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POR: 06/01/98-05/31/99  
REMAND  
Proprietary Document  
**PUBLIC VERSION**

*Ta Chen Stainless Steel Pipe Co., Ltd. v. United States of America; and Alloy Piping Products, Inc., Flowline Division, Markovitz Enterprises, Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. v. United States of America.*  
Slip Op. 04-46 (CIT May 4, 2004)

**FINAL RESULTS  
PURSUANT TO REMAND**

**SUMMARY**

The Department of Commerce (“the Department”) has prepared these results of redetermination pursuant to the remand order of the Court of International Trade (“the Court”) in Ta Chen Stainless Steel Pipe Co., Ltd v. United States of America and Alloy Piping Products Inc., Flowline Division, Markovitz Enterprises, Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. v. United States Slip Op. 04-46 (CIT May 4, 2004) (“Remand”). In accordance with the Court’s instructions, the Department has re-examined the remanded issues of the Department’s Final Determination. See Final Results of Antidumping Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 65 FR 81827 (December 27, 2000) (“Final Determination”) and the accompanying Issues and Decision Memorandum for the Sixth Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: June 1, 1998, through May 31, 1999 (December 15, 2000) (“Decision Memo”). Pursuant to the Court’s instructions, the Department has: (1) provided an

explanation of why, in this case, recognized expenses are an adequate proxy for imputed expenses, and has demonstrated that the Department's methodology in calculating CEP profit is not distortive; and (2) reconsidered its basis for its determination concerning reimbursement in light of additional factual information submitted by Ta Chen Stainless Steel Pipe Co., Ltd., and found that the reimbursement agreement did not apply to the June 1, 1998, through May 31, 1999 period.

On August 5, 2004, the Department released the Draft Results Pursuant to Remand ("Draft Results") to interested parties for public comment. On August 9, 2004, we received comments on the Draft Results from Alloy Piping Products Inc., Flowline Division, Markovitz Enterprises, Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. v. United States (collectively "Petitioners") and from Ta Chen Stainless Steel Pipe Co., Ltd. ("Ta Chen" or the "Respondent")

## **BACKGROUND**

On December 27, 2000, the Department published its Final Determination, covering the period of review ("POR") June 1, 1998, through May 31, 1999. Ta Chen and Petitioners each contested various aspects of the Final Determination.

On May 4, 2004, the Court issued its opinion and remanded to the Department the following two aspects of its Final Determination for reconsideration:

(1) With respect to the Department's methodology for calculating CEP profit, the Court ordered the Department to explain why, in this case, recognized expenses included in the "Total Expenses" denominator and in the "Total Actual Profit" multiplier are an adequate proxy for the

imputed expenses included in the “Total U.S. Expenses” numerator, or to recalculate Ta Chen’s CEP profit to properly reflect its U.S. imputed expenses, and

(2) With respect to the Department’s reimbursement determination, the Court ordered the Department to reconsider the bases for its determination concerning the alleged reimbursement agreement, in light of any relevant factual evidence, as well as the agency’s own findings, conclusions, and determinations in other matters (including its determination– in the administrative review following the review at bar– that the reimbursement agreement on which it relies was limited to the 1992-1994 periods of review), and the applicable law.

## **I. CEP PROFIT**

The CEP profit equation allocates an amount of “Total Actual Profit” for all production and selling activities of subject merchandise to the respondents’ U.S. CEP selling and further-manufacturing activities only. CEP profit is calculated according to the following equation:

$$\begin{array}{l} \text{Total CEP profit} \\ \text{allocated to U.S.} \\ \text{expenses} \end{array} = \text{Total Actual Profit} \times \frac{\text{Total U.S. Expenses}}{\text{Total Expenses}}$$

In its remand instructions, the Court instructed the Department to explain how the recognized expenses used to calculate the “Total Expenses” denominator and the “Total Actual Profit” multiplier adequately reflect the imputed expenses that are included in the “Total US Expenses” numerator.

In addressing the Court’s concerns on remand, the Department first provides a more detailed

explanation of how financial expenses are taken into account, and further demonstrates that such expenses are adequately reflected in all parts of the Department's standard CEP profit calculation. Second, the Department explains that when it applies its standard CEP methodology to Ta Chen, no distortion is created. Finally, the Department addresses the Court's concern with respect to the test program it ran during the review.

**A. The CEP Profit Calculation and Imputed Expenses**

In its remand to the Department, the Court questioned whether excluding imputed financial expenses from the "Total Expenses" denominator and "Total Actual Profit" multiplier portions of the CEP profit calculation, while including the same expenses in the "Total U.S. Expenses" numerator, would lead to a distorted result. Below, the Department explains that these two parts of the calculation ("Total Actual Profit" and "Total Expenses") include recognized financial expenses which adequately reflect the imputed financial expenses included in the "Total U.S. Expenses" numerator.

In the Department's CEP profit calculation, the "Total Actual Profit" multiplier under section 1677a(f)(2)(D) is calculated by (1) adding the subject merchandise revenue for both the U.S. and the home market; (2) deducting from that amount the cost of merchandise for both markets; and (3) deducting the selling, distribution, and packing expenses for both markets. The "Total Expenses" denominator is calculated by adding (1) the cost of merchandise for both markets and (2) the selling, distribution, and packing expenses for both markets. In both the "Total Expenses" denominator and the "Total Actual Profit" multiplier, recognized financial expenses are included in the cost of U.S. and home

market merchandise.<sup>1</sup>

When calculating both the “Total Actual Profit” multiplier and the “Total Expenses” denominator, net financial expenses are calculated from the respondent’s constructed value (“CV”) database in determining the cost of U.S. merchandise, and from the respondent’s cost of production (“COP”) database in determining the cost of home market merchandise. See 19 USC § 1677b(e) and 1677b(b)(3). Generally, net financial expenses are calculated by offsetting the total financial expenses incurred with any financial income earned during the period. Because net financial expenses are included in both the “Total Actual Profit” multiplier and the “Total Expenses” denominator as a cost item, and because the statute indicates that these two numbers are to be actual (i.e. recognized) amounts, the Department does not include imputed financial expenses as an expense item in the profit calculation. CEP Profit Bulletin at n. 5.

By contrast, the numerator of the CEP profit equation, “Total U.S. Expenses,” includes imputed credit and inventory carrying costs as an approximation of the borrowing costs associated with the respondent’s U.S. selling activities. The inclusion of the imputed financial expenses in the “Total U.S. Expenses” numerator is consistent with 19 USC § 1677a(f)(2)(B), which defines the term “Total U.S. Expenses” as described under 19 USC § 1677a(d)(1) and (2). In this case, to avoid double-counting, we did not include any amount of recognized financial expenses in the “Total U.S. Expenses”

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<sup>1</sup>See Policy Bulletin 97/1, dated September 4, 1997, Calculation of Profit for Constructed Export Price Transactions (“CEP Profit Policy Bulletin”); see also Statement of Administrative Action, dated September 29, 1998 (“SAA”) (stating that “{t}he total profit is calculated on the same basis as the total expenses.” SAA at 825).

numerator, as the imputed expenses account for all such expenses.

The Court cited SNR Roulements v. United States, 24 CIT 1130, 118 F. Supp. 2d 1333 (2000), which supports the proposition that any expenses in the “Total U.S. Expenses” numerator must logically also be included in the “Total Expenses” denominator. However, it is the Department’s position that it is proper to exclude the imputed expenses from the “Total Expenses” denominator and the “Total Actual Profit” multiplier because the total recognized financial expenses of a company already account for the costs of carrying merchandise in inventory and extending credit. Similarly, because we included imputed expenses in the “Total U.S. Expenses” numerator per 19 USC § 1677a(d)(1), we excluded all recognized financial expenses from the numerator in this case, as they were accounted for by the imputed expenses.

Generally, companies may finance their operations by collecting cash through various sources, including debt financing, equity financing, and through working capital. Because money is fungible, it is difficult to ascertain exactly which portion of a respondent’s financial expenses arises as a result of certain specific operations of the company, such as U.S. selling activities. However, to the extent that a respondent company borrows funds through debt-financing, some portion of the financial expenses incurred on those funds may reasonably be attributable to the company’s U.S. selling activities. The U.S. imputed expenses are an estimate of that amount. To calculate the imputed expenses, we apply the respondent’s actual daily short-term interest rate to the number of days its inventory remains unsold and its sales revenue remains uncollected. It is the Department’s position that the respondent’s short-

term interest rate is the most appropriate rate available to estimate the interest expenses the company incurs as a result of its U.S. selling activities.

The imputed financial expenses related to selling activities simply represent the opportunity cost of having the merchandise sit in inventory prior to sale, and of extending credit after the sale. To the extent that a company incurs a longer waiting period between production and payment, it will not have recourse to such funds and will generally incur greater financial expenses relative to receiving payment immediately upon production. The net interest expense incurred by a company, which is reported as an element of COP/CV, and included in the Department's calculation of the "Total Actual Profit" multiplier and the "Total Expenses" denominator, will account for this opportunity cost. CEP Policy Bulletin at n. 5. If we were to include both the imputed expenses and the recognized financial expenses in the "Total Expenses" denominator, the denominator would then include both the recognized financial expense and an estimate of the amount of financial expenses due to U.S. selling activities, and thus, would result in double-counting that amount. As noted, we have avoided such double-counting by excluding recognized financial expenses from the "Total U.S. Expenses" numerator.

Thus, it is the Department's position that a relation exists between recognized financial expenses and imputed expenses, such that the recognized net expenses account for the extent to which the company incurs inventory carrying cost and credit costs related to the collection of accounts receivable, among other financial or economic costs. Therefore, the concern raised by the court in SNR Roulements that expenses in the "Total U.S. Expenses" numerator be included in the "Total Expenses"

denominator is satisfied because the Department's methodology ensures that inventory carrying costs and imputed credit costs are reflected in both.

In Thai Pineapple Canning Industry Corp., Ltd. v. United States 24 CIT 107, Ct. Int'l Trade, Lexis 17, Slip Op. 00-17 (CIT February 10, 2000) ("Thai Pineapple II"), the Court agreed that, absent a demonstration of any great discrepancy between the imputed expenses and the recognized financial expenses, the CEP profit calculation comports with the purpose of the statute, and concurred with the Department's position, recognizing that "the total expenses denominator would reflect the interest expenses captured in the U.S. sales expenses numerator specified in 19 U.S.C § 1677a(f)(2)(B), as well as 'home' market interest expenses, because the total expenses denominator is derived from a net unit figure based on all company interest expenses without regard to sales destination." See Thai Pineapple II at 21.

In Thai Pineapple II, the Court found that the issue of whether the imputed expenses in the numerator were comparable with the recognized expenses in the denominator was therefore whether the specific facts of that case warranted a departure from the Department's standard methodology. In that case, the Court found that the respondent had not established that any great discrepancy between the imputed expenses and the recognized financial expenses existed. Thus, the Court sustained the Department's calculation of CEP profit. See Thai Pineapple II at 22.

On August 10, 2004, subsequent to the date the Department issued its Draft Results, the Court of International Trade upheld the Department's standard CEP methodology by finding that (1) the

statute does not require symmetry in the calculation, and (2) even if symmetry were required, imputed expenses and recognized financial expenses are reasonable surrogates for each other. SNR Roulements v. United States, Court No. 01-00686, Slim.Op. 04-100, 7-9 (CIT August 10, 2004). In that case, the Court, following Thai Pineapples, indicated that the Department’s standard methodology may be challenged if a company demonstrates that either a distortion is caused by different expenses over time or that the inclusion of imputed expenses in the denominator and multiplier will not result in double-counting.

**B. Analysis of the Record in This Case**

In this case, Ta Chen has attempted to establish that a significant discrepancy between the imputed expenses and the recognized financial expenses exists. Ta Chen asserted that the Department “essentially ‘ignore{d} enormous.... inventory carrying and credit costs,’ making U.S. sales appear overly profitable in comparison to home market sales.” See Remand at 17.

In its decision, this Court stated that the Department’s standard CEP profit calculation may have distorted the allocation of profit by over-allocating profit to Ta Chen’s U.S. CEP sales. The result of such distortion would have the effect of generating a greater deduction from CEP than is appropriate, thereby creating an unduly increased dumping margin.

In order to address this concern, the Court instructed the Department to “explain why, in this case, recognized expenses are an adequate proxy for imputed expenses, or – if necessary – to

recalculate Ta Chen's CEP profit to properly reflect TCI's imputed expenses" in the "Total Actual Profit" multiplier and the "Total Expenses" denominator. See Remand at 22.

We emphasize that the size of a respondent's U.S. imputed interest expenses has no bearing on whether the respondent actually incurred financial expenses to borrow cash. Whether the respondent's cash requirements are large or small, the interest expenses incurred on amounts borrowed are reflected in the respondent's recognized financial expenses. It is the Department's position that regardless of the size of a respondent's imputed interest expenses, its recognized financial expenses will account for the extent of that respondent's net borrowing requirements related to its selling activities.

Importantly, Ta Chen argues that a distortion exists in part because the U.S. inventory carrying cost in the numerator is so large that it exceeds the recognized financial expenses included in the denominator. See Remand at 21. We note that there is no theoretical or logical requirement that the imputed U.S. inventory carrying cost and imputed U.S. credit expense should somehow be limited to or less than the total amount of recognized net financial expenses which is included in the "Total Expenses" denominator.

#### **D. Test Recalculation of Ta Chen's CEP Profit**

As noted in the Court's Remand, the Department ran a test program in which it added imputed credit and inventory carrying costs to the total expenses used in the calculation of the total profit ratio. See Decision Memo at 29. The Department found the resulting change in the CEP profit ratio to be insignificant. However, the Court noted that "the agency failed to include any documentation of its test

program in the administrative record filed here, effectively precluding independent analysis and judicial review.” The Court further found that “the very fact of that test program casts doubt on the government’s claim that accepted accounting principles prohibit the inclusion of imputed expenses in determining profit. See Remand at 22.

First, the Department only ran this test in light of the argument made in this case. It does not represent a methodology that the Department uses in lieu of its standard approach. This test was designed merely to examine the argument by Ta Chen that a distortion was generated in the calculation. By running this test, we found that a distortion was in fact not created, thus reinforcing the Department’s position that its methodology is not distortive.

We have included all documentation related to that test program in the record of this redetermination. In the test program, the Department added Ta Chen’s imputed U.S. selling expenses to the “Total Expenses” denominator and the “Total Actual Profit” multiplier. As is apparent through an examination of the attached documentation, the resulting change in Ta Chen’s calculated dumping margin is insignificant. Ta Chen’s CEP ratio (Total Actual Profit/Total Expenses) has changed from [ \* \* \* ] to [ \* \* \* ]. Ta Chen’s weighted-average margin changes from 6.42% to [ \* \* \* ]%<sup>2</sup>

Most important, however, although the Department tested Ta Chen’s proposed methodology, the Department continues to maintain that the methodology for calculating CEP profit set forth in the attached documents is flawed. According to the Department’s methodology, the imputed interest

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<sup>2</sup>The numerical results presented are based on Ta Chen’s revised margin program according to the results of the “Reimbursement” section below.

expenses are already reflected in the recognized financial expenses, which is included in the cost of merchandise in the denominator and the multiplier of the CEP profit equation. By adding the imputed interest expenses to the denominator and the multiplier, these amounts are then double-counted in the denominator and in the multiplier, such that the denominator and the multiplier would have both the recognized amount and the imputed measurement of the respondent's interest expenses. Furthermore, the CEP profit equation applied in the attached documents is not accurate or symmetrical. By adding only the U.S. imputed interest expenses, but ignoring the home market imputed interest expenses and any imputed expenses related to production, purchasing, financing, or administrative activities, this version places undue emphasis on Ta Chen's imputed U.S. selling expenses.

Finally, if the Court concludes that no double-counting occurred because the imputed interest expenses are excluded from the recognized net financial expenses, then the version of the CEP profit equation in the attached documents is further inaccurate or asymmetrical because the appropriate portion of those net interest expenses in the denominator are excluded from the "U.S. Expenses" numerator. Hypothetically, it would be necessary to estimate an amount of the recognized financial expenses which is attributable to U.S. selling activities, and add that amount to the "Total U.S. Expenses" numerator.

## **E. Conclusions**

We have not changed our standard calculation methodology for CEP profit in this case. The Department maintains that the CEP profit equation is symmetric with regard to the imputed interest

expenses such that the imputed interest expenses in the “Total U.S. Expenses” numerator are in fact reflected in recognized financial expenses in the “Total Expenses” denominator and the “Total Actual Profit” multiplier. It is the Department’s position that the imputed expenses represent an approximation of the recognized financial expenses attributable to U.S. selling functions. Accordingly, if we add the imputed expenses to the “Total Expenses” denominator, the denominator would then include both the recognized financial expense and an estimate of interest expenses, and thus, would entail double-counting.

We are not aware of any reason specific to this case that the Department should not continue to apply its standard methodology. Due to the fact that Ta Chen chooses to maintain large inventory levels of subject merchandise in the United States, and thus has reported significant U.S. inventory carrying costs, we expect that the amount of CEP profit allocated to Ta Chen’s U.S. selling activities should be significant, as it is. Also, the fact that Ta Chen’s U.S. inventory carrying costs are large does not imply that those amounts would not be reflected in the respondent’s recognized financial expenses. Finally, 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. Thus, the imputed expenses may reasonably exceed the amount of recognized financial expenses in the denominator without the existence of a distortion.

**COMMENTS: CEP PROFIT**

## **Comment 1**

Ta Chen stated that the draft results repeat the Department's prior decision, which was already rejected by the reviewing court as not in accordance with law.

Petitioners agree with the Department's explanation and analysis in the Draft Results, as Ta Chen's recognized net financial expenses already consider the costs of carrying inventory and of extending credit to customers.

## **Department's Position**

We disagree that the Draft Results simply repeat previous arguments and analyses. On the contrary, the Draft Results contains significant additional analyses which were not addressed in prior briefs to the Court. The Court instructed us to explain why, in this case, imputed financial expenses are an adequate proxy for recognized financial expenses, or, alternatively, to recalculate CEP profit by including both imputed financial expenses and recognized financial expenses in the denominator and multiplier of the CEP profit equation.

Pursuant to these instructions, the Draft Results provided a more detailed explanation of our standard methodology for calculating CEP profit. We provided a more detailed description of how the imputed financial expenses estimate the portion of the recognized financial expenses which may be attributable to Ta Chen's U.S. selling activities. The Draft Results also explains why a departure from our standard methodology of calculating CEP profit is not warranted in this case, as the standard

methodology is the most accurate methodology. Finally, the Draft Results tested the alternative methodology as instructed by the Court, and found that the standard methodology is not distortive in this instance.

## **Comment 2**

Ta Chen notes that the Department's position recognizes that higher imputed costs translate into higher recognized borrowing costs. The Department's position further acknowledges that Ta Chen has particularly high imputed costs for subject merchandise in this case. Ta Chen argues that "the Department inconsistently and inexplicably claims that such costs as to fittings in particular may be ignored on the claim that TCI's overall imputed costs (that cover all TCI products, a small percent of which is fittings) equal TCI's overall actual costs."

Ta Chen asserts that "the objective is {to} determine the cost and profit of the subject merchandise fittings in particular, which this Department claim actually admits is not done as to imputed credit and inventory carrying costs in the profit calculation."

Petitioners agree with the Department's explanation and analysis in the Draft Results, as Ta Chen's recognized financial expenses already consider the costs of carrying inventory and of extending credit to customers.

## **Department's Position**

We must qualify the Department's position on Ta Chen's comment as stated above in that we are unable to comprehend, with certainty, the purpose of Ta Chen's argument. We presume that Ta Chen's comment is that the following two positions, which Ta Chen asserts are the positions of the Department, are inconsistent: 1) higher imputed financial costs lead to higher recognized financial expenses; and 2) the imputed financial costs equal the recognized financial expenses, and thus may be ignored in the denominator and the multiplier of the CEP profit equation. Ta Chen's comment seems to argue that, by not including the imputed financial expenses in the denominator and the multiplier, the CEP profit equation miscalculates the total expenses and total profit of subject merchandise. We base the following position on this interpretation of Ta Chen's comment:

Ta Chen misunderstands the Department's positions. It is indeed the Department's position that higher imputed costs translate into higher recognized borrowing costs, as explained in the Draft Results at 6. However, we do not ignore imputed costs or any other costs in this instance. Rather, we attempt to avoid double-counting financial costs which are already included in the denominator and the multiplier of CEP profit.

We include the imputed costs in the "Total U.S. Expenses" numerator. We do not add the imputed amounts to the "Total Expenses" denominator and the "Total Actual Profit" multiplier, as the recognized, net financial expenses included in the denominator and the multiplier already reflect those imputed amounts. Adding the imputed amounts to the denominator and the multiplier thus would result in double-counting.

Further, despite Ta Chen's claims to the contrary, it is not the Department's position that the imputed expenses in the numerator and the recognized net financial expenses in the denominator and the multiplier are equal. The imputed expenses are an estimate of the amount of gross financial costs associated with the respondent's U.S. selling activities. The recognized financial expenses are net amounts of financial expenses associated with all production and selling activities, both in the United States and the home market. Therefore, they are not the same or equal, and we do not claim that they are, as Ta Chen argues. The Department notes that the CIT has upheld this position in its recent decision, finding that imputed expenses and actual expenses are not equal, but, rather are "reasonable surrogates" for one another. SNR Roulements v. United States, Slip. Op. 04-100, Consol Court No. 01-00686, p. 8 (August 10, 2004), citing Timken 240 F. Supp.2d at 1247.

Ta Chen's comment seems to imply that TCI's (not Ta Chen's) recognized financial expenses would be an appropriate substitute for the imputed interest expenses in the CEP profit calculation, or perhaps that TCI's recognized financial expenses may be a substitute for Ta Chen's recognized financial expenses. Neither the Department nor the Court have contemplated substituting TCI's recognized financial expenses for Ta Chen's imputed expenses or for Ta Chen's recognized expenses.

TCI is not a separate and independent company, but rather is a wholly-owned subsidiary of the respondent, Ta Chen. We cannot rely on the individual financial statements of a single subsidiary to reflect the full financial results and position of the consolidated respondent. For this reason, we calculate the recognized net financial expenses using the fully consolidated financial statements of the

respondent, Ta Chen. We reject Ta Chen's implication that the subsidiary's financial statements, as a part of the whole, somehow more closely reflect the recognized financial expenses that may be attributable to the respondent's subject merchandise selling activities in the United States. Because money is fungible, it is difficult to isolate exactly which portion of a respondent's financial expenses arises as a result of certain specific operations of the company, such as U.S. selling activities for subject merchandise. In this case, the subsidiary sells a full range of products which are outside the scope of this order, and has significant related-party transactions with other Ta Chen companies. We therefore cannot conclude that TCI's financial statements, as a part of the whole, effectively isolate the proper portion of Ta Chen's recognized financial expenses that may be attributable to U.S. selling activities of subject merchandise.

### **Comment 3**

Ta Chen contests the Department's statement that because interest revenue is considered in the dumping margin calculations on a subject merchandise basis, such consideration is not also needed for imputed credit costs associated with delayed customer payment on a subject merchandise basis. Ta Chen asserts that this position taken by the Department makes no sense. Ta Chen also argues that the Department's claim referenced above ignores imputed inventory carrying costs.

Petitioners agree with the Department's explanation and analysis in the Draft Results, as Ta Chen's recognized financial expenses already consider the costs of carrying inventory and of extending

credit to customers.

## **Department's Position**

Ta Chen misstates the Department's argument. While we did not make the claim Ta Chen refers to in its comments, our position with respect to Ta Chen's comment is that all appropriate interest revenues related to Ta Chen's U.S. selling activities are included in the "Interest Revenue" data field in the margin calculation program. We do not attempt to match those interest revenues to Ta Chen's imputed expenses.<sup>3</sup>

## **Comment 4**

Ta Chen argues that the Department's test recalculation of CEP Profit did not reduce CEP profit itself for imputed credit and inventory carrying costs of subject fittings. Rather, the test recalculation merely adjusted the expense ratio applied to the calculated CEP Profit. Thus, Ta Chen

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<sup>3</sup> We note that we deleted some language from page 10 of our Draft Results as it caused some misunderstandings from interested parties. Specifically, we deleted the following language from page 10: "The recognized financial expenses in the denominator reflects all types of financial expenses, net of financial income, while the U.S. inventory carrying costs and U.S. credit expenses are gross imputed expenses. We have already included the proper amount of interest income that Ta Chen accrues due to its U.S. selling activities as an addition to gross price, in the "Interest Revenue" data field, per the Department's standard practice. Thus, the "U.S. Expenses" numerator separates the relevant interest income into a unique data field, while the "Total Expenses" denominator nets interest income against the interest expenses." See Draft Results at 10.

argues, the Department did not recalculate the dumping margin to determine the impact of adjusting the amount of profit used in the CEP profit calculation downward to reflect imputed credit and inventory carrying costs.

Petitioners argue that the Department put to rest Ta Chen's claim that the Department's consideration of Ta Chen's recognized expenses in lieu of Ta Chen's imputed expenses has distorted the CEP profit calculation in this case. Petitioners state that the Department mathematically demonstrated that Ta Chen's methodology results in an insignificant change in Ta Chen's dumping margin.

### **Department's Position**

We disagree with Ta Chen that the Department's test program did not recalculate the CEP adjustment pursuant to the Court's instructions. The actual test recalculation of CEP Profit from the log of the test program was included as an attachment to the Draft Results, See Draft Results at 10, and is included as an attachment to our Final Redetermination. See Attachment A. As evidenced by the equations set forth in the test program, the Department added the imputed expenses to the "Total Expenses" denominator, thus increasing "Total Expenses" by the amount of the imputed expenses. We also deducted this recalculated "Total Expenses," which now includes the imputed expenses, from Ta Chen's "Total Revenue" to recalculate the "Total Actual Profit" multiplier. See CEP Test Program Log at lines 3293-3391. Thus, we did in fact increase the "Total Expenses" denominator by the amount of

the imputed expenses, and we also did in fact decrease “Total Actual Profit” multiplier by including the same imputed expenses as a deduction from “Total Revenue”. We have replicated the equations which evidence our inclusion of both the imputed expenses and the recognized financial expenses in the denominator and the multiplier with additional narrative explanation in an attachment to the Final Redetermination. See Attachment A.

We note that although the test program departed from our methodology of using recognized financial expenses to calculate CEP profit in the denominator and multiplier, the standard comments which accompany the CEP profit calculation as narrative in the CEP test program remain. Specifically those standard narrative comments state that we “calculate values for use in CEP profit calculation using recognized expenses, not imputed expenses,” specifically referring to our calculation of the “Total Actual Profit” multiplier and the “Total Expenses” denominator. Those standard narrative comments are present in our test program because they reflect the Department’s standard methodology. These comments are notes to the original program, but are not the computer programming language and do not reflect the actual calculation of the test program run in this instance. As evidenced from the actual calculations in the CEP test program and the test program computer language, the test program did in fact include the U.S. imputed financial expenses in the “Total Actual Profit” multiplier and the “Total Expenses” denominator, despite Ta Chen’s claims to the contrary.

As stated in our Draft Results at 11, the methodology for calculating CEP profit set forth in the above equations is flawed and is a departure from our standard methodology. We have only detailed

this test procedure because the standard approach to calculating CEP profit is being scrutinized in this case. The test is not part of our normal practice, but nevertheless has some limited value in this case, in that it shows the standard approach is correct and that our CEP profit calculation has not been distorted. The alternative methodology proposed by Ta Chen does not produce significantly different results from the Department's standard methodology. Because the departure from the Department's standard methodology is not warranted in this instance, we have not applied Ta Chen's alternative methodology.

#### **Comment 5**

Ta Chen argues that the Department stated in the Draft Results that imputed and recognized financial costs are the same, and thus the test program is unnecessary. Ta Chen argues that the Department is referring to total TCI costs in this instance, rather than the cost of subject merchandise. Ta Chen claims that the total TCI costs represent costs for all products that TCI sells, in addition to subject merchandise, and that no figure exists for the actual costs of subject merchandise in particular. Ta Chen states that the costs related to subject merchandise are necessarily determined from imputed financial costs, which the Department indicates is equal to recognized financial costs. Finally, Ta Chen reports that the only figure for subject merchandise in particular is the imputed costs.

Petitioners agree with the Department's explanation and analysis in the Draft Results.

**Department Position:**

We stated in our Draft Results that the imputed financial expenses are reflected in the recognized financial expenses. See Draft Results at 11. In addition, throughout the Draft Results, the Department set forth various reasons why the recognized and the imputed amounts are not equal. The imputed expenses are an estimate of the amount of financial costs associated with the respondent's U.S. selling activities. The recognized expenses are net financial costs associated with all production and selling activities, both in the United States and the home market. Therefore, they are not the same or equal, and we do not make the claim that they are.

Further, we note that we have made no references to total TCI costs in our Draft Results. We refer to Ta Chen's costs, but not TCI's. As noted at Comment 2, TCI is a wholly-owned subsidiary of the respondent, Ta Chen. We calculated Ta Chen's recognized net financial expenses based on Ta Chen's consolidated financial statements, not TCI's unconsolidated financial statements. Given that TCI has substantial related party transactions with other Ta Chen companies and that TCI sells a wide range of non-subject merchandise, we cannot conclude that TCI's financial statements, as a part of the whole, somehow effectively isolate Ta Chen's financial expenses related to subject merchandise or Ta Chen's financial expenses related to Ta Chen's U.S. selling activities of subject merchandise. Neither the Department nor the Court has contemplated using TCI's recognized financial expenses as a substitute for Ta Chen's recognized financial expenses or as a substitute for Ta Chen's imputed financial expenses.

Ta Chen argued in its brief to this Court in support of its motion that Ta Chen had large imputed financial expenses for U.S. selling activities, yet that TCI had very little recognized interest expense during the POR. See Plaintiff Ta Chen Stainless Steel Pipe Co., Ltd: Memorandum of Law In Support of Motion For Judgment on the Agency Record, September 4, 2001, p.25. This suggests that any recognized financing expenses related to imputed credit or inventory carrying costs are not being borne by TCI, but rather by the parent company or other Ta Chen companies. Such amounts are not reported in TCI's separate financial statements, but would be reflected in Ta Chen's consolidated statements.

Finally, the Department calculated Ta Chen's recognized net financial expenses related to the production, distribution, and selling activities of subject merchandise in the home market and the United States based on Ta Chen's financial statements. This amount is included in the cost of manufacturing in the "Total Actual Profit" multiplier and the "Total Expenses" denominator. As Ta Chen's comment implies, its financial statements report financial expenses related to all products, not just subject merchandise. The Department's standard calculation of the cost of manufacturing, which was applied in this case, assigns a portion of the total net financial expenses recognized in Ta Chen's consolidated financial statements to subject merchandise. Thus, the recognized net financial expenses in the "Total Actual Profit" multiplier and the "Total Expenses" denominator in the Department's standard CEP profit calculation in fact represent a figure for subject merchandise only, excluding the appropriate amounts for any non-subject products.

The imputed costs represent an estimate of the amount of total gross financial expenses that are due only to U.S. selling and further manufacturing activities of subject merchandise, not production activities, financing activities, or any other activities related to subject merchandise.

#### **Comment 6**

Ta Chen argues that the Department referred to additional adjustments that should be made in the CEP profit calculation if the dumping margin is to be calculated accurately. Ta Chen argues that such adjustments should be made in order to calculate the most accurate dumping margin. However, Ta Chen qualified its statement by arguing that, to the extent that any additional adjustments involve calculating overall TCI credit costs for all products, then the recognized amounts would be an adequate substitute for those adjustments.

Petitioners agree with the Department's explanation and analysis in the Draft Results.

#### **Department's Position**

To support our reasoning that the alternative methodology proposed by Ta Chen is inaccurate, we noted the following additional adjustments that should be considered to improve the alternative methodology: 1) The denominator and the multiplier are intended to capture all actual costs to produce and sell subject merchandise in the United States and the home market. Thus, if we add imputed financial expenses for U.S. selling activities to the numerator and denominator, as proposed by Ta

Chen, we should also consider adding imputed financial expenses for home market selling activities and all other activities related to subject merchandise, such as production activities in order not to place undue emphasis on the respondent's U.S. selling activities. 2) If one concludes that the imputed amounts are not an appropriate surrogate for the recognized amounts, and thus should be added to the denominator and the multiplier, as proposed by Ta Chen and as tested in the Draft Results, then the logical inference is that some portion of the recognized amounts should also be added to the numerator to make the numerator and the denominator comparable. No alternative methodology for estimating this amount has been proposed, other than the standard imputed expenses. See Draft Results at 11.

The Department does not consider that these potential adjustments to the alternative methodology merit further discussion because the standard CEP profit methodology applied in this case represents the most accurate methodology. We do not claim that these additional adjustments would make the alternative methodology more accurate than the standard methodology. We have only noted that additional adjustments should be considered in a theoretical sense to show that the alternative methodology leaves much room for improvement. However, in a practical sense, we do not have the means or the information necessary to make such adjustments. These adjustments have not been made in prior cases, and any attempt to make them now would be ad hoc, unique, and unrefined through experience in other situations. Finally, we do not normally collect data necessary to calculate such adjustments (e.g. data to impute financial expenses related to production activities), and the record of this review does not contain such data.

## **II. Reimbursement**

In accordance with the Court's instructions, the Department has reconsidered its decision concerning the reimbursement agreement. The Department has determined that the reimbursement agreement, in light of the new information submitted by Ta Chen on May 18, 2004, indicates that the reimbursement agreement did not apply for the June 1, 1998, through May 31, 1999, period, but was limited to the 1992-1994 period.

### **A. Background**

As noted above, on May 4, 2004, the Court issued its opinion and remanded to the Department the reimbursement aspect of its Final Determination for reconsideration. On May 14, 2004, the Department requested that Ta Chen provide additional documentation related to the 1992-1994 reimbursement agreement considered by the Department in 1998-99 administrative review. On May 18, 2004, Ta Chen provided the additional documentation as requested by the Department on May 14, 2004. However, Ta Chen neglected to provide the complete set of documents it had submitted in the 98-99 administrative review, and as requested in our May 14, 2004, letter. Specifically, Ta Chen did not submit Attachment E of its November 20, 2000, submission regarding reimbursement in the 98-99 administrative review. On June 3, 2004, the Department requested that Ta Chen submit Attachment E. On June 7, 2004, Ta Chen submitted Attachment E.

### **B. Analysis of Record Evidence**

In the Final Determination and Decision Memo, the Department determined that [ \* \* \* ], on behalf of Ta Chen, had agreed to reimburse Ta Chen International CA Corp. (“TCI”), for any antidumping duties on pipe fittings for the 1992-1994 period of review (“POR”). In addition, the Department stated in the Decision Memo that “this agreement to reimburse as to an earlier segment of the proceeding raises a rebuttable presumption that the agreement is still in effect during this current POR. That presumption has not been overcome in this segment.” See Decision Memo at 9.

In the 98-99 administrative review, the Department rejected Ta Chen’s November 20, 2000, submission which contained documentation to support Ta Chen’s statements that the agreement to reimburse TCI for any antidumping duties for pipe fittings was limited to the 1992-1994 POR. In our brief to the Court, the Department stated that “we recognize the necessity of time limits to permit Commerce to complete investigations and review in an orderly fashion. However, given the facts of this case, it is apparent that Ta Chen should be given an opportunity to rebut Commerce’s presumption of reimbursement by the submission of factual information. Thus, the Court should remand this matter to Commerce so that the agency may reconsider its reimbursement finding in light of the November 20, 2000, factual information proffered by Ta Chen.” See Defendant’s Memorandum in Partial Opposition to the Motions for Judgement Upon the Agency Record (“Government Brief”) at 34.

As noted above, the Department requested from Ta Chen the information contained in its November 20, 2000, submission regarding reimbursement on May 13, 2004, and June 3, 2004. On May 18, 2004, and June 7, 2004, Ta Chen submitted information regarding reimbursement including a

copy of an agreement which indicates that:

[ \* \* \* ]

This agreement clearly indicates that Ta Chen's commitment to reimburse, [ \* \* \* ], was limited to [ \* \* \* ]. Because this agreement to reimburse expressly mentions only the 1992-1994 period, upon reconsideration, we conclude there is no basis to presume the agreement was in effect for any subsequent period.

The Court also raised the question of whether the imposition of distribution of duties in excess of the actual dumping margin effectively converts the remedial antidumping regime into a punitive scheme. However, because the Department has determined that reimbursement of antidumping duties did not exist for the POR, we are not addressing the legality of reimbursement because our finding renders this issue moot.

### **C. Conclusion**

Given the above, we conclude that an agreement to reimburse antidumping duties with respect to butt-weld pipe fittings between Ta Chen and TCI was not in effect during the 98-99 administrative review period<sup>4</sup>. Consequently, we will no longer double Ta Chen's margin. Therefore, Ta Chen's margin is now 6.42 percent.

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<sup>4</sup>June 1, 1998, through May 31, 1999.

## **COMMENTS: REIMBURSEMENT**

### **Comment 7**

Petitioners concur that the record evidence as augmented on remand by Ta Chen, indicates that the reimbursement agreement was limited. Petitioners request that the Department be instructed to provide copies of the agreement to the U.S. Customs and Border Protection (“CBP”) as supporting documentation for Ta Chen’s assertion that no reimbursement is involved. Petitioners assert that this step is warranted under the circumstances and, more particularly, is appropriate to assist in monitoring that Ta Chen’s commitment to reimburse truly is limited as presented by Ta Chen.

Ta Chen did not comment on the Reimbursement section of the Draft Results.

### **Department’s Position**

We agree with Petitioners that the record evidence as augmented on remand by Ta Chen indicates that the reimbursement agreement was limited. Petitioners request that we instruct Ta Chen to provide copies of the agreement to CBP as supporting documentation for Ta Chen's assertion that no reimbursement is involved. Documentation of a reimbursement agreement for a prior time period provides no evidence about the existence or non-existence of reimbursement during the instant review. The Department will provide CBP with liquidation instructions consistent with the revised reimbursement determination contained in this remand when affirmed by this Court.

**WEIGHTED-AVERAGE DUMPING MARGIN**

As a result of this redetermination, the Department has recalculated the dumping margin for Ta Chen. The weighted-average dumping margin is as follows:

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Manufacturer/Exporter	Weighted-average margin (percent)	
	Determination on Remand	Final
Ta Chen.....	6.42%.....	12.84%
All-Others Rate .....	51.01%.....	51.01%

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These final results pursuant to remand are being issued in accordance with the order of the Ta Chen Stainless Steel Pipe, Ltd. v. United States and Alloy Piping Products, Inc., et. al., Court No.01-00027 (CIT May 4, 2004).

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James J. Jochum  
Assistant Secretary  
for Import Administration

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Date

**ATTACHMENT A**  
EQUATIONS FROM CEP TEST PROGRAM LOG

**Addition of U.S. Imputed Credit Costs (IMPCREDI) to “U.S. Direct Expenses” (DIREXPU):**

3293     **DIREXPU** = (CREDIT1U \* EXRATE) + CREDIT2U + **IMPCREDI** + REPACKU;

**Addition of U.S. Inventory Carrying Costs (INVCARU) and “U.S. Direct Expenses” (DIREXPU), which already includes U.S. Imputed Credit Costs, to the “Total Expenses” Denominator:**

3321     **SELLEXPU** = (**DIREXPU** + COMMISU + INDIRSU + **INVCARU**)

3322             \* QTYUNITU / EXRATE;

3323     **MOVEXP** = (FGNMOVE + USMOVEU) \* QTYUNITU / EXRATE;

**SELLEXPU, which includes the U.S. imputed expenses, is averaged and renamed TOTSELLU:**

3344 PROC MEANS NOPRINT DATA = US;

3345     VAR REVENU COGSU **SELLEXPU** **MOVEXP**;

3346     OUTPUT OUT = USCEPTOT (DROP = \_FREQ\_ \_TYPE\_)

3347     SUM = TOTREVV TOTCOGSU **TOTSELLU** TOTMOVEU;

3348 RUN;

**U.S. expenses are added to home market expenses to calculate “Total Expenses” (TOTEXP). TOTEXP now includes U.S. imputed expenses:**

3371     TOTREV = TOTREVVH + TOTREVVU;

3372     TOTCOGS = TOTCOGSH + TOTCOGSU;

3373     **TOTSELL** = TOTSELLH + **TOTSELLU**;

3374     TOTMOVE = TOTMOVEH + TOTMOVEU;

3375     **TOTEXP** = TOTCOGS + **TOTSELL** + TOTMOVE;

**Calculation of “Total Actual Profit” Multiplier (TOTPROFT), including the U.S. imputed expenses:**

$$3376 \quad \text{TOTPROFT} = \text{TOTREV} - \text{TOTEXP};$$

**Calculation of CEP Ratio (Total Actual Profit/Total Expenses):**

$$3381 \quad \text{CEPRATIO} = \text{TOTPROFT} / \text{TOTEXP};$$

**Calculation of “U.S. Expenses” Numerator (CEPSELL). Imputed Credit Cost is already included in DIREXPU and Inventory Carrying Cost is already included in INDEXUS, thus the “U.S. Expenses” numerator (CEPSELL) also includes U.S. imputed expenses, per the Department’s standard calculation:**

$$2054 \quad \text{CEPSELL} = (\text{DIREXPU} - (\text{CREDIT1U} * \text{EXRATE})) + \text{COMMISU} + \text{INDEXUS};$$

**Calculation of CEP Profit:**

$$2055 \quad \text{CEPROFIT} = \text{CEPRATIO} * \text{CEPSELL};$$

**Deduct CEP Profit from Gross Price (GRSUPRU) to determine Net Price (NETPRIU):**

$$2056 \quad \text{NETPRIU} = \text{GRSUPRU} - \text{CEPROFIT} - \text{COMMISU} - \text{DIREXPU} - \text{DISCREB}$$
$$2057 \quad \quad \quad + \text{DTYDRWU} - \text{FGNMOVE} - \text{INDEXUS} - \text{USMOVEU};$$