A-583-816
Remand
Proprietary Document
AD/CVD Operations, Office 7: JD

ALLOY PIPING PRODUCTS, INC., et al., V. UNITED STATES
Consol. Court No. 08-00027
Slip Op. 09-119 (CIT, October 20, 2009)

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

SUMMARY

The Department of Commerce (Commerce) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or Court) in Alloy Piping Products, Inc., et al., v. United States, Slip Op. 09-119 (CIT October 20, 2009) (Opinion).

In accordance with the Court's instructions, Commerce has analyzed the information on the record to determine whether imputed costs are adequately reflected in the total actual costs used in the "total actual profit" and "total expenses" components of the constructed export price (CEP) profit methodology employed by Commerce. After the analysis, including consideration of comments by respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), and for the reasons explained below, Commerce finds that imputed costs are adequately reflected in the total actual costs used to calculate CEP profit, and that an adjustment is not warranted.

BACKGROUND

On June 16, 1993, Commerce published in the Federal Register the antidumping duty order on certain stainless steel butt-weld pipe fittings (pipe fittings) from Taiwan. See Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 58 FR 33250 (June 16, 1993). On June 2, 2006, Commerce published a notice of opportunity to request an administrative review for the period June 1, 2005, through May 31, 2006 of this order. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 71 FR 32032 (June 2, 2006).

In accordance with 19 CFR 351.213(b)(1) and (2), on June 22, 2006, Flowline Division of Markovitz Enterprises, Inc. (Flowline Division), Gerlin, Inc. Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively, Petitioners) requested an antidumping duty administrative review for Ta Chen, and four other Taiwanese producers of pipe fittings. On June 29, 2006, Ta Chen also requested an administrative review. On July 27, 2006, and August 30, 2006, Commerce published notices initiating this administrative review. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In

Part, 71 FR 42626 (July 27, 2006) and Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 71 FR 51573 (August 30, 2006).

Commerce's preliminary results of review were published on July 2, 2007. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 72 FR 35970 (July 2, 2007) (Preliminary Results). The final results of review and final rescission in part were published on January 7, 2008. See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 73 FR 1202 (January 7, 2008), and accompanying Issues and Decision Memorandum (Final Results).

In the Final Results, Commerce concluded that Ta Chen's home market (HM) sales were made at a more advanced level of trade than those made to Ta Chen's U.S. affiliate, Ta Chen International (TCI). Therefore, Commerce determined that a CEP offset was warranted. See Final Results and accompanying Issues and Decision Memorandum at Comment 2. Commerce also determined that an adjustment to CEP profit was not warranted. Id. at Comment 4.

Both Petitioners and Ta Chen challenged Commerce's Final Results to the CIT. The Court remanded the case to Commerce, instructing it to explain further its factual findings with respect to the issue of CEP profit.

On June 16, 2009, Commerce issued its final results of redetermination pursuant to the remand from the CIT. See Final Results of Redetermination Pursuant to Remand, A-583-816 (June 16, 2009) (Remand Determination). In the Remand Determination, Commerce concluded that the continuance of calculating CEP profit based on actual expenses was appropriate. Id. at 3. On October 20, 2009, the Court remanded the decision to Commerce once again. In this second remand, the Court stated that "because the court cannot reasonably discern the link between the facts in the record and the conclusions reached by Commerce, the court remands the agency's determination for a second time." See Opinion at 4.

DISCUSSION

In its first remand to Commerce, the Court remanded the CEP profit issue, stating that "Commerce must provide a more rigorous analysis in its examination of whether imputed costs are adequately reflected in total actual costs used in the 'total actual profit' and 'total expenses' components of the CEP profit methodology." See Alloy Piping Products, Inc., et al., v. United States, Slip Op. 09-29 at 23 (CIT April 14, 2009) (Alloy Piping). The Court stated that it is Commerce's normal practice to derive CEP profit by multiplying the total actual profit for all production and selling activities of the subject merchandise by the applicable percentage, with the percentage determined by dividing total U.S. expenses by total expenses. Id. at 15-16 (citing 19 U.S.C. §§ 1677a(d)(3) and (f)). For both total U.S. expenses and total expenses, the Court further noted that recognized (i.e., actual) financial expenses are included in the cost of both the U.S. and HM merchandise. Id. at 16 (citing Ta Chen Stainless Steel Pipe, Ltd. v. United States, 30 CIT 376, 380, 427 F. Supp. 2d 1265, 1269 (Ta Chen 2006)). Additionally, the Court stated that Commerce's normal practice does not include imputed expenses in the calculation, as Commerce holds that these are themselves an estimate of actual expenses, and the actual financial expenses already reflect the costs of carrying merchandise in inventory and extending credit. Id. at 16-17 (citing Ta Chen 2006, 30 CIT at 380, 427 F. Supp. 2d at 1269-70). The Court noted previous instances where the CIT and the U.S. Court of Appeals for the Federal Circuit upheld Commerce's methodology. Id. at 17.

However, the Court stated that Commerce did not properly analyze the information before it with respect to this issue. Rather, the Court found that Commerce simply cited two previous Court decisions concerning prior administrative reviews in this proceeding as the basis for its determination, instead of addressing directly Ta Chen's claim that the exclusion of imputed costs in the CEP profit calculation in this review renders Ta Chen's actual costs inaccurate. The Court explained that the data available to Commerce in previous reviews, which Commerce used as the basis for denying an adjustment to CEP profit in those circumstances, are different than the data before Commerce in this review. Id. at 22. Therefore, the Court stated that Commerce must provide substantial evidence, based on the record of this review, to support its finding that actual costs adequately reflect imputed costs. Id. at 22-23.

In its first redetermination on remand, Commerce discussed the statutory and regulatory framework that it uses when calculating CEP profit. Commerce noted, as part of its requirement in calculating CEP, that it must identify and deduct from the starting price in the United States market an amount for profit allocable to selling, distribution, and further manufacturing activities in the United States. In determining profit, 19 U.S.C. § 1677a(f) states that profit shall be an amount determined by multiplying the total actual profit by the applicable percentage. Commerce also noted that the Statement of Administrative Action (SAA) states that "the total profit is calculated on the same basis as the total expenses." H.R. Doc. No. 103-316, vol. 1, at 825, reprinted in 1994 U.S.C.C.A.N. 3773, 4164. Moreover, the SAA states that "no distortion in the profit allocable to U.S. sales is created if total profit is determined on the basis of a broader product-line than the subject merchandise, because the total expenses are also determined on the basis of the same expanded product line. Thus, the larger profit pool is multiplied by a commensurately smaller percentage." Id. By regulation, Commerce has determined that "in calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production." 19 C.F.R. 351.402(d)(1); see also Remand Determination at 3 – 5.

Commerce noted that it considers imputed selling expenses (such as imputed credit and inventory carrying opportunity costs) to be types of selling expenses encompassed by 19 U.S.C. § 1677a(d)(1) and 19 U.S.C. § 1677a(d)(2). Therefore, Commerce includes imputed selling expenses because the statute defines "total United States expenses" as equaling the selling expenses described in 19 U.S.C. § 1677a(d)(1) and 19 U.S.C. § 1677a(d)(2). However, Commerce stated that it does not include imputed selling expenses in the determination of "total actual profit," because "'normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit.'" Commerce also does not include imputed selling expenses in its determination of "total expenses," as the determination of "total actual profit" is based upon its determination of total actual expenses. See id. at 5 – 6. Commerce rejected Ta Chen's proposed construct of calculating profit, stating that Ta Chen's approach was contrary to Commerce's practice and statutory guidance. Additionally, Commerce stated that the inclusion of imputed expenses in the denominator (i.e., total expenses) would result in double-counting such expenses because the total expenses figure already accounts for these amounts. See id. at 6.

In ruling on the first remand determination, the Court stated that it could not "reasonably discern the link between the facts in the record and the conclusions reached by Commerce." See Opinion at 4. The Court further stated that Commerce's standard methodology "was not in issue on remand," but that Commerce did not "explain meaningfully why the standard methodology that the agency normally employs to determine a profit adjustment to the CEP adequately accounts for Ta Chen's imputed costs under the facts of the subject review." Id. The Court also stated that Commerce failed "to provide a rational explanation to support the application of the standard methodology to the facts on the record." Id. Additionally, the Court asserted that Commerce failed "to show, through evidence on the record, how cost data provided by Ta Chen in this review, if considered by the agency, would result in double-counting." Id. at 5. The Court instructed Commerce to "provide a more rigorous analysis of the record facts in its examination of whether the standard methodology adequately reflects the imputed costs incurred by Ta Chen during the subject review. More specifically, Commerce must more thoroughly examine whether the costs used in the "total actual profit" and "total expenses" components of the standard methodology account for Ta Chen's imputed costs under the facts of the agency proceeding at issue." Id. at 5 - 6.

ANALYSIS

After analyzing the information on the record in preparing these final results of redetermination pursuant to second remand, Commerce determines that the continuance of calculating CEP profit based on actual expenses per the statute, 19 U.S.C. §§ 1677a(d)(1) and (2), and our regulations, 19 C.F.R. 351.402(d), is appropriate.

Commerce wishes to note that, in the context of the underlying administrative proceeding and subsequent remand proceedings, Ta Chen has not provided Commerce with any calculations, alternate methodologies, or specific record evidence to use as a basis of analysis, other than to state that the information is on the record of the proceeding or to reference its briefs to the Court. See, e.g., Remand Determination at 9 – 10, and Ta Chen Letter to Commerce, dated December 11, 2009, at 1. Nevertheless, the Court states that Commerce bears the burden of proof in this proceeding. See Opinion at 5. Therefore, we have reexamined the record evidence, including Ta Chen's record of borrowings, its total sales during the period of review, TCI's financial statements, and our margin calculation program and have considered its comments on our draft remand results, see detailed discussion below.

It is worth beginning by providing a brief overview of the CEP profit calculation, and a discussion of the double-counting issue. CEP profit is calculated using the following equation:

$$\text{Total CEP profit Allocated to U.S. expenses} = \text{Total Actual Profit} \times \frac{\text{Total U.S. Expenses}}{\text{Total Expenses}}$$

The "total expenses" and the "total actual profit" contain net financial expenses submitted by Ta Chen as cost of production and constructed value for both home and U.S. market sales, per 19 U.S.C. §§ 1677b(e) and 1677b(b)(3). In the subject review and consistent with 19 U.S.C. §§ 1677b(e) and 1677b(b)(3), Ta Chen's net financial expenses were calculated by offsetting total financial expenses incurred with any financial income earned during the period. Because net financial expenses were included in both "total expenses" and the "total actual profit" as a cost item, and because the statute indicates that both numbers are to be actual (i.e., recognized) amounts, Commerce did not include imputed financial expenses as an expense item in the profit calculation in the Final Results. See Analysis Memorandum for the Preliminary Results, dated June 25, 2007, (unchanged for the Final Results) (Preliminary Results Memorandum) at 8 – 9. However, in the "total U.S. expenses" numerator, Commerce included imputed credit and inventory carrying opportunity costs as an approximation of the borrowing costs associated with the respondent's U.S. selling activities. Id. The inclusion of these expenses is consistent with 19 U.S.C. § 1677a(f)(2)(B), which defines the term "total U.S. expenses" as described under 19 U.S.C. § 1677a(d)(1) and (2).

Companies may finance their operations by generating cash from various sources. These include debt financing, equity financing, and working capital. Because money is fungible, it is difficult to ascertain exactly which portion of a respondent's financial expenses arise as a result of specific operations of a 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. If a respondent company has a U.S. affiliate with borrowings, it is reasonable to assume that a portion of those borrowings may be attributable to the U.S. selling activities associated with sales of subject merchandise. As previously noted by Commerce, the U.S. imputed expenses are an estimate of the amount of borrowing cost attributable to those U.S. selling activities. See Remand Determination at 7. These imputed expenses are opportunity costs that are a consequence of merchandise sitting in inventory and of extending credit to customers. The net interest expense incurred by a company, reported as an element of the cost of goods sold, accounts for this opportunity cost, which as explained above, was captured in TOTCOGS component of our CEP profit calculation. See Preliminary Results Memorandum at 8 - 9. Including both the imputed expenses and the recognized financial expense in the "total expenses" denominator would then include both recognized financial expenses and an estimate of the amount of those financial expenses due to selling activities and, thus, would result in double-counting.

The presence of any recognized financial expenses implies a possibility of double-counting because these expenses may reflect financing of U.S. selling activities. If a portion of the net interest expense is a result of borrowing in the United States by the U.S. affiliate, it is more likely that these borrowings already finance the opportunity costs of sales of subject merchandise to some degree, and increases the likelihood of double-counting.

Ta Chen clearly has a positive financial expense, from borrowings both by Ta Chen and TCI. See Ta Chen's Section A questionnaire response, dated September 11, 2006, at exhibits

A-15 and A-16. For example, exhibit A-16 shows Ta Chen with current liabilities due to short-term bank loans equal to 966,226,00 NT dollars. Id. at exhibit A-16. Note 10 from the same exhibit indicates that some of these loans were in U.S. dollars. Id. In exhibit A-16, the income statement for TCI in 2005 shows an interest expense of $[ ]. Short-term loans on TCI's balance sheet are valued at $[ ], and real estate loans are valued at $[ ]. Id.; see also Ta Chen's supplemental questionnaire response, dated April 6, 2007, at exhibit A-9. Exhibit A-9 of the April 6, 2007, submission contains a [ ], executed in [ ]. The [ ] is based in part on [ ]. Id. at page 8 of exhibit A-9 (page SQR-98). The [ ] defines [ ] in part as accounts that are not where [ ]. Because money is fungible, any of these financial expenses may have financed U.S. selling activities or may have been unnecessary but for the U.S. selling activities related to the subject merchandise.

In any event, Commerce examined TCI's sales to the United States of subject merchandise during the period of review (POR) to determine how many of these sales were paid within [ ]. In some cases TCI had sales during the POR with payment in substantially less than [ ], such as OBS#s [ ] and [ ], whose payment dates are [ ] after the sales dates. See Analysis Memorandum for the Draft Results of Re-Determination on Remand of Stainless Steel Butt-Weld Pipe Fittings from Taiwan, dated December 4, 2009, at Attachment 8 (unchanged in the Final Redetermination) (Draft Remand Analysis Memorandum) (providing the program and output used to determine this information). In fact, our examination of Ta Chen's U.S. sales database and a comparison of the differences between invoice date and payment date indicates that the majority of Ta Chen's sales during the POR were paid in less than [ ], thus making these sales eligible as [ ] against which [ ]. See Id.; see also Ta Chen's supplemental questionnaire response, dated April 6, 2007, at page 20 of exhibit A-9 (page SQR-110). Of the [ ] observations in Ta Chen's U.S. sales database, [ ], or 94 percent of the total, were paid within [ ].[1] See Remand Analysis Memorandum at Attachments 7 – 8. It is reasonable to conclude that at least some of the [ ] were used to finance the sales of the subject merchandise in the United States, given that they comport to the requirements for [ ].

---

[1] Our analysis indicates that the majority of the [ ] sales with payment dates over [ ] are [ ] sales. Such sales [ ], as they are shipped [ ], but will have higher [ ]. Furthermore, [ ] such sales, OBSU #[ ], are listed in our normal U.S. margin program output as being in the top five U.S. sales with margins that are matched to most similar merchandise. See Preliminary Results Memorandum, Attachment of U.S. margin calculation program output at page 26. Ta Chen's argument, therefore, has the perverse effect of using sales with high dumping margins to try and reduce the overall dumping percentage.

Thus, Commerce finds, based on the above information on the record, that the inclusion of imputed credit and inventory carrying opportunity costs in the "total expenses" denominator, as Ta Chen advocates, would result in double-counting. As explained above, the denominator already includes financial expenses from borrowings in both the home market and the United States, a portion of which can be reasonably assumed to finance the credit and inventory carrying opportunity costs of the sales of subject merchandise in the United States. The additional inclusion of the imputed costs in the denominator would mean that the denominator contains two sets of figures representing the same costs of financing inventory and credit, one actual and the other imputed. By definition, this is double-counting. Because money is fungible, it is not possible to state with certainty the extent of this double-counting. However, if it is reasonable to conclude that some portion of Ta Chen's borrowings during the POR were used to finance sales of subject merchandise in the United States, then double counting does exist if imputed credit and inventory carrying opportunity costs are included with the net financial expense in the "total expenses" denominator.

The Court has ordered that Commerce provide a more rigorous analysis of the record facts in order to determine whether Commerce's standard methodology adequately reflects the imputed costs incurred by Ta Chen during the subject review. Our examination of the record, described above, demonstrates that certain recognized financial expenses may reasonably be understood as accounting for imputed expenses for U.S. selling activities.

The above positions are supported by previous decisions by the Court. In Thai Pineapple Canning Industry Corp., Ltd. v. United States, the Court stated that Commerce's standard methodology for CEP profit calculation comports with the purpose of the statute, absent any great discrepancy between the imputed expenses and the recognized financial expenses. 24 CIT 107, 115 (2000) ("Theoretically, 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. The issue is whether there is some peculiarity of this case that belies the relevancy of the theory.") In that case, the Court notably did not find that the mere presence of a discrepancy would automatically be distortive. Id. at 115 n.13. Commerce wishes to emphasize its belief that it is of no import whether or not the imputed costs are equal to the net financial expense. The size of U.S. imputed interest expenses has no bearing on the size or scope of a respondent firm's borrowings for the simple reason that opportunity costs may be largely self-financed and, thus, not appear as recognized costs. As stated previously, money is fungible. Additionally, we note that, in principle, imputed U.S. credit and inventory carrying opportunity costs need not be equal to, or less than, the total amount of the recognized net financial expenses used in the "total expenses" denominator of our CEP profit calculation.

Nevertheless, Commerce has run a test using its margin calculation program with the U.S. imputed credit and inventory carrying opportunity costs included in the calculation of the SELLEXPU variable to increase the total expenses used to calculate the CEP ratio. We used these increased expenses with the total actual profit to calculate a new ratio and, thus, a new CEP profit. This calculation is consistent with the calculation performed by Commerce in the remand redetermination affirmed by Ta Chen 2006. See Ta Chen 2006, 427 F. Supp. 2d at 1277. The recalculation does not represent a methodology that Commerce uses in lieu of its standard approach, but represents an approach which Commerce believes satisfies the Court's instructions. Due to the presence of the above-mentioned double-counting, the "total expenses" figure is inappropriately inflated and the CEP profit ratio is inappropriately diminished, resulting in the allocation of too little CEP profit to U.S. sales and an inaccurately diminished dumping margin. This test consists of an analysis of all of the sales and expense data on the record of this review, and incorporates assumptions that are inappropriately and inaccurately favorable to Ta Chen. Nevertheless, the test results demonstrate the absence of a large discrepancy that would justify a departure from Commerce's standard methodology.

Based on the results of this program, Commerce concludes that there is no distortion through continued reliance on its standard methodology and that any discrepancy resulting from its use is not significant. The effect on the margin calculation was substantially under one-tenth of one percent, changing from 0.52 to 0.51. Commerce does not believe that these differences require it to deviate from its standard methodology, and we have not done so in this redetermination on second remand. <u>See</u> Remand Analysis Memorandum at page 9 (providing further discussion of Commerce's calculation methodology).

COMMENTS

At the request of Commerce, the Court granted an extension for the filing of this redetermination on remand to December 18, 2009. On December 4, 2009, we invited interested parties to comment on the Draft Results of Redetermination Pursuant to Remand (Draft Remand Results). The initial deadline for comments was December 9, 2009. On December 7, 2009, Ta Chen requested an extension for time to file comments until December 14, 2009. In considering Ta Chen's request, we extended the deadline for parties to provide comments until 10:00 A.M. on December 11, 2009. On December 11, 2009, Ta Chen submitted comments on the Draft Remand Results. <u>See</u> Ta Chen Letter to Commerce, dated December 11, 2009. We did not receive any other comments. Ta Chen's comments and Commerce's position are summarized below.

<u>Comment 1: Ta Chen's Briefs to the Court</u>

Ta Chen states that its briefs to the Court, which occurred prior to this redetermination, stated why the prior and current determinations are not in accordance with the law and not supported by substantial evidence. Ta Chen further states that the points contained in the briefs continue to indicate why Commerce's determination is not in accordance with the law, and Ta Chen states that it incorporates those briefs by reference.

Commerce's Position:

This redetermination is responsive to the Court's <u>Opinion</u> requiring Commerce to "provide a more rigorous analysis of the record facts in its examination of whether the standard methodology adequately reflects the imputed costs incurred by Ta Chen during the subject review." <u>Opinion</u> at 5-6. Through the above analysis of record evidence establishing that Commerce's standard methodology adequately reflects Ta Chen's imputed costs during the POR and that the costs used in the "total actual profit" and "total expenses" components of

Commerce's standard methodology reasonably account for Ta Chen's imputed costs, Commerce believes that it has addressed the concerns articulated by the Court in its Opinion.

Commerce further notes that the briefs referenced by Ta Chen are not on the record of the underlying administrative proceeding or any subsequent remand proceeding before the agency. Nevertheless, the briefs referenced by Ta Chen address previous, different determinations made by Commerce and not the current redetermination for which comments were solicited. Ta Chen makes no effort to articulate or elaborate with any degree of specificity how arguments made in response to prior determinations remain applicable to this redetermination. Commerce further notes that, in the context of the judicial proceeding, it has previously responded and will continue to afford itself of any opportunity to respond to arguments raised by Ta Chen to the Court.

Comment 2: Recalculation Methodology

Ta Chen asserts that Commerce erred in the use of its test program by not adjusting the figure for "total actual profit." Ta Chen states that it discussed the issue at length in its briefs to the Court.

Commerce's Position:

Adjusting the "total actual profit" figure as proposed by Ta Chen would be contrary to the statute. See 19 U.S.C. § 1677a(f)(2)(D). Thus, we continued to use the "total actual profit" as determined in the Final Results (unchanged from the Preliminary Results).

Commerce has previously explained the reasoning behind its calculation of "total actual profit" in its standard methodology and how the statute itself specifically refers to "total actual profit." See Remand Determination at 3 – 5. The Court affirmed certain aspects of the standard methodology used to calculate the profit adjustment to CEP. See Opinion at 3, note 3; see also Alloy Piping at 20 – 21. Commerce believes that the test program adequately reflects the effect of including imputed credit and inventory carrying expenses for U.S. sales on the margin, and demonstrates that the effect is minimal. Therefore, contrary to Ta Chen's assertions otherwise, Commerce did not "err" in its recalculation in the Draft Remand Results but rather accounted for total actual profit in a manner required by the statute and consistent with the calculation used in the Final Results. Consequently, we are not changing the test program.

Comment 3: Double Counting

Ta Chen states that it presented different methods to address the issue of double counting in its briefs to the Court, and that Commerce does not address any of these arguments. Ta Chen makes the conclusory statement that Commerce will not consider imputed costs at all because of a possibility of double counting. Ta Chen asserts that such a position is contrary to Commerce's statutory obligation to use the best means possible to calculate a margin as accurately as possible.

Commerce's Position:

Contrary to Ta Chen's conclusory statement, Commerce has considered imputed expenses in the test program. As we previously stated above, Commerce found that the effect on the margin of including imputed costs is minimal.

Concerning the issue of double counting, if we deviate from our standard methodology (which eliminates double counting) and include imputed expenses in the calculation of the CEP ratio, Commerce believes that eliminating double counting can only be done in specific circumstances that do not fit the evidence on the record of this proceeding, such as the circumstances described below, or are contrary to the statute and Commerce's practice. Commerce believes that a further discussion of double counting is useful to address Ta Chen's comments.

As Commerce stated above, to the extent that a respondent company borrows funds through debt financing, some portion of the financial/interest expenses incurred on those funds may reasonably be attributable to the company's U.S. selling activities. Such borrowings, and their resulting financial expense, are captured on a company's consolidated and audited financial records. Additionally, if it were possible to attribute specific borrowings, and hence specific finance expenses, to sales or accounts receivable of specific merchandise, it might be possible to determine more accurately whether double counting has occurred and by how much. We have found no evidence that would warrant such attribution on the record of this proceeding. Ta Chen sells a number of products, including steel pipe, pipe fittings, valves, shutters, and mobile accessories in Taiwan. See Ta Chen's Section A questionnaire response, dated September 11, 2006, at exhibit A-2. In the United States, TCI sells automobile parts, shutters, bar, pipe, valves, fittings, and steel flat products. Id. at exhibit A-3. It is impossible to state with certainty which loans or borrowings, or how much of each loan, is attributable to finance the selling activities of each product. Different products may have different inventory carrying times or different credit terms, or a combination of outstanding accounts receivable from a variety of sources may necessitate funding through borrowing. Unless all products have identical imputed expenses, it would not be reasonable, for example, to assign a percentage of financing expenses based on the percentage of sales of a particular product compared to total sales. Some products may account for a larger percentage of sales, but have lower imputed costs due to shorter inventory carrying or credit expenses. We do not have on the record of this proceeding the credit and inventory carrying expenses of all of Ta Chen's merchandise, broken down by product. Therefore, it is impossible to determine accurately the percentage of the net financing expense to Ta Chen's sales of subject merchandise. The existence of financing expenses, derived from Ta Chen's home market and U.S. sales operations, makes it very likely that some of the financing expense should be assigned to U.S. sales of subject merchandise. Again, regardless, the inclusion of imputed expenses as well as these actual financing expenses would result in double counting.

Additionally, our analysis of TCI's sales of subject merchandise in the United States does not indicate that they are extraordinary such that the imputed costs wouldn't be adequately captured by the net finance expense. While we do not have the inventory carrying period for sales of all products sold by TCI, our analysis above of TCI's loan indicates that 94 percent of the sales of subject fittings would fall under the category of [ ], listed in the terms of collateral for the [ ]. Commerce believes this indicates that the majority of TCI's sales of subject merchandise are not extraordinary. Thus, as stated above, because money is fungible any of these financial expenses may have financed U.S. selling expenses of subject merchandise, and the inclusion of imputed costs would thereby result in double counting.

One possible way to avoid double counting, were imputed expenses included in the calculation of the CEP ratio, would be to remove the actual net financing expense from the "total expenses" denominator; however, Commerce believes that such an action is contrary to law and would be distortive. The SAA states in part that "{n}o distortion in the profit allocable to U.S. sales is created if total profit is determined on the basis of a broader product-line than the subject merchandise, because the total expenses are also determined on the basis of the same expanded product line. Thus, the larger profit pool is multiplied by a commensurately smaller percentage." H.R. Doc. No. 103-316, vol. 1, at 825, reprinted in 1994 U.S.C.C.A.N. 3773, 4168. Additionally, "{i}n calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production." 19 C.F.R. § 351.402(d)(1). Eliminating the actual net financing expense from "total expenses" would result in a distortion in the calculation of profit, and would be contrary to the Department's regulations. Therefore, we do not believe that such a proposal would result in the calculation of an accurate margin.

Comment 4: TCI Borrowings

Ta Chen argues that Commerce's analysis of TCI's borrowings "misses the mark." According to Ta Chen, TCI's recognized borrowing costs are not used in the CEP profit calculation.

Commerce's Position:

Our examination of the record indicates that Ta Chen's audited financial statement is consolidated. See Ta Chen's Section A questionnaire response, dated September 11, 2006, exhibit A-15, at page SQA 183. By definition, TCI's financial statement, including its financial expenses related to borrowings, are consolidated with its parent company, Ta Chen. Therefore, Commerce believes that an analysis of TCI's borrowing costs and financing expenses is relevant to this analysis.

FINAL RESULTS OF REDETERMINATION

Based on our review of the record and consideration of comments from Ta Chen, we find that a more rigorous analysis of the CEP profit issue supports our previous finding in the Final Results that imputed costs are adequately reflected in the total actual costs used to calculate CEP profit. Accordingly, an adjustment is not warranted.

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date