(33)(F) and (G) of the

⁵ Pursuant to sections 771(33)(F) & (G) of the Act, the Department found that an affiliation existed between Dragon and Ta Chen. See Affiliation Memo at 9-14.

Act. However, in accordance with the Court's order, the Department's affiliation analysis on remand is limited to addressing the criteria under 771(33)(A)-(E) of the Act. See Ta Chen, Slip Op. 07-87 at 50-51.

DNC

Record Evidence

The evidence on the record shows that "Roger Tsai, the brother-in-law of Robert Shieh, the President of Ta Chen, is the President and Chairman of DNC. David Schlaeger is the Director of Operations and General Manager of DNC." See January 23, 2004, response at B-1. Ta Chen also stated that "DNC has never purchased from, or sold to, Ta Chen, stainless steel butt-weld pipe fittings. DNC buys bolts, nuts and coil (awhile back) from TCI, and re-exports them." Id.

We note that Mr. Schlaeger reported that he also manages and operates Emerdex Stainless Flat Roll Products, Inc. ("Emerdex 1"), and that Mr. Schlaeger signed Emerdex 1's California business record dated January 31, 2003 (during the POR). See May 11, 2004, submission at Exhibit I-A-2 and April 28, 2004 submission at Enclosure 2A.

Determination

First, we note that in the previous review the Department found that PFP, like DNC, was managed by Roger Tsai, a brother-in-law of Robert Shieh, the President of Ta Chen. The Department found that an affiliation through familial relationship under section 771(33)(A) of the Act did not exist between Roger Tsai and Robert Shieh, because they were not "descendants of a common progenitor." See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review 68 FR 69,996, 69,998 (December 16, 2003) and

accompanying Issues and Decision Memorandum, at Comment 2. Here, we continue to find that an affiliation between Ta Chen and DNC through familial relationship under section 771(33)(A) does not exist.

However, DNC shares an officer or director with Emerdex 1 (David Schlaeger), which the Department previously found is controlled by Ta Chen. See Affiliation Memo at 4-9 (remained unchanged in the Final Results). Mr. Schlaeger is thus an officer or director of a company controlled⁶ by Ta Chen and an officer of DNC. Therefore, pursuant to section 771(33)(B) of the Act, we find that Mr. Schlaeger is affiliated with both DNC and Emerdex 1, but we do not find that DNC, through its shared officer, Mr. Schaleger, is affiliated with Ta Chen, (whether or not Mr. Schlaeger is also affiliated with Ta Chen). In order to find an affiliation between DNC and Ta Chen, the Department would need to consider issues of control under sections 771(33)(F) and (G) of the Act. However, in accordance with the Court's order, the Department's affiliation analysis on remand is limited to addressing the criteria under 771(33)(A)-(E) of the Act. See Ta Chen, Slip Op. 07-87 at 50-51.

Billion

Record Evidence

The evidence on the record shows that “Billion was in the business of importing, exporting and distributing steel products. The owner was again Robert Shieh’s nephew (Roger Tsai).” See January 23, 2004 response at B-2. Ta Chen also stated that “the business between

⁶ Pursuant to sections 771(33)(F) & (G) of the Act, the Department found that an affiliation existed between Emerdex 1 and Ta Chen. See Affiliation Memo at 4-9. Specifically, the Department found that Ta Chen was in a position to exercise restraint or direction of Emerdex 1’s business activities because Ta Chen, through Robert Shieh had extraordinary access to Emerdex 1’s accounting and computer records and because Emerdex 1 was commercially dependent (supplier/buy relationship) on Ta Chen. See Affiliation Memo at 4-9 and Final Results at Comment 1, 6-7.

Billion Stainless and TCI included stainless steel sheet, plate, and coil, alloy fittings, machinery, and tooling. At no time did TCI buy stainless steel butt weld pipe fittings from, or sell stainless steel butt weld pipe fittings to, Billion Stainless.” Id.

The Department issued specific requests for information concerning the exact identity of Ta Chen’s purchases, if any, from Billion during the POR. Ta Chen stated that “Ta Chen Taiwan and TCI (and thus Ta Chen) did not buy anything from Billion during the POR.” See April 14, 2004, response at 30.

Ta Chen also submitted an income statement from Billion, indicating that it was a commercially active corporation through the first two and a half months of the POR. Ta Chen also submitted Billion’s Articles of Dissolution, dated August 31, 2002 (3 months into the POR).

Determination

The record indicates that Mr. Tsai was an owner and officer of Billion. We note that Mr. Tsai was also an officer of DNC (see DNC analysis above). Although Mr. Tsai is an officer of both Billion and DNC, Mr. Tsai is not an officer of Ta Chen (or TCI). There is no evidence on the record that Ta Chen is affiliated with Billion under sections 771(33)(A)-(E) of the Act. Therefore, we do not find that Ta Chen is affiliated with Billion under sections 771(33)(A)-(E) of the Act, during the POR.

AMS California

Record Evidence

AMS California, a California corporation, was first identified on the record of this review in a note within TCI’s financial statements for the fiscal year ending 2002 as an affiliate of TCI. (See September 12, 2003, AQR at A-246). The record also shows that Ta Chen owned 51% of

AMS California through its wholly-owned subsidiary, Ta Chen (BVI) Holding, Ltd., and that Robert Shieh was President of AMS California, as noted in the an annual report filed by AMS California on October 7, 2002, which was signed by Robert Shieh. See Petitioners December 9, 2003, comments at Enclosure 5. In addition, we note that the record contains a corporate record from the State of California, where AMS California was incorporated, dated current as of December 5, 2003, which identifies AMS California as an active corporation, with the same mailing address as TCI's headquarters in Long Beach, California and identifies Robert Shieh, the President of Ta Chen, as the Agent for Service of Process for AMS California.⁷

We also note that the December 19, 2003, submission from Ta Chen indicated that Robert Shieh had an ownership interest in AMS California, while Ta Chen's November 19, 2003, submission stated that Ta Chen, through Ta Chen BVI Holdings, Ltd. had the ownership interest. Specifically, we note that Ta Chen's statements at page 10 of the April 14, 2004, response indicate that Ta Chen BVI Holdings (100% owned by Ta Chen) and Robert Shieh, the President of Ta Chen, owned a majority interest in AMS Specialty Steel (a California company) from September 2000 through December 2002. Mr. Shieh was also the Director, Chief Economic Officer ("CEO"), Secretary, Chief Financial Officer ("CFO") of AMS {California}, and a registered agent for AMS California.

At page 11 of the April 14 ,2004, submission Ta Chen stated that "(a) James Chang, (a Vice-President at Ta Chen or TCI) was a director of AMS {California}; and (b) Denny Chang (a Vice President of Ta Chen Taiwan) was a director of AMS {California}," thus suggesting that Ta

⁷ Ta Chen stated that AMS California "has been, and continues to be, managed jointly by Mr. Klaus Becker and Ms. Barbara Anderson." (See December 19, 2003, submission at 2).

Chen's relationship with AMS California has ended. See April 14, 2004, response at 11.

However, in the same response Ta Chen reported that Robert Shieh owns, controls, or holds with power to vote, five percent or more of the outstanding voting stock of AMS California. See April 14, 2004, response at 11.

Determination

The record indicates that Ta Chen held a majority ownership (51%) of AMS California during the first six and half months of the POR. Therefore, pursuant to section 771(33)(E) of the Act, we find that an affiliation existed between AMS California and Ta Chen during the first six and half months of the POR based on Ta Chen's 51% ownership interest in AMS California.

In addition, pursuant to section 771(33)(B) of the Act, we find that Robert Shieh, Danny Chang and James Chang are affiliated with AMS California and TCI. However, we do not find that AMS California, through the sharing of certain officers (Robert Shieh, Danny Chang and James Chang), is affiliated with Ta Chen. In order to find an affiliation between AMS California and Ta Chen based on shared officers, the Department would need to consider issues of control under sections 771(33)(F) and (G) of the Act. However, in accordance with the Court's order, the Department's affiliation analysis on remand is limited to addressing the criteria under 771(33)(A)-(E) of the Act. See Ta Chen, Slip Op. 07-87 at 50-51.

Finally, we continue to find that there is no evidence to conclude that the business activities of AMS California during the first six and half months of the POR related to subject merchandise or that AMS California had direct transactions with Ta Chen as either a customer or supplier of any product related to the production of subject merchandise. See Affiliation Memo at 22.

AMS North Carolina 1 & AMS North Carolina 2

Record Evidence

The articles of incorporation and dissolution on the record for AMS North Carolina 1 indicate that the company was formed in 2000 and dissolved in 2001, prior to the POR. Further, the public corporate record indicates that AMS North Carolina 1's principal office address was TCI's headquarters in Long Beach, CA.⁸ The record also contains a public filing from the North Carolina Department of the Secretary of State for AMS North Carolina 2.⁹

Petitioners also submitted AMS North Carolina 2's annual report for the year ended December 31, 2002 (during the POR) from the North Carolina Secretary of State which indicates that AMS North Carolina 2's business was "specialty steel products wholesaler: the company purchases steel from overseas vendors and resells to North American distributors." This same annual report identifies AMS California and Klaus Sabert (see analysis of The Sabert Steel Trading Companies below) as the members of AMS North Carolina 2.

In its April 14, 2004, response at 12, Ta Chen identified AMS North Carolina 2 as "a successor company" to AMS California. Ta Chen stated that "neither Ta Chen nor Robert Shieh had any involvement with this independent entity, it is Robert Shieh's understanding that this entity was formed by Barbara Anderson and Jurgen Koch. Therefore {AMS North Carolina 2} had not {sic} relationship with Ta Chen and for all the separately listed questions, with respect to

⁸ 5855 Obispo Ave., Long Beach, CA 90805. This address continues to be used for AMS California's mailing address according the public records in the State of California.

⁹ This filing indicates that AMS North Carolina 2 was formed on December 2, 2002 (during the POR, and 10 days prior to the date Robert Shieh reported to have divested his interest in AMS California), in North Carolina, and is currently active as of December 3, 2003. The report for AMS North Carolina 2 identifies the address of TCI's California headquarters as North Carolina 2's principal office address. This is also the same address that had been used as AMS North Carolina 1's registered office address.

{AMS North Carolina 2} the answer is ‘no’ or ‘not applicable.’” See April 14, 2004 response at 33. Ta Chen also stated that it {AMS North Carolina 2} is a separate legal entity from AMS California and that “Ta Chen has not obtained a favorable response in reply to its request for documentation from this entity.” Id. In Ta Chen’s May 11, 2004, submission, Ta Chen reiterated that AMS North Carolina 1 was dissolved prior to the POR, and that AMS North Carolina 2 was formed at the point of Ta Chen’s disengagement from AMS California, in December 2002. See May 11, 2004, submission at 11.

Determination

AMS North Carolina 1

Because evidence on the record indicates that AMS North Carolina 1 was dissolved prior to the POR, an affiliation determination for purposes of this review is not applicable.

AMS North Carolina 2

There is no evidence on the record that Ta Chen is affiliated with AMS North Carolina on the basis of any of the affiliation criteria in section 771(33)(A)-(E). Therefore, the Department finds that Ta Chen was not affiliated with AMS North Carolina during the POR.

Stainless Express 1

Record Evidence

The record contains a printout of a Public Inquiry from the Florida Department of State, Division of Corporations which identifies Stainless Express 1 as an inactive corporation under administrative dissolution for failure to file an annual report. The Florida registry identifies Donna Richey as the President of Stainless Express 1. Further, the registry states that Stainless Express 1 was administratively dissolved on October 4, 2002 (during the POR). Petitioners also

filed the publicly available Articles of Incorporation for Stainless Express 1, filed in July 2001 (before the POR), which also identify Donna Richey as an officer or director. See December 9, 2003, submission at Enclosure 4.

In Ta Chen's April 14, 2004 submission, Ta Chen stated that Stainless Express 1 was inactive during the POR. See April 14, 2004, submission at 33. Ta Chen also provided a copy of Stainless Express 1's Articles of Incorporation. Ta Chen also stated at 23 that "Ms. Richey is a Ta Chen branch manager," and at 33 that "Donna Richey, in the employ of TCI, has advised Ta Chen that she formed Stainless Express {1} for personal use, but that business was never opened because the employee found its prospective venture not financially viable."¹⁰ Ms. Richey submitted a letter at Exhibit 5-5 stating that Stainless Express 1 was formed for "the distribution of Stainless Steel Piping products to the end user in Florida," but that "Stainless Express {1} never opened, and never did any purchasing or sales of any kind."

Determination

Despite the fact that Stainless Express 1 was dissolved during the POR, the evidence on the record shows that Ms. Richey is not only an employee of Ta Chen and an officer or director of Stainless Express 1, but also an officer of Dragon, a company affiliated with Ta Chen,¹¹ and an officer of Millennium as noted above. Therefore, pursuant to section 771(B) of the Act, we find that Ms. Richey is affiliated with both Stainless Express 1 and Ta Chen, but we do not find that

¹⁰ In Ta Chen's December 19, 2003, submission of statements from William Ken Mayes, Mr. Mayes stated that "as far as I know, Ms. Richey was contemplating opening her own business at the time and leaving Ta Chen's employ. After researching her financial needs and requirements for running this type of business, Ms. Richey decided that it was in her best interest to remain with Ta Chen." Mr. Mayes also stated that Stainless Express 1 "was never active." See December 19, 2003, submission at 6.

¹¹ See Affiliation Memo at 9-14 and Final Results at Comment 2.

Stainless Express 1, through its shared employee in Ms. Richey, is affiliated with Ta Chen. In order to find an affiliation between Stainless Express 1 and Ta Chen, the Department would need to consider issues of control under sections 771(33)(F) and (G) of the Act. However, in accordance with the Court's order, the Department's affiliation analysis on remand is limited to addressing the criteria under 771(33)(A)-(E) of the Act. See Ta Chen, Slip Op. 07-87 at 50-51.

Southstar

Record Evidence

The record contains an online corporate record from the Department of the Secretary of State of the State of North Carolina which identifies Southstar as an active corporation as of December 3, 2003 (after the POR). The AMS North Carolina 1 corporate record also identifies "Klaus E Becker" as Southstar's Agent. The TCI record and the Southstar record both list the same address as the "Registered Office Address" and "Registered Mailing Address."

Ta Chen's December 19, 2003, statements from Robert Shieh, the President of Ta Chen, stated that Mr. Becker was the CEO of Southstar and the President of Estrela 1 (see Analysis of Estrela 1 below). Mr. Shieh stated that, "although on paper SouthStar Steel is still a viable entity, it is not and has not been for the past 4 ½ years an operating concern." See December 19, 2003, submission at 1. Mr. Shieh continues, "in late 1998, SouthStar ran into financial problems and began their quest for a strategic partner." Mr. Shieh also stated that SouthStar's "lender took possession of the company and liquidated the assets. {Mr. Shieh} in turn proceeded to hire a significant portion of the SouthStar workforce." Id.

Ta Chen reiterated that it believes that none of the affiliation criteria apply between Southstar and Ta Chen, including shared employees or officers. Ta Chen also reiterated that

Southstar was “defunct and not active during the POR.” See April 14, 2004, response at 13-14.

Determination

Ta Chen denies that any affiliation exists between Ta Chen and Mr. Becker, and specifically disputes the relevancy of any such affiliation, as Ta Chen claims that Southstar was not active during the POR. Ta Chen did not provide any evidence that, in fact, Southstar was not active during the POR. Ta Chen also stated that “on paper, Southstar Steel is still a viable entity.” The corporate records from the State of North Carolina, which list Southstar as an active company, support Ta Chen’s claim that Southstar remains viable on paper.¹² Thus, the record evidence shows that Southstar was active during the POR, and does not provide any justification for a conclusion that Southstar’s official legal documents somehow are unreliable such that they do not reflect the underlying commercial reality of the company.

Mr. Becker was an officer of a company affiliated with Ta Chen during a portion of the POR and CEO of Southstar. However, we do not find that Southstar, through Mr. Becker, is affiliated with Ta Chen. In order to find an affiliation between Southstar and Ta Chen, the Department would need to consider issues of control under sections 771(33)(F) and (G) of the Act. However, in accordance with the Court’s order, the Department’s affiliation analysis on remand is limited to addressing the criteria under 771(33)(A)-(E) of the Act. See Ta Chen, Slip Op. 07-87 at 50-51.

¹² We realize that Ta Chen’s statement that Southstar was “not an operating concern” likely implied that Southstar was commercially inactive, regardless of its official status in the North Carolina corporate registry. Ta Chen made that claim concerning its assertion that South Coast was “inactive,” when in fact that company’s status is “active” in the corporate registry.

Estrela 1 & Estrela 2¹³

Record Evidence

Ta Chen stated that Estrela 1 was a “sister company” of Southstar with a “similar ownership structure.” Ta Chen stated that “the financing for Estrela {1} was backed by SouthStar,” and that Klaus Becker was the CEO of Southstar and the President of Estrela 1. Mr. Shieh stated that he lent his “financial assistance” to Mr. Becker so that Mr. Becker could continue the operation of Estrela 1. Subsequently, “a new business was formed which was named AMS Specialty Steels.”¹⁴ Ta Chen noted that its involvement with Estrela 1 (and Southstar) may have begun as early as “late 1998.”

In the April 14, 2004, response at 33, Ta Chen stated that Estrela 1 was inactive during the POR. Ta Chen also indicated on April 14, 2004, at 15 that no affiliation of any sort existed between Ta Chen and Estrela 1. Ta Chen also provided Estrela 1’s Certificate of Dissolution in the State of North Carolina, dated June 12, 2003, (after the POR) at Exhibit 5-4.

Estrela 2 was formed in 1999 and was an active North Carolina corporation during the POR. See Affiliation Memo at Appendix 3. No comments concerning Estrela 2 were filed on

¹³ During the course of the review we independently identified the following companies in the California State registry: TCI Estrela International (“TCI Estrela”), Estrela International Corporation (“Estrela 3”), and Estrela International, Inc. (“Estrela 4”). See Affiliation Memo at 29, n. 24 and Appendix 3. We note that TCI Estrela reported the same official address as NASTA, a company which Ta Chen described as a “division” of TCI. See id., at Appendix 4. Our research indicated that each of these companies have been dissolved or suspended, although we could not determine whether they were dissolved or suspended during the POR. Due to the statutory time constraints on this proceeding we were unable to investigate Ta Chen’s relationship with these companies during the POR. Additionally, the Department notes that it did not receive any comments from either party as to these three entities after their mention in the Affiliation Memo. Because of the lack of interest by parties as to these companies as well as their exclusion from the Court’s remand order, the Department has determined not to pursue additional information on these companies. See Ta Chen at 51-52, n.27.

¹⁴ We presume Mr. Shieh is referring to AMS California, although we note that he may very well be referring to AMS North Carolina 1, or possibly AMS North Carolina 2.

the record of this review by Petitioners or Ta Chen. Estrela 2's business activities are identified as "wholesale steel products." We note that Mark C. Menzies is the registered agent and managing member of Estrela 2. The full name of the other member of this limited liability company is illegible in the public record ("oncepcion M Becker") attached to the Affiliation Memo. We note that Mr. Menzies and Mr. Klaus Becker are members in Becman, LLC, and officers of Becmen Specialty Steels, Inc., and Becmen Trading International, Inc. (collectively, "The Becmen Steel Trading Companies") (see Analysis of The Becmen Steel Trading Companies below).

Determination

Estrela 1

During the POR Mr. Becker was an officer of Estrela 1 and an officer of a company affiliated with Ta Chen during the POR. However, we do not find that Estrela 1, through Mr. Becker, is affiliated with Ta Chen. In order to find an affiliation between Estrela 1 and Ta Chen, the Department would need to consider issues of control under sections 771(33)(F) and (G) of the Act. However, in accordance with the Court's order, the Department's affiliation analysis on remand is limited to addressing the criteria under 771(33)(A)-(E) of the Act. See Ta Chen, Slip Op. 07-87 at 50-51.

Estrela 2

The Department became aware of Estrela 2 as the statutory deadlines of this proceeding approached, despite having specifically asked supplemental questions regarding Estrela 1, which noted that we were in fact interested in the Estrela business. Because Ta Chen did not offer this information to the Department of its own accord, and the Department only became aware of

Estrela 2 more than eight months after Ta Chen's original section A response was filed, the Department was unable to further investigate Ta Chen's relationship with Estrela 2.

Furthermore, the interested parties in this review submitted no comments on the record concerning Estrela 2. As a result, the record of this review cannot support a finding of affiliation under sections 771(33)(A)-(E) of the Act between Ta Chen and Estrela 2.

**Becman, LLC, Becmen Specialty Steels, Inc., and Becmen Trading International
(collectively referred to as "The Becmen Steel Trading Companies")**

Record Evidence

The record shows that Becmen, LLC is an active limited liability company formed in November 1995 in North Carolina by Mark Menzies and Klaus Becker and that during the POR, Mr. Menzies was also a limited liability member of Estrela 2. Becmen, LLC's business activities are described as "import and export trading of bulk and specialty steel products." See April 28, 2004, response at Enclosure 8F.

Becmen Special Steels, Inc. is a currently active North Carolina corporation formed in 1986. Mark Menzies is identified as the Vice-President and Secretary and Klaus Becker is identified as the President and Treasurer. Becmen Special Steels, Inc's business activities are described in North Carolina's registry as "trading of specialty steels." See April 28, 2004, response at Enclosure 8G.

Becmen Trading International, Inc. is a currently active North Carolina corporation formed in 1983. Klaus Becker and Mark Menzies are identified as the President and Vice-President, respectively. Becmen Trading International, Inc.'s business activities are described as "Steel Trading/Holding Company." See April 28, 2004, response at Enclosure 8H.

Each of the three Becmen Steel Trading Companies all use the same address in Charlotte, NC.¹⁵ This is also the same address used by Estrela 2 as its principal office address and Southstar as its principal mailing address. See Affiliation Memo at Appendix 3 and December 9, 2003, submission at Enclosure 7.

Determination

The Department finds that Mr. Becker was an officer of a company affiliated with Ta Chen during the POR and the President of The Becmen Steel Trading Companies during the POR. Mr. Becker was thus an officer of a company affiliated with Ta Chen during the POR and the President of the Becmen Steel Trading Companies during the POR. However, we do not find that The Becman Steel Trading Companies, through Mr. Becker, are affiliated with Ta Chen. In order to find an affiliation between The Becman Steel Trading Companies and Ta Chen, the Department would need to consider issues of control under sections 771(33)(F) and (G) of the Act. However, in accordance with the Court's order, the Department's affiliation analysis on remand is limited to addressing the criteria under 771(33)(A)-(E) of the Act. See Ta Chen, Slip Op. 07-87 at 50-51.

KSI Steel, Inc., K. Sabert, Inc., and Sabert Investments (collectively referred to as "The Sabert Steel Trading Companies")

Record Evidence

The record contains a publicly available annual report of KSI Steel, Inc., dated April 2002 (before the POR) which identifies Klaus Sabert as President and Secretary and the corporate

¹⁵ 112 S. Tryon Street, Suite 600, Charlotte, NC, 28284.

registry from the State of North Carolina which identifies Mr. Sabert¹⁶ as the agent as of May 2003 (during the POR). KSI Steel, Inc., was incorporated in July 1993 in North Carolina. At that time, it was an active corporation with business activities described as an “agent/broker of steel products.” See April 28, 2004, submission at Enclosure 8C.

K. Sabert, Inc., a currently active corporation, was incorporated in October 1989 in North Carolina. Petitioners submitted to the Department the corporate registry of K. Sabert, Inc., from the State of North Carolina which identifies Klaus Sabert as the agent as of May 2003 (during the POR). Mr. Sabert is also identified as President of K. Sabert, Inc. on annual reports from 1994 and 1997, which were also filed by Petitioners. The Nature of K. Sabert, Inc.’s business activities is described as “agents.” Id., at Enclosure 8D.

The record also contains the corporate registry from the State of North Carolina which identifies Klaus Sabert as the Agent of Sabert Investments, Inc., as of May 2003 (during the POR). Sabert Investments, Inc. is an active corporation which was also incorporated in October 1989 in North Carolina. Mr. Sabert is also identified as President of Sabert Investments, Inc., on annual reports from 1996 and 2001. The nature of Sabert Investments, Inc.’s business activities is described as “agents/brokers of steel products.” Id.

Determination

_____The record indicates that Klaus Sabert is the President and Secretary of KSI Steel, Inc., agent and past President of K Sabert, Inc. and agent and past President of Sabert Investments, Inc. Although Mr. Sabert is an agent and President (past and present) and Secretary of the

¹⁶ We note that Mr. Sabert was identified on December 9, 2003, by Petitioners as a limited liability member of AMS North Carolina 2, which was formed in December 2002 (during the POR).

individual entities of The Sabert Steel Trading, Mr. Sabert was not an officer of Ta Chen during the POR.

Based on other record evidence discussed in the Affiliation Memo at 33-34, Ta Chen may be in the position to exercise control over The Sabert Steel Trading Companies. However, pursuant to the Court's order, on remand, the Department has only conducted an affiliation analysis under sections 771(33)(A)-(E) of the Act.

PFP

Record Evidence

PFP is managed by Roger Tsai, a nephew or brother-in-law of Robert Shieh, the President of Ta Chen. See January 23, 2004, response at B-021.

Determination

As determined in prior reviews, an affiliation through familial relationship under section 771(33)(A) of the Act does not exist between Roger Tsai and Robert Shieh, because they are not "descendants of a common progenitor."¹⁷ In this review no additional data is available with respect to section 771(33)(A) that would lead the Department to a different conclusion.

Based on other record evidence discussed in the Affiliation Memo at 35-36, Ta Chen may be in the position to exercise control over PFP. However, pursuant to the Court's order, on remand, the Department has only conducted an affiliation analysis under sections 771(33)(A)-(E) of the Act.

¹⁷ See Memorandum for James Jochum, Assistant Secretary, from Joseph Spetrini, Deputy Assistant Secretary, Issues and Decision Memorandum for the Administrative Review of Stainless Steel Butt-Weld Pipe Fittings from Taiwan, at Comment 2, December 10, 2003).

III. DRAFT REMAND CONCLUSION

Pursuant to the Court's order, based on the analysis of the data available on the record, the Department completed the affiliation analysis for numerous entities. As a result, the antidumping duty margin for Ta Chen remains unchanged at 5.08%.

IV. SUMMARY OF COMMENTS RECEIVED

Petitioners

Petitioners disagree with the Department's draft remand results, framing their analysis in terms of the proper interpretation of the Act and its legislative history. Petitioners did not otherwise address the Department's factual affiliation decisions.

I. Petitioners state that the roots of section 771(33) of the Act can be found in section 206(c)(1)-(6) of the 1921 Antidumping Act, in which Congress designated certain relationships as relevant to constructed value. According to Petitioners, in the 1979 Trade Agreement Act ("TAA"), section 206(c)(1)-(6) was taken without change to become section 773(e)(3) of the Act and in the 1988 Omnibus Trade and Competitiveness Act ("OTCA"), section 773(e)(3) became section 773(e)(4) of the Act, again without any substantive modification. Lastly, Petitioners note that in the 1994 Uruguay Round Agreements Act ("URAA"), section 773(e)(4) was incorporated as section 771(33) of the Act and codified in 19 U.S.C. (33)(A)-(F) with reference to affiliated persons. Thus, Petitioners argue, in the current antidumping law Congress has not only maintained the original related-party definition from the 1921 Antidumping Act, but also has recognized the nuances in affiliations that exist in today's marketplace and it has reacted to these concerns by giving the Department a more expansive reach to define and find affiliated persons under the antidumping law. Specifically, Petitioners argue that subsections (A)-(E) have far

more utility than simply defining affiliated relationships between a company and a person within that company.

According to Petitioners, subsections (A)-(E) define various conduits that, if shared by two companies, put the two companies and the conduit in a position to exercise restraint or direction over one another. Therefore, Petitioners argue that the Department does not need to undertake and should not undertake a second affiliation analysis under subsections (F) or (G), as subsections (A)-(E) provide the requisite mechanism to determine overlapping control, and, as the legislative history demonstrates, subsections (F) or (G) define other relationships. Petitioners cite several cases in support of their position.¹⁸

II. Petitioners also argue that, in order for the Department to complete its affiliation analysis according to the Court's requirement, the Department should address Ta Chen's behavior in failing to develop the record for its acknowledged and unacknowledged affiliates. Citing the Department's numerous questionnaires, Petitioners argue that Ta Chen has failed to develop an accurate, timely and complete record of its affiliations. The Department thus faces the position of not being able to calculate dumping margins as accurately as possible for Ta Chen, because the respondent withheld core information from the record.

Department's Position:

I. While we do dispute much of Petitioner's description of the evolution of the affiliated party definitions, they have not recognized that prior to the URAA, two definitions for "related parties" existed under section 773(e)(4) and also under section 771(13). Section 771(13) was repealed with the Uruguay Round Agreements Act while section 733(e)(4) was redesignated

¹⁸ The cases cited by Petitioners are addressed below in the Department's analysis.

section 771(33). See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. I at 838 (1994) (“SAA”) at 838. Section 773(e)(4) was applicable only to those situations in which a related party sold an input to a respondent and the Department needed to consider those related party sales when calculating constructed value. See, e.g., Queen’s Flowers de Colombia v. United States, 21 CIT 968, 972-76 981 F. Supp. 617, 623-624 (1997)(“Queen’s Flowers”). By contrast, section 771(13) of the Act was considered to be the related party definition of the more general application. See id.

Section 771(13) provided guidance in identifying the “exporter” which included the person by whom or for whose account the merchandise was imported into the United States. That provision was also used to determine whether home market sales are between related companies for purposes of calculating foreign market value. As such, this was the provision applied by the Department in the pre-URAA cases cited by Petitioners. The language in subsections (A)-(D) of 771(13) differs from both section 773(e)(4) and its successor, the current day section 771(33) of the Act. Specifically, the element of control is specifically addressed in section 771(13) of the Act, whereas control is not discussed in sections 771(33)(A)-(E).¹⁹ Thus,

¹⁹ Section 1677(13) provided:

For the purpose of determining United States price, the term “exporter” includes the person by whom or for whose account the merchandise is imported into the United States if--

- (A) such person is the agent or principal of the exporter, manufacturer, or producer;
- (B) such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;
- (C) the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or
- (D) any person or persons, jointly or severally, directly or indirectly, through stock

Petitioners presented an incomplete summary of the evolution of the related/affiliated party provision of the antidumping statute.

Petitioners cited numerous cases to support their claim that the Department need not include subsections (F) and (G) in its affiliation analysis. Petitioners rely on Hontex Enterprises v. United States, 248 F. Supp. 2d 1323, 1339 (2003) (“Hontex Enterprises”), for the Court’s statement that entities “are ‘affiliated’ where they share either certain relationships...or cross-ownership of voting stock..., or share any other relationship.” See Petitioners comments at 4-5 (quoting Hontex Enterprises, 248 F. Supp. 2d at 1339). However, the Court in that case examined whether the Department’s interpretation of 19 U.S.C. 1677(33)(F) was a permissible interpretation of the antidumping statute. See Hontex Enterprises, 248 F. Supp 2d. at 1342. In Hontex Enterprises the Court did not reach the issue of “shared” relationships under 19 U.S.C. §1677(33)(A)-(E) because the issue before it was Commerce’s interpretation of subsection (F) of the statute.

Petitioners also cite to Ferro Union, Inc. v. United States, 23 CIT 178, 44 F. Supp. 2d 1310 (1999) (“Ferro Union”) to illustrate the nuances in affiliations that exist in today’s marketplace (Petitioners’ Comments at 3, n.4), as well as the statute’s focus on the “capacity to exercise control.” Petitioners’ Comments at 10, n.17. However, in Ferro Union, the Court recognized that the “shared conduit” approach that Petitioners are advocating here would constitute a new affiliation standard not contemplated by the statute. See 23 CIT at 195, 44 F.

ownership or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.

19 U.S.C. § 1677(13) (1988).

Supp. 2d at 1327.

Petitioners also rely upon OCTG from Argentina for the proposition that shared relationships between two companies establish the conduit through which overlapping control is achieved, rendering unnecessary any reference to subsections (F) or (G). That case does not support that proposition, however, as the Department found no relationship between the two companies in question despite the fact that there was one common board member. See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina, 60 Fed. Reg. 33,539, 33,544 (June 28, 1995) (“OCTG from Argentina”). Furthermore, the statutory provision in OCTG from Argentina was different from the current statute. Specifically, the Department applied section 1677(13) of the Act (which, as discussed above, with the exception of subsection (A), includes a control requirement)--not section 1677b(e)(4), which is the provision most similar to the current day affiliation provision. Petitioners relied upon Flowers from Mexico as another example of a pre-URAA case where shared relationships between two companies established the conduit achieving overlapping control. However, in that case, the documentation submitted only showed the absence of a person’s name from the lists of company officers for the companies in question. The Department did not reach the question of what analysis was necessary if the name of the person in question did in fact appear on those company lists. See Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Mexico, 56 Fed. Reg. 1,794, 1,700 (January 17, 1991).

In Sugiyama, Petitioners are again incorrect in attempting to equate section 1677(33) to pre-URAA cases. See Sugiyama Chain Co., Ltd. v. United States, 852 F. Supp. 423, 425, and 433-35 (1994) (“Sugiyama”). In Sugiyama, the statutory provision that was applied was section

1677(13)(C), which required a different analysis. In fact, as noted above, sections 1677(13)(C) had a control requirement that is not found in section 1677(33)(A)-(E). Finally, similar to Sugiyama, in Queen's Flowers, the statutory provisions in question were sections 1677(13)(B) and (D). Those provisions of the statute are different from the current affiliation statute and there is nothing equivalent to these provisions in the current day statute. Therefore, as the cases cited by Petitioners and interpretation provide no support of its argument that the Department may look at control relationships in the context of subsections (A) or (E) in its affiliation analyses, the Department reaffirms its draft "completion" of the affiliation determinations in compliance with the Court's requirements.

II. Petitioners' argument regarding Ta Chen's cooperation has already been fully considered and decided by the Court. See Ta Chen, Slip Op. 07-87 at 31 ("{T}he court cannot conclude that the ITA's decision not to apply total AFA was unreasonable. The plaintiff's arguments concerning the ITA's application of partial adverse facts available to Emerdex 2 and Dragon fall short for similar reasons"). Moreover, because the Court's remand order was limited to the Department's completion of its affiliation analysis pursuant to sections 1677(A)-(E), (id. at 49-51), the Department has not reconsidered the issue of applying total adverse facts available to Ta Chen in this remand redetermination.

V. FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's order, based on the analysis of the data available on the record and comments received in response to the draft remand redetermination, the Department completed the affiliation analysis for numerous entities. As a result, the antidumping duty margin for Ta Chen remains unchanged at 5.08%.

David M. Spooner
Assistant Secretary
for Import Administration

Date