

UNITED STATES COURT OF INTERNATIONAL TRADE

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 ALLOY PIPING PRODUCTS, INC., *et al.*, :
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 Plaintiffs, :
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 v. :
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 UNITED STATES, :
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 Defendant, :
 :
 and :
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 TA CHEN STAINLESS STEEL PIPE :
 CO., LTD., :
 :
 Defendant-Intervenor. :
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**Before: Judith M. Barzilay, Judge
Consol. Court No. 08-0027**

OPINION

[Defendant’s Second Remand Determination is sustained.]

Dated: February 8, 2010

Kelley Drye & Warren, LLP (Jeffrey S. Beckington, David A. Hartquist), for Plaintiffs.

Tony West, Assistant Attorney General; Jeanne E. Davidson, Director, Reginald T. Blades, Jr., Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (Stephen C. Tosini); Daniel J. Calhoun, Attorney-International, Of Counsel, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for Defendant.

Squire, Sanders & Dempsey LLP (Peter J. Koenig), for Defendant-Intervenor.

Barzilay, Judge: This case returns to the court following the second U.S. Department of Commerce (“Commerce”) remand determination on the thirteenth administrative review of an antidumping duty order covering stainless steel butt-weld pipe fittings from Taiwan. *Final Results of Redetermination Pursuant to Remand*, A-583-816 (Dep’t Commerce Dec. 18, 2009) (“*Second Remand Determination*”). In early 2009, the court affirmed in part and remanded in part Commerce’s review of the subject antidumping duty order.¹ *Alloy Piping Prods., Inc. v. United States*, Slip Op. 09-29, 2009 WL 983078 (CIT Apr. 14, 2009). The remand order to Commerce concerned the calculation of the profit adjustment to the Constructed Export Price (“CEP”),² a component of the dumping margin equation. In October 2009, the court reviewed Commerce’s first remand determination and found that the agency did not support its conclusion that the record did not warrant a profit adjustment to the CEP with substantial evidence. *Alloy Piping Prods., Inc. v. United States*, Slip Op. 09-119, 2009 WL 3367498 (CIT Oct. 20, 2009); *Final Results of Redetermination Pursuant to Remand*, A-583-816 (Dep’t Commerce June 16, 2009), Admin. R. Pub. Doc. 1928. The court directed the agency 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.” *Alloy Piping Prods., Inc.*, 2009 WL 3367498, at *3. In the latest determination, Commerce has found anew that the record does not support a profit adjustment to the CEP. *Second Remand Determination* at 1.

¹ The court presumes familiarity with the procedural history of this case.

² Commerce uses the following formula to calculate CEP Profit:
Total Actual Profit x (Total U.S. Expenses / Total Expenses). 19 U.S.C. § 1677a(d)(3), (f).

Defendant-Intervenor Ta Chen³ contests this finding and argues that the agency based its conclusion in the *Second Remand Determination* on conjecture.^{4 5} Ta Chen Br. 5-13. The court affirms Commerce's *Second Remand Determination* for the reasons explained below.

³ On June 18, 2009, Plaintiffs Alloy Piping Products, Inc., Flowline Division of Markovitz Enterprises, Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. informed the court by letter that they support Commerce's analysis of the remanded issue and that they would no longer actively participate in the case. Pls.' Letter at 1, *Alloy Piping Prods., Inc. v. United States*, No. 08-cv-00027 (CIT June 18, 2009).

⁴ Ta Chen also avers that the standard methodology Commerce used to calculate the profit adjustment does not account adequately for certain imputed costs. Ta Chen Br. 4-5. In its April and October opinions, the court affirmed the legal validity of Commerce's standard methodology for calculating the profit adjustment to CEP absent certain conditions. *Alloy Piping Prods., Inc.*, 2009 WL 3367498, at *1 n.3; *Alloy Piping Prods., Inc.*, 2009 WL 983078, at *9. Ta Chen argues that a condition exists in this review that renders the standard methodology inapplicable. Ta Chen Br. 11 (citing *Thai Pineapple Canning Indus. Corp. v. United States*, 24 CIT 107, 115 (2000) (not reported in F. Supp.) ("*Thai Pineapple*"). In *Thai Pineapple*, the Court stated that the standard methodology might not apply in a situation where the record contained no actual expenses but only imputed costs, though it did not "address whether th[is is] a truly distortive situation[]." 24 CIT at 115 & n.13. Even assuming that the absence of actual costs creates a truly distortive situation, the record of this review evinces the presence of both actual and imputed expenses, *see generally Second Remand Determination*, and thus discredits Ta Chen's argument.

⁵ Ta Chen also alleges that Commerce erroneously rejected Ta Chen's three alternate and allegedly more accurate methodologies to calculate CEP profit. Ta Chen Br. 14-17. The Federal Circuit has found that the standard methodology used by Commerce sufficiently comports with the agency's statutory duty under 19 U.S.C. § 1677a to ensure the fairness of the price comparison between foreign and domestic produced goods, so long as "Commerce affords a respondent who so desires the opportunity to make a showing that the amount of imputed expenses is not accurately reflected or embedded in its actual expenses." *SNR Roulements v. United States*, 402 F.3d 1358, 1361 (Fed. Cir. 2005). Because Commerce has given Ta Chen the required opportunity, the court "must accord deference to the agency in its selection and development of proper methodologies." *Fla. Citrus Mut. v. United States*, 550 F.3d 1105, 1111 (Fed. Cir. 2008) (quotation marks & citation omitted).

I. Subject Matter Jurisdiction & Standard of Review

A civil action commenced under 19 U.S.C. § 1516a falls within the exclusive ambit of the Court's subject matter jurisdiction pursuant to 28 U.S.C. § 1581(c). The Court must hold unlawful any antidumping duty determination "unsupported by substantial evidence on the record, or otherwise not in accordance with law." § 1516a(b)(1)(B)(i). An agency supports its factual findings with substantial evidence when it explains the standards that it applied and demonstrates a rational connection between the facts on the record and the conclusions drawn. *See Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 933 (Fed. Cir. 1984). "[W]hile [the] explanations do not have to be perfect, the path of [the agency]'s decision must be reasonably discernible to a reviewing court." *NMB Sing. Ltd. v. United States*, 557 F.3d 1316, 1319 (Fed. Cir. 2009) (citation omitted).

II. Discussion

Commerce supports with substantial evidence its conclusion in the *Second Remand Determination* that the standard methodology accounted for Ta Chen's imputed costs during the subject review. The agency explains that where a respondent foreign company has an affiliate in the United States that receives a loan, "it is reasonable to assume that a portion of those borrowings may [cover] the U.S. selling activities associated with sales of subject merchandise." *Second Remand Determination* at 5. Commerce further notes that imputed expenses in the United States represent an estimated amount of the borrowing cost attributable to those U.S. selling activities. *Id.* Commerce points to record evidence of several loans by Ta Chen and its U.S. subsidiary, Ta Chen International, that demonstrates that the two entities likely used a

portion of the funds from those loans to finance selling activities related to the subject merchandise within the United States. *See id.* at 6-7 (citing Ta Chen Section A Questionnaire Resp. (Sept. 11, 2006), P.R. Doc. 16 at Exs. A-9, A-15, A-16)). Commerce's assumption is reasonable, given that (1) Ta Chen did not provide the agency with any evidence to show that the loans were not used to support U.S. selling expenses, including an itemization of the credit and inventory carrying costs associated with each of Ta Chen's goods and the subject merchandise, and (2) it was reasonably foreseeable that such information would be pertinent to the agency's determination. *See id.* at 11. Finally, Commerce reasons that Ta Chen's imputed costs belong in the Total U.S. Expenses numerator and not in the Total Actual Profit multiplier or Total Expenses denominator, since the latter two components contain only actual costs, and to include both the actual costs and an estimate of those expenses, i.e., imputed costs, would by definition result in double counting. *See id.* at 6-7. In reaching these findings, Commerce provides a justification absent from its previous determinations that shows the requisite rational connection between the facts on the record and the conclusion reached. *See Matsushita Elec. Indus. Co.*, 750 F.2d at 933.

III. Conclusion

For the foregoing reasons, the court finds that Commerce supported the *Second Remand Determination* with substantial evidence.

Date: February 8, 2010
New York, New York

/s/ Judith M. Barzilay
Judith M. Barzilay, Judge