

implements a policy in NME cases whereby all exporters or producers are presumed to comprise a single entity, the "NME entity." The U.S. Court of International Trade has upheld our NME policy in previous cases. See e.g., *UCF America, Inc. v. United States*, 870 F. Supp. 1120, 1126 (CIT 1994); *Sigma Corp. v. United States*, 841 F. Supp. 1255, 1266-67 (CIT 1993), and; *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1013-15 (CIT 1992). Thus, we assign the NME rate to the NME entity just as we assign an individual rate to a single exporter or producer operating in a market economy. As a result, all exporters and producers that are part of the NME entity are assigned the "NME-wide" rate. Because the "NME-wide" rate is the equivalent of a company-specific rate, it changes only when we review the NME entity (i.e., all NME producers and exporters that have not qualified for a separate rate). To qualify for a separate rate, as discussed under the *Separate Rates* section of this notice, an NME exporter or producer must provide evidence showing both *de jure* and *de facto* absence of government control over export activities. Until such evidence is presented, a company is presumed to be part of the NME entity and receives the "NME-wide" rate. All exporters or producers will either qualify for a separate, company-specific rate, or be part of the NME enterprise, and receive the "NME-wide" rate. Thus, there can be no exporters or producers who have never been investigated or reviewed. In this review, Clover/Lucky qualifies for a separate rate, as discussed under the *Separate Rates Analysis* section of this notice. The PRC-wide rate has not changed from the last administrative review because no companies representing the single entity were reviewed.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 353.22(c)(6). Any interested party may request a hearing within 10 days of publication in accordance with 19 CFR 353.38(b). Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 353.38(c). In accordance with 19 CFR 353.38(d), rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are

requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of the publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will calculate, wherever possible, an exporter/importer-specific assessment rate. With respect to these preliminary results, we divided the total dumping margins for each importer (calculated as the difference between NV and EP), by the total quantity of sales to that importer during the POR. We will instruct Customs to assess the resulting per-piece (a set to be treated as a single piece) amount against each piece in each of the importer's entries during the POR. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer for the review period will approximately equal the total dumping margins. The Department will issue appraisal instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of POS cooking ware from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Clover/Lucky, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate; and (3) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. We preliminarily determine that the margin of 66.65 percent continues to be the PRC-wide rate because no companies representing the single entity were reviewed. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 of the Department's regulations 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 administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f (i)) and 19 CFR 353.22 of the Department's regulations.

Dated December 31, 1997.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-815]

Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Review

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

ACTION: Notice of preliminary results of administrative review.

SUMMARY: In response to requests by petitioners¹ and respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded stainless steel pipe from Taiwan (A-583-815). This review covers one manufacturer/exporter of the subject merchandise to the United States during the period December 1, 1995 through November 30, 1996.

We preliminarily determine that a *de minimis* dumping margin exists for Ta Chen's sales of welded stainless steel pipe (WSSP) in the United States. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta Chen merchandise during the period of review, in accordance with the Department's regulations (19 CFR 353.6). Interested parties are invited to

¹ Avesta Sheffield, Inc., Damascus Tube Division, Damascus-Bishop Tube Co., Trent Tube Division, Crucible Materials Corporation, and the United Steelworkers of America (AFL-CIO/CLC).

comment on these preliminary results. Parties who submit comments are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

EFFECTIVE DATE: January 9, 1998.

FOR FURTHER INFORMATION CONTACT:

Robert James at (202) 482-5222 or John Kugelman at (202) 482-0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

APPLICABLE STATUTE AND REGULATIONS:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1992, the Department published in the **Federal Register** the antidumping duty order on WSSP from Taiwan (57 FR 62300). On December 3, 1996, the Department published the notice of "Opportunity to Request Administrative Review" for the period December 1, 1995 through November 30, 1996 (61 FR 64051). In accordance with 19 CFR 353.22(a)(1) (1995), petitioners and Ta Chen requested that we conduct a review of Ta Chen's sales. On January 17, 1997, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period December 1, 1995 through November 30, 1996 (62 FR 2647).

Because it was not practicable to complete this review within the normal time frame, on July 24, 1997, we published in the **Federal Register** our notice of extension of time limits for this review (62 FR 39824). As a result, we extended the deadline for these preliminary results to December 31, 1997. The deadline for the final results of this review will continue to be 120 days after publication of these preliminary results.

Scope of the Review

The merchandise subject to this administrative review is certain welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials

(ASTM) for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 7306.40.5005, 7306.04.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this review is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

The period for this review is December 1, 1995 through November 30, 1996. This review covers one manufacturer/exporter, Ta Chen.

Export Price

Ta Chen reported in its initial and supplemental questionnaire responses that all of its U.S. sales were first sold to unaffiliated purchasers prior to importation into the United States. Each of these sales was made through Ta Chen's wholly-owned U.S. subsidiary, TCI. Ta Chen claims that it "sold" the merchandise to TCI, which immediately transferred the WSSP to the first unaffiliated U.S. customer. For each of these sales, Ta Chen claims that TCI acted merely as a "facilitator," handling sales- and Customs-related paper work; Ta Chen states that at no time did TCI take physical possession of the merchandise or enter it into TCI's warehouse. In each instance, according to Ta Chen, the price and quantity of the U.S. sale to the unaffiliated customer were determined prior to importation into the United States. Therefore, in calculating U.S. price we used export price (EP), as defined in section 772(a) of the Tariff Act, for all of Ta Chen's sales. We calculated EP as the packed, delivered or ex-U.S. port price to

unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Tariff Act, we reduced this price by Taiwanese pre-sale inland freight, international ocean freight, marine insurance, Taiwanese brokerage and handling, U.S. brokerage and handling, U.S. duty, and U.S. inland freight. Where appropriate, we also reduced the EP by Taiwanese and U.S. bank charges.

Normal Value

A. Viability

Based upon (i) our comparison of the aggregate quantity of home market and U.S. sales, (ii) the absence of any information that a particular market situation in Taiwan does not permit a proper comparison, and (iii) the fact that Ta Chen's quantity of sales in the home market exceeded five percent of its sales to the U.S. market, we determined that the quantity of foreign like product Ta Chen sold in Taiwan was sufficient to permit a proper comparison with the sales of subject merchandise to the United States pursuant to section 773(a) of the Tariff Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Tariff Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting market, i.e., Taiwan.

B. Cost-of-Production Analysis

Because we disregarded sales below the cost of production in the less-than-fair-value (LTFV) investigation (at the time of our initiation of this administrative review, the most-recently completed segment of these proceedings), we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Tariff Act (see Final Determination of Sales at Less Than Fair Value; Certain Welded Stainless Steel Pipe from Taiwan, 57 FR 53705 (November 12, 1992)). Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Ta Chen (see Memorandum to the File, dated February 11, 1997, available in Room B-099 of the Main Commerce Building).

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for

shipment. We relied on the home market sales and COP information Ta Chen provided in its questionnaire responses.

After calculating COP, we tested whether home market sales of subject WSSP were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges and post-sale price adjustments (reported as discounts).

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than twenty percent of Ta Chen's home market sales for a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where twenty percent or more of Ta Chen's home market sales were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2) (B) and (C) of the Tariff Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act, we compared home market prices to the weighted-average COPs for the POR.

The results of our cost test for Ta Chen indicated that for certain home market models less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV. Our cost test for Ta Chen also indicated that for certain other home market models more than twenty percent of the home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Tariff Act, we therefore excluded the below-cost sales of these models from our analysis and used the remaining above-cost sales as the basis for determining NV.

C. Product Comparisons

We compared Ta Chen's U.S. sales with contemporaneous sales of the foreign like product in the home market. We considered pipe identical based on product nomenclature and considered specifications/alloy, nominal pipe size,

and wall thickness in determining the most similar types of pipe. We used a twenty percent cap in reported differences in merchandise as the maximum difference in cost allowable for similar merchandise. For purposes of these preliminary results, we have used the difference-in-merchandise information Ta Chen submitted with its supplemental questionnaire response of October 30, 1997.

D. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, the Department will calculate NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. In cases involving constructed export price (CEP) sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV pursuant to section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In its questionnaire responses Ta Chen stated that there were few differences in its selling activities by customer categories within each market. In order to confirm independently the absence of separate levels of trade within or between the U.S. and home markets, we examined Ta Chen's questionnaire responses for indications that Ta Chen's functions as a seller differed qualitatively or quantitatively

among customer categories. Where possible, we further examined whether each selling function was performed on a substantial portion of sales.

Ta Chen sold to distributors in the U.S. market. In the home market, Ta Chen sold to local distributors and end users. With respect to the home market, Ta Chen claimed that its two customer categories constituted a single level of trade. Base upon our examination of information supplied by Ta Chen in its original and supplemental questionnaire responses, we agree that only one level of trade existed for Ta Chen in the home market. According to Ta Chen, it provided no strategic or economic planning services, market research, business-development services, personnel training, engineering, advertising, procurement services, inventory maintenance, or post-sale warehousing for customers in either category. Customers in both categories received the same degree of packing, after-sales services, and freight and delivery arrangements. End-user customers did receive slightly higher levels of research and development and technical assistance than did distributors; however this one difference is not sufficient to establish discrete levels of trade.

For its U.S. sales, Ta Chen reported a single customer category, i.e., distributors. In determining whether, in fact, a single stage of marketing existed, we examined the selling functions as reflected in the starting price to the unaffiliated U.S. customer. TCI processed paperwork and provided certain selling functions for all of Ta Chen's U.S. sales which, in every instance, were to pipe distributors in the United States. We find preliminarily that TCI provided very limited selling functions for these sales and, therefore, find that no significant differences in the selling functions between sales to different customers. As a result, we preliminarily agree with Ta Chen that Ta Chen's EP sales constitute a single level of trade.

When we compared Ta Chen's sales at its EP level of trade to its home market level of trade, we found that Ta Chen provided little or no strategic or economic planning, market research, engineering services, advertising, after-sales services, or post-sale warehousing at either the EP or home market level of trade. Ta Chen reported that it provided moderate-to-low technical assistance at its home market level of trade, while providing none at the EP level. All packing expenses at either level of trade were borne by Ta Chen; freight and delivery arrangements varied between the two markets in that U.S. movement

expenses on certain U.S. sales were incurred by TCI, while other sales were made on "FOB U.S. port" terms. Our analysis of the selling functions performed by Ta Chen in both markets leads us to conclude that sales within or between each market are not made at different levels of trade. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same level of trade. We have not, therefore, made a level-of-trade adjustment because all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) of the Tariff Act is not appropriate.

E. Home Market Price

While we found below-cost home market sales for Ta Chen in this review, Ta Chen's remaining home market sales at or above cost were sufficient to serve as the basis for NV.

We based home market prices on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act, and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 353.56. We made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Finally, where the comparison EP sale involved a commission, we increased home market price by the amount of this commission and subtracted home market indirect selling expenses up to the amount of the U.S. commission, as provided at 19 CFR 353.56(b).

In accordance with section 773(a)(4) of the Tariff Act, we based NV on constructed value (CV) if (i) a sale of a U.S. model matched to a home market model for which no sales were above cost, or (ii) we were unable to find a contemporaneous home market match for the U.S. sale. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for

consumption in Taiwan. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act and 19 CFR 353.56 for COS adjustments. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions.

Fair-Value Comparisons

To determine whether Ta Chen made sales of subject WSSP in the United States at prices that were less than fair value, we compared the EP to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act, we calculated monthly weighted-average prices for NV and compared these monthly averages to individual U.S. sales transactions.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average margin for Ta Chen for the period December 1, 1995 through November 30, 1996 is 0.07 percent.

Parties to these proceedings may request disclosure within five days of the date of publication of this notice and may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be submitted no later than 37 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentage stated above. The Department will issue appraisal

instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise during this period of review, and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of WSSP from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Tariff Act:

- (1) The cash deposit rate for Ta Chen will be zero percent, in light of its *de minimis* weighted-average margin;
- (2) For previously reviewed or investigated companies other than Ta Chen, 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, a prior review, or the LTFV investigation, 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 this or any previous review conducted by the Department, the cash deposit rate will be 19.84 percent. See *Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Taiwan*, 57 FR 62300 (December 30, 1992).

This notice serves as preliminary reminder to importers of their responsibility 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 30, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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