

if it is affirmed on appeal, the Department will revoke the antidumping order covering the subject merchandise.

**EFFECTIVE DATE:** December 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1766 or (202) 482-4194, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department published notice of its final affirmative LTFV determination covering the subject merchandise, *i.e.*, imports of pure magnesium from Ukraine, on March 30, 1995, *Final Affirmative Determination of Sales at Less Than Fair Value; Pure Magnesium from Ukraine*, 60 FR 16432, and the Commission subsequently made its final affirmative determination that a U.S. industry was being materially injured by reason of imports of the subject merchandise. *See Magnesium from China, Russia, and Ukraine*, 60 FR 26456 (May 17, 1995). The Department published an antidumping order covering the subject merchandise on May 12, 1995. *See Antidumping Duty Orders; Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine*, 60 FR 25691.

Following publication of the antidumping duty order, Gerald Metals, Inc. ("Gerald Metals") an interested party in this case, filed a lawsuit with the CIT challenging the Commission's final affirmative determination of material injury. In its first decision, the CIT affirmed the Commission's final affirmative determination of material injury. However, the Federal Circuit subsequently directed the CIT to vacate its decision to affirm the Commission's final affirmative determination of material injury and to remand the case to the Commission. *See Gerald Metals, Inc. v. United States*, 132 F.3d 716 (Fed. Cir. 1997). On remand, the Commission determined that the U.S. industry was not being materially injured, and was not threatened with material injury, by reason of imports of the subject merchandise. The CIT affirmed the Commission's remand determination on October 20, 1998. *See Gerald Metals, Inc. v. United States*, Court No. 95-06-00782, Slip Op. 98-148 (CIT).

**Suspension of Liquidation**

In its decision in *Timken*, the Federal Circuit held that the Department must publish notice of a decision of the CIT

or the Federal Circuit which is not "in harmony" with the Department's or the Commission's determination. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, the Department must suspend liquidation pending the expiration of the period to appeal the CIT's October 20, 1998 decision or, if that decision is appealed, pending a final decision by the Federal Circuit. However, because entries of pure magnesium and alloy magnesium from Ukraine already are being suspended pursuant to the antidumping duty orders in effect, the Department need not order the Customs Service to suspend liquidation. Furthermore, consistent with *Timken*, the Department will revoke the antidumping duty order covering the subject merchandise in the event that the CIT's ruling is not appealed or the Federal Circuit issues a final decision affirming the CIT's ruling.

Dated: December 1, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98-32722 Filed 12-8-98; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-583-816]

**Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On June 5, 1998, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. This review covers one manufacturer and exporter of the subject merchandise. The period of review ("POR") is June 1, 1996 through May 31, 1997. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** December 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Becky Hagen or Bob Bolling, AD/CVD Enforcement Group III—Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482-1102 or (202) 482-3434, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353.

**Background**

On June 5, 1998, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan (63 FR 30710). On September 30, 1998, the Department extended the time limit for the final results to December 2, 1998, in accordance with the Act. *See Butt-Weld Pipe Fittings from Taiwan; Extension of Time Limits for Antidumping Duty Administrative Review* (63 FR 54108, October 8, 1998). The Department has now completed this administrative review in accordance with section 751 of the Act.

**Scope of the Review**

The products subject to this review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Certain stainless steel butt-weld pipe fittings ("pipe fittings") are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows," "tees," "reducers," "stub ends," and "caps." The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted

fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

The POR is June 1, 1996 through May 31, 1997. This review covers sales of certain stainless steel butt-weld pipe fittings from Taiwan by Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen").

#### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Ta Chen, exporters of the subject merchandise ("respondent") and rebuttal comments from petitioner, Flowline Division of Markovitz Enterprises Inc.

#### Comments

*Comment 1:* Ta Chen argues that the Department made a clerical programming error in the margin calculation program by setting cost of manufacture ("TOTCOMCV") equal to Ta Chen's total constructed value ("TOTCV"). Respondent argues that Ta Chen's cost of manufacture ("TOTCOMCV") should be set equal to Ta Chen's total cost of manufacture ("TOTCOM"). The petitioner did not comment on this argument.

*Department's Position:* We agree with respondent and have corrected this error for the final results. The final margin program now sets the cost of manufacture equal to total cost of manufacture. For a more specific discussion of the change that the Department has made in its final margin program, please see the Department's analysis memorandum and final antidumping duty margin calculation program.

*Comment 2:* Ta Chen argues that inventory carrying costs associated with time on the water should not be included in U.S. indirect selling expenses deducted from U.S. price. It asserts that only indirect selling expenses associated with economic activity occurring in the United States should be deducted from U.S. price pursuant to determining net price. Respondent states that the preliminary results added the ocean time in transit between Ta Chen's plant in Tainan, Taiwan and Ta Chen International's ("TCI") warehouses in Long Beach,

California to Ta Chen's reported inventory carrying costs. It argues that that inventory carrying cost is not associated with economic activity in the United States, and therefore should not be included in U.S. indirect selling expenses.

Petitioner argues that, while it is true that the amendments to the dumping statute now only recognize those indirect selling expenses associated with economic activity occurring in the United States, it is not true that "time on the water" necessarily took place outside the United States. Additionally, petitioner argues, the Department's Antidumping Manual ("AD Manual") notes that foreign inventory carrying costs do not form part of the constructed export price ("CEP") deduction, and the AD Manual makes no mention of the costs incurred once a product leaves the foreign country. Petitioner asserts that Ta Chen revised its reported inventory carrying costs at verification to include "time on the water" in the calculations, which was accepted by the Department. They argue that the Department's inclusion of "time on the water" is consistent with its past practice, and does not constitute an unintentional error.

*Department's Position:* We agree with Ta Chen that the inventory carrying costs incurred for the time on the water between Taiwan and the United States should not be deducted from the price used to calculate CEP. The Department has addressed this issue in the past in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom*; *Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320, 33344 (June 18, 1998) and *Color Picture Tubes From Japan*; *Final Results of Antidumping Duty Administrative Review*, 62 FR 34201, 34206 (June 25, 1997). In both instances, the Department stated that it is clear from the Statement of Administrative Action ("SAA") that under section 772(d) of the Act we should deduct from CEP only those expenses associated with commercial activity in the United States which relate to the resale to an unaffiliated purchaser. In *Color Picture Tubes From Japan*, we further explained that the SAA indicates CEP "is now calculated to be, as closely as possible, a price corresponding to a price between non-affiliated exporters and importers." 62 FR at 34207 (quoting SAA at 823). Section 351.402(b) of the Department's

new regulations<sup>1</sup> codifies this principle, stating that we will make adjustments under section 772(d) for expenses associated with commercial activity in the United States, no matter where it was incurred. Therefore, consistent with section 772(d) and the SAA, we deduct only those expenses representing activities undertaken to make the sale to the unaffiliated customer in the United States. We ordinarily do not deduct indirect expenses incurred in selling to the affiliated U.S. importer. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*; *Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11834 (March 13, 1997); *Gray Portland Cement and Clinker From Mexico*; *Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17168 (April 9, 1997).

We do not consider the portion of Ta Chen's inventory carrying costs during the period of transit to be associated with commercial activity in the United States. These expenses were incurred from the date of exportation to the date the affiliated importer received the subject merchandise in the United States and, therefore, relate to the sale to Ta Chen's U.S. affiliate and not to the sale to the unaffiliated customer. See *Certain Stainless Wire Rods From France: Amended Final Results of Antidumping Duty Administrative Review (Steel Wire Rods)*, 62 FR 25915, 25916 (May 12, 1997). Accordingly, for these final results we have not deducted such costs from the CEP.

*Comment 3:* Ta Chen argues that the CEP profit calculation erroneously imputes a profit on TCI's direct expenses and commission payments in the United States. It states that the CEP profit calculation should only be an imputed profit on Ta Chen's indirect selling expenses occurring in the United States, not on U.S. direct selling expenses and commissions.

Petitioner argues that it is the Department's policy to use total U.S. selling expenses, including direct selling expenses and commission, in the derivation of CEP profit.

<sup>1</sup> Although this review was conducted under the Department's old regulations at 19 CFR part 353, section 351.701 of the new regulations states that the old regulations will apply to reviews requested before the new regulations take effect to the extent the old regulations "were not invalidated by the URAA." Here, the old regulations governing exporter sales price deductions are not in conformity with the requirements of the URAA, therefore the new regulations at 351.402(b) apply to this CEP deduction issue.

**Department's Position:** The Department agrees with petitioner. Ta Chen argues that the Department should not impute a CEP profit on Ta Chen's U.S. direct selling expenses and commissions. Instead, Ta Chen asserts that the Department should only impute CEP profit on Ta Chen's indirect selling expenses occurring in the United States. Respondent's proposed methodology is directly contrary to the plain language of Section 772(d)(3) of the Act. Section 772(d)(3) provides that the Department shall reduce the starting price used to establish CEP by the profit allocated to the expenses described in section 772(d)(1)&(2). Section 772(d)(1) lists the following expenses:

(A) Commissions for selling the subject merchandise in the United States;

(B) Expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) Any selling expenses that the seller pays on behalf of the purchaser; and

(D) Any selling expenses not deducted under \* \* \* (A), (B), or (C) [above].

Further, for purposes of calculating the applicable percentage, section 772(f)(2)(B) defines total U.S. expenses as those expenses deducted under section 772(d)(1)&(2). Therefore, contrary to Ta Chen's argument, the plain language of the statute directs the Department to deduct from CEP the profit allocated to all U.S. expenses, including U.S. direct selling expenses and commissions. Thus, the Department has not changed the CEP profit methodology used in the *Preliminary Results*.

#### Final Results of Review

As a result of this review, we determine that the following margin exists for the period June 1, 1996 through May 31, 1997:

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ta Chen .....	0.34

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisal instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during

the POR to the total entered value of sales examined during the POR. As a result of this review, we have determined that the importer-specific duty assessment rate is necessary.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain stainless steel butt-weld pipe fittings from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) No cash deposit will be required for the reviewed company because its rate, stated above, is *de minimis*; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 51.03 percent, the "All Others" rate made effective by the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677(f)(i)(1)).

Dated: December 2, 1998.

**Robert S. LaRossa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98-32728 Filed 12-8-98; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-821-803]

#### Titanium Sponge From the Russian Federation: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission of antidumping duty administrative review.

**SUMMARY:** On September 29, 1998, the Department of Commerce (the Department) initiated an administrative review of the antidumping finding on titanium sponge from the Russian Federation (Russia) for TMC Trading International, Ltd. (TMC), an exporter/reseller of subject merchandise. This review was requested by TMC and covers the period April 1, 1997, through March 31, 1998. The Department is rescinding the review after receiving a withdrawal of its request for review from TMC.

**EFFECTIVE DATE:** December 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mark Manning or Wendy Frankel, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-3936 and 482-5849, respectively.

#### SUPPLEMENTARY INFORMATION:

##### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

##### Background

On August 28, 1998, TMC requested that the Department conduct an administrative review of titanium sponge from Russia for the period April