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December 6, 2002

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping Administrative Review of Stainless Steel Sheet and Strip in Coils ("SSSS") from Taiwan

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SUMMARY

We have analyzed the case briefs and rebuttal briefs of interested parties in this review. As a result of our analysis, we have made changes from the preliminary results of review for Chia Far Industrial Factory Co., Ltd. ("Chia Far"). These changes can be found in the Analysis for the Final Results in the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan - Chia Far Industrial Factory Co., Ltd ("Chia Far") dated December 6, 2002 ("Chia Far Final Analysis Memorandum"). We made no changes from the preliminary results of review for Yieh United Steel Company Ltd. ("YUSCO").

We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review which we received in the case and rebuttal briefs submitted by interested parties.

BACKGROUND

The Department of Commerce ("the Department") published its notice of preliminary results of antidumping administrative review of SSSS from Taiwan on July 9, 2002. See Stainless

Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 45742 (July 9, 2002) ("Preliminary Results").

The merchandise covered by this order is stainless steel sheet and strip in coils as described in the "Scope of the Review" section of the Federal Register notice. The period of review ("POR") is July 1, 2000 through June 30, 2001.

We invited interested parties to comment on our Preliminary Results. We received written comments on September 4, 2002, from petitioners[1] addressing our analysis of YUSCO, Tung Mung Development Corporation ("Tung Mung"), Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), and Chia Far. On September 16, 2002, we received rebuttal comments from petitioners on Chia Far's comments. Also on September 16, 2002, we received rebuttal comments from YUSCO and Chia Far on petitioners' comments.

On September 18, 2002, we received a submission from petitioners concerning Chia Far alleging new arguments, including a claim that Chia Far had submitted untimely new factual information on the record. The Department rejected petitioners' submission finding that the second portion of the letter included new factual information that was untimely filed for this review. On September 27, 2002, petitioners resubmitted the letter of September 18, 2002**,** pursuant to instructions received from the Department on September 25, 2002, with the requested modifications. On October 8, 2002, the Department rejected petitioners' request to remove from the record certain passages contained in Chia Far's rebuttal brief. The Department determined that Chia Far's rebuttal brief contained only information already on the written record of review, and it stated that it was therefore not rejecting any passages contained in Chia Far's rebuttal brief. The Department found that Chia Far had timely filed its rebuttal brief and that none of the information included in the rebuttal brief constituted "new information" according to 19 CFR 351.309(d). See letter to Collier Shannon Scott of October 18, 2002. On October 9, 2002, petitioners submitted, pursuant to instructions received from the Department on October 7, 2002, a revised case brief concerning YUSCO, which excluded certain new factual information. We have now completed the administrative review in accordance with section 751 of the Act.

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC.

LIST OF ISSUES FOR DISCUSSION

A. Issues with Respect to Tung Mung and Ta Chen

Comment 1: Total Adverse Facts Available ("AFA") for Tung Mung and Ta Chen
Comment 2: Whether Ta Chen Should Be Granted a Partial Recision of Review

B. Issues with Respect to YUSCO

Comment 3: Sales to Affiliated Parties in the United States
Comment 4: Affiliation With China Steel
Comment 5: Classification of Home Market Sales
Comment 6: The Use of AFA

C. Issues with Respect to Chia Far

Comment 7: Total AFA
Comment 8: Affiliated-Party Purchases
Comment 9: General and Administrative ("G&A") Expenses
Comment 10: Appropriate Period for G&A and Interest Expense Ratios
Comment 11: Inventory Carrying Costs Incurred in Taiwan for U.S. Sales
Comment 12: Constructed Export Price ("CEP") Transactions

CHANGES TO THE COMPUTER PROGRAM

Based on our analysis of comments received, we made changes in the margin calculation for Chia Far. The changes are listed below:

Chia Far

1. We included all of the depreciation expense incurred in the common service department at Pu-Shin and allocated it to the rolling department in the calculation of the cost of production.

2. We used Chia Far's 2001 financial statements to calculate the net interest expense ratio and G&A expense ratio. We also included miscellaneous losses in the G&A expense ratio.

3. We used Chia Far's reported inventory carrying costs incurred in Taiwan.

ISSUES FOR DISCUSSION

A. Issues with Respect to Tung Mung and Ta Chen

DISCUSSION OF ISSUES

Comment 1: Total AFA for Tung Mung and Ta Chen

Petitioners argue that the Department should apply total adverse facts available ("AFA") in this review to respondents Ta Chen and Tung Mung. Petitioners argue that the Department should apply AFA because Ta Chen and Tung Mung failed to place on the record complete information that could be relied on to make a determination, thereby impeding the administrative review.

Petitioners state that section 776(a)(2) of Act, as amended, provides that if an interested party withholds information requested by the Department, fails to provide such information in a timely manner, significantly impedes a determination or provides information that cannot be verified, the Department shall, subject to the provisions of section 782(c) - (e) of the Act, use facts otherwise available. Further, petitioners note that in accordance with section 776(b) of the Act, AFA may be used when a party fails to cooperate with the Department by not acting to the best of its abilities to comply with the Department's request for information.

In this case, petitioners state that on October 17, 2001, the Department sent a letter to Tung Mung stating that it failed to respond to our questionnaire, and granted Tung Mung an extension for submitting its responses until October 24, 2001. Petitioners further note that the Department's letter also stated that if Tung Mung failed to respond by October 24, 2001, the Department might choose to apply AFA when calculating Tung Mung's dumping margin. Petitioners state that on October 19, 2001, Tung Mung informed the Department that it would not be filing a response to the questionnaire.

Petitioners further note that on September 20, 2001, Ta Chen sent a letter to the Department requesting an exemption from answering the questionnaire on the grounds that with one exception, Ta Chen had no U.S. sales during the POR and that those sales that occurred during the POR resulted from entries made prior to the suspension of liquidation, which are not subject to this review.

Petitioners note that on October 17, 2001, the Department issued a supplemental questionnaire to Ta Chen stating that if Ta Chen failed to cooperate to the best of its ability, the Department may use AFA in its determination. On November 17, 2001, petitioners note that Ta Chen responded to the Department with a letter stating that it would not respond to the supplemental questionnaire. Thus, petitioners argue that Ta Chen and Tung Mung have failed to meet the legal standards of the Act in the following ways: (1) by withholding information requested by the Department; (2) by not submitting questionnaires in a timely manner; and (3) by failing to provide any information on the record upon which the Department could rely for its final results.

Therefore, petitioners argue that the Department should apply facts available because both Ta Chen and Tung Mung failed to comply with section 776 of the Act. Petitioners further assert that the Department should apply total AFA because Ta Chen and Tung Mung failed to cooperate to the best of their ability with the Department's requests. And, in applying AFA, petitioners contend that the Department should apply the 34.95 percent ad valorem antidumping rate published by the Department in the final determination of the investigation because this was the highest dumping margin published by the Department. Additionally, petitioners argue that this rate should also be used because it represents the total amount of dumping measured by selling the subject merchandise from Taiwan into the U.S. market.

Further, petitioners argue that the Department erred in its preliminary results of review by rejecting the use of the highest published dumping margin on the grounds that the record does not indicate that any of Tung Mung's U.S. exports involved a middleman during the POR. Petitioners assert that the Department erred in this decision for the following reasons: (1) there is no evidence or substantial evidence indicating that Tung Mung did not use a middleman during the POR, due to Ta Chen and Tung Mung's failure to respond to the Department's questionnaires; (2) Ta Chen and Tung Mung's refusal to respond to the Department's requests "should reasonably be interpreted to mean that Ta Chen was involved as a middleman" for Tung Mung; and (3) "the fact that the 34.95 percent margin was derived from the sum of a producer's and middleman's dumping is of no consequence." Petitioners contend that the margin is of no consequence because it is reflective of the amount of dumping calculated on sales of the subject merchandise from Taiwan to the first unaffiliated U.S. customer and therefore it is "nothing new or different from any other margin of dumping calculated by the Department and should serve as the benchmark for the total AFA" for Ta Chen and Tung Mung. Thus, petitioners argue that without the proper information, the Department cannot make an "unsupported" conclusion in favor of Tung Mung.

Neither Ta Chen nor Tung Mung submitted rebuttal comments.

Department's Position: We disagree with petitioners in part. We agree with petitioners that the Department should apply AFA to Tung Mung because it failed to provide any information on the record for this administrative review. Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also the Statement of Administrative Action to the URAA, H. Doc. 103-316 (1994) at 870 ("SAA") (further discussing the application of adverse facts available). Tung Mung received the Department's questionnaire and refused to provide any information on the record. Therefore, for the final results of this review, consistent with the Preliminary Results, we are applying an AFA rate to Tung Mung. However, we disagree with petitioners' argument that the AFA rate should be the 34.95 percent ad valorem antidumping rate from the final determination in the original investigation. As stated in the Preliminary Results, the 34.95 percent rate represents a combined rate applied to a channel-specific transaction in the investigation of this proceeding based on middleman dumping by Ta Chen. We have no record evidence in this segment of the proceeding that Tung Mung's exports to the United States during the POR involved a middleman. Therefore, for the final results, we are continuing to apply the highest margin from any segment of the proceeding for a producer's direct exports to the United States without middleman dumping, which is 21.10 percent.

Additionally, Ta Chen informed the Department that it had no shipments of subject merchandise to the United States during the POR, which we confirmed using a U.S. Customs Service ("Customs") data inquiry. (See Customs no shipment inquiry, dated June 13, 2002, and the Memorandum to the File, dated October 9, 2002, which explains that we did not receive an affirmative response from Customs as a result of the no shipment inquiry.) We note that Ta Chen did not respond to our November 1, 2001, supplemental questionnaire in which we requested that Ta Chen demonstrate the link between its U.S. sales of the subject merchandise from its U.S. warehouses to entries made prior to the suspension of liquidation and provide documentation linking these resales to pre-suspension of liquidation entries. However, neither the statute nor the regulations instruct the Department to require a respondent to affirmatively demonstrate proof of entry of its resales in order to obtain a rescission, when substantial evidence indicates no entries of the subject merchandise entered the United States during the POR. Hence, based on the results of our Customs inquiry, and consistent with our Preliminary Results, we are rescinding the administrative review of Ta Chen because we have no evidence that Ta Chen had shipments of subject merchandise to the United States during the POR.

Comment 2: Partial Rescission for Ta Chen

Petitioners argue that the Department erred in the Preliminary Results by preliminarily granting Ta Chen a rescission of review because record evidence indicated that Ta Chen made U.S. sales of subject merchandise during the POR. Thus, petitioners contend that without the information concerning these sales the only conclusion the Department can make is that Ta Chen had exports, shipments and/or U.S. sales that should have been reported to the Department during this POR.

Petitioners further note that the Department should consider that both Ta Chen and Tung Mung failed to provide the requested information to the Department, and that in the original investigation, the Department found that Ta Chen acted as a middleman for Tung Mung's sales of subject merchandise in the United States. Therefore, petitioners argue the Department should make an adverse inference that Ta Chen and Tung Mung failed to cooperate with the Department because they had middleman sales which they did not want to report to the Department.

Further, petitioners argue that because Ta Chen's behavior in this review is no different than that of Tung Mung, the Department should apply facts available to Ta Chen and not reward Ta Chen with a partial rescission for refusing to cooperate with the Department, while Tung Mung will suffer for its non-cooperation. Petitioners contend that such a decision would not withstand the scrutiny of any court.

Additionally, petitioners contend that the Preliminary Results suggest that the Department contacted Customs to conduct an inquiry of Ta Chen's exports to the United States during the POR, but that no memorandum had been placed on the record of this review. Therefore, petitioners argue that it cannot be determined that the Department has in fact conducted such an inquiry, and even if the Department did conduct such an inquiry, it is of "little consequence" as Ta Chen has refused to respond to the Department's requests. Also, petitioners assert that it is not the Department's job to develop a record on behalf of a respondent and that because Ta Chen's distribution system is a nationwide operation entailing entries in multiple ports, a spot check would not suffice to provide substantial evidence on the record that there were no entries during the POR. Finally, petitioners contend that because of the middleman relationship between Ta Chen and Tung Mung, a spot check by Customs would have to include a check of entries by Tung Mung. Therefore, petitioners argue that based on the facts presented, the Department should impose the same consequences to Ta Chen that it imposed to Tung Mung in the Preliminary Results and apply total AFA to Ta Chen.

Neither Ta Chen nor Tung Mung submitted rebuttal comments.

Department's Position: As explained in the previous comment, we granted a preliminary rescission to Ta Chen because we have no evidence on the record in this segment of the proceeding that Ta Chen made shipments of subject merchandise to the United States during the POR. We disagree with petitioners' claim that Ta Chen's behavior in this review is the same as Tung Mung's failure to cooperate. Ta Chen filed a submission stating that it did not have sales of subject merchandise to the United States during the POR. We confirmed this statement via our Customs inquiry. See Customs no shipment inquiry, dated June 13, 2002, and the Memorandum to the File, dated October 9, 2002, which states that we did not receive an affirmative response from Customs as a result of the no shipment inquiry. Thus, Ta Chen's behavior is different from Tung Mung's failure to provide any responses to the Department's questionnaire.

Further, we disagree with petitioners with respect to middleman dumping. A finding of middleman dumping in a previous segment of the proceeding does not constitute sufficient grounds for a determination of middleman dumping in another segment of the proceeding, unless there is evidence at the very least, shipments from the "middleman," on the record. Therefore, we have made no changes to our analysis or calculations for the final results of review for Ta Chen.

B. Issues with Respect to YUSCO

Comment 3: Sales to Affiliated Parties in the United States

Petitioners

Petitioners contend that YUSCO made sales to affiliated parties in the United States and that the record of this proceeding should be opened to clarify YUSCO's relationship with affiliated customer(s) in the United States.

Petitioners contend that section 771(33) of the Tariff Act of 1930, as amended ("the Act"), states that affiliation exists when the persons involved are: (1) family members; (2) officers or directors of an organization; (3) partners; (4) employer and employee; (5) any person who directly or indirectly owns 5 percent or more of the outstanding voting stock of an organization and that organization; (6) two or more persons directly or indirectly controlling, controlled by, or under common control with any person; or, (7) any person that controls any other person and such other person. Petitioners provide a list of proprietary reasons why it believes that YUSCO and its U.S. customer(s) meet the criteria for establishing affiliation in accordance with section 771(33) of the Act.[2] Petitioners explain that prior to submitting the case brief, they requested the Department to reopen the record so that they could introduce documentation that would substantiate that YUSCO and its U.S. customer(s) were affiliated at the time of the sales to the United States.[3] Petitioners explain that the Department denied their request as untimely.[4] Petitioners renew their request to reopen the record for the following reasons:

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[2] See petitioners' case brief dated September 4, 2002, at pages 4 and 5.

[3] See petitioners' letter to the Department dated August 14, 2002.

[4] See the Department's letter to petitioners dated August 27, 2002.

(A) Petitioners argue that there is yet time for the Department to reopen the administrative record to receive petitioners' evidence, and any contrary evidence from YUSCO. In addition, petitioners contend that the Department has the discretion to reopen the record under section 351.301(c)(2) and can extend the deadline for the final results by 60 days under section 351.213(h)(2) of the Department's regulations;

(B) Petitioners explain that the information they wish to submit consists of public information that is readily available, official in nature, certified, and strongly supports their conclusion that YUSCO was affiliated with its U.S. customer(s) at the time of the sales to the United States. In addition, petitioners contend that their information demonstrates that close relationships existed between the YUSCO's customer(s) in the United States and the president of Yieh Phui, a member of the Yieh Group, and a YUSCO affiliate;

(C) Petitioners contend that it is important to reopen this record because the review was requested by YUSCO, and that the record must be developed as fully and as accurately as possible;

(D) Petitioners contend that their request to reopen the review is not dilatory. Petitioners further contend that they began investigating this allegation at the time YUSCO filed its October 4, 2001, section A response. Petitioners state that they first requested the Department to reopen the record on May 9, 2002, on the grounds that it appeared that the U.S. sales pre-selected for verification were not bona fide.[5] However, petitioners acknowledge that the anticipated information supporting their allegation was not forthcoming. Petitioners therefore claim that it was not until after YUSCO's verification that petitioners discovered the documentation that they wish to place on the record. Petitioners claim that information from YUSCO's verification was not available to them until July 3, 2002 when the verification report was released to them. See Sales and Cost Verification of Yieh United Steel Corporation ("YUSCO") in the Antidumping Administrative Review of Certain Stainless Steel Sheet and Strip in Coils from Taiwan, July 1, 2002 ("YUSCO Verification Report"). Petitioners contend that only in the weeks following the verification were they able to piece together the information that demonstrates the YUSCO was affiliated with its U.S. customer(s) at the time of the sales. As a result, petitioners assert, they communicated their request to submit new information on the record to the Department on August 14, 2002;[6]

(E) Petitioners contend that it is important to "stand back" and see how administrative records can most effectively be developed in the antidumping proceedings. Petitioners

[5] See petitioners' letter to the Department dated May 9, 2002.

[6] See petitioners' letter to the Department dated August 14, 2002.

contend, that as they noted in their August 14, 2002, letter,[7] that it is the respondent's burden to create an accurate record in accordance with Zenith Electronics Corp. v. United States, 988 F.2nd 1573, (Fed. Cir. 1993). Petitioners note that they must wait until respondents submit information on the record before evaluating the information and suggesting ways in which the information should be developed. They assert that it is not easy to identify information that contradicts a respondent's data, since the respondent has access to its own data and petitioners do not. Petitioners argue that the Department must take these difficulties into account when considering how best to develop the record by reopening the record and entertaining data that petitioners have gather in light of the material generated at verification;

(F) Petitioners contend that YUSCO's relationship with its customer(s) in the United States is therefore of great significance in this review. Petitioners state that YUSCO's assertion that there was no affiliation at the time of the sales to the United States is unsubstantiated by meaningful documentation. Petitioners further contend that there are many documents that YUSCO could have put on the record in order to corroborate its claim of not being affiliated with its U.S. customer(s) at the time of its sales to the United States;

(G) Petitioners contend that the information they have developed is persuasive and demonstrates that YUSCO and its customer(s) in the United States were affiliated at the time of the sales to the United States. Petitioners further argue that objections to reopening the record based on the fact that verification has already occurred and that petitioners' information might not be uniformly viewed as dispositive, should be dismissed. Petitioners argue that if the Department were to extend the deadline for the final results by 60 days, a second verification could be scheduled. Furthermore, petitioners claim that the documentation they would like to submit is public, official and certified. Petitioners argue that YUSCO's documentation in rebuttal could also be based on official and certified documentation, although, petitioners allow that it would not have to be public. If these events were to occur, petitioners contend that further verification would not be necessary;

(H) Petitioners contend that there is no requirement under the statute that the evidence they might present be dispositive. They argue that YUSCO might present documentation to counter petitioners' evidence. However, petitioners assert that the statute requires the Department only to base its findings on substantial evidence on the record as a whole, and not necessarily on dispositive evidence. Petitioners further contend that substantial evidence can be interpreted reasonably to justify different outcomes and still be deemed sufficient for the outcome; and,

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[7] See id.

(I) Petitioners argue that, as the investigative agency and administering authority, the Department is obligated to be a trier of fact and reach a reasonable determination on the strength of substantial evidence. Therefore, petitioners claim, that in order to reopen the record, they would not be assigned the task of proving dispositively that YUSCO was affiliated with its customer(s) in the United States at the time of the sales to the United States.

YUSCO

YUSCO contends that it properly classified its U.S. sales as export price ("EP") sales to an unaffiliated purchaser in the United States, and as a result, the Department should reject petitioners' request to reopen the record. YUSCO observes that, on August 27, 2002, the Department rejected petitioners' request to reopen the record, noting that the information contested by petitioners was submitted in October 2001 and that petitioners had ample opportunity to comment on this issue prior to verification.

YUSCO contends that the YUSCO Verification Report indicates that the Department fully examined the issue concerning the nature of the relationship between YUSCO and its U.S. customer. YUSCO contends that the Department examined YUSCO's corporate structure, correspondence file and U.S. sales data and asked follow-up questions to YUSCO's personnel which clarified the timing and nature of the corporate relationship between YUSCO, Yieh Phui and its U.S. customer(s). YUSCO further contends that these facts are described in the YUSCO Verification Report, where the Department did not identify any discrepancies concerning YUSCO's reported corporate structure and affiliations. YUSCO claims that petitioners ignore all of the findings in the Department's verification report. YUSCO contends that the documentation that it submitted and that the Department examined during verification establishes that the U.S. sales reported by YUSCO were bona fide sales to unaffiliated customer(s) in the United States.

YUSCO further contends that the Court of International Trade ("the Court") acknowledged the Department's policy of setting time limits on the submission of factual information is reasonable because the Department clearly cannot complete its work unless it is able at some point to "freeze" the record and make calculations and findings based on that fixed and certain body of information.[8] YUSCO contends that in administrative reviews, the deadline to submit factual information is no later that 140 days after the last day of the anniversary month according to section 351.301(b)(2) of the Department's regulations. YUSCO notes that petitioners' May 9, 2002, and August 14, 2002, requests to reopen the record are well beyond

[8] Gulf States Tube Div. of Quantex Corp. v. United States, 981 F. Supp. 630, 653 (CIT 1997) (citation omitted) ("Gulf States").

this deadline. Additionally, YUSCO argues that in this administrative review, the record had been fully developed and "frozen." YUSCO further contends that the Department based its Preliminary Results on that "fixed" body of information.

Furthermore, YUSCO argues that the petitioners' extension request is administratively impossible. YUSCO contends that even if the Department extended the deadline by 60 days past the 140 days allowed under regulations, the Department would not have sufficient time to accept new petitioner information, to allow for new comment and rebuttal information, to verify the new comment and rebuttal information, and to incorporate all the new information into analysis and margin calculations. Moreover, YUSCO asserts that the Department's reason for setting time limits on the submission of factual information is to avoid basing calculations and analysis on a indefinite body of information

Department's Position: We agree with YUSCO that it appropriately classified its sales to the United States as EP sales. The YUSCO Verification Report demonstrates that the Department examined YUSCO's corporate structure and U.S. sales data in great detail, and concluded that there were no discrepancies between the information submitted on the record and the information provided at verification. Furthermore, section 351.301(b)(2) states that "factual information is due no later than: . . . 140 days after the last day of the anniversary month. . . ." which occurred on December 18, 2001 in this proceeding. Petitioners' two requests to re-open the record fell well beyond this deadline. Therefore, we agree with YUSCO that it would be administratively difficult to reopen the record on the very date that the case briefs were due in order to receive new information, to conduct a verification, receive comments, and then finally, to receive and respond to case and rebuttal briefs. As a result, we concur with YUSCO because, as the Court in Gulf States explained, there is a need to set limits on the time period in which information can be submitted, so that the Department has a fixed body of information with which to make a decision.

Petitioners contend that YUSCO did not provide any information on the record that would substantiate YUSCO's assertion that there was not affiliation with its U.S. customer(s) at the time of the sales of subject merchandise to the United States. However, YUSCO first revealed its prior affiliation with its U.S. customer(s) in its October 4, 2001 section A response, where it noted that its U.S. customer(s) were affiliated with one of its affiliates in Taiwan during a part of the POR, and then sold by the parent company in Taiwan prior to YUSCO's sales of the subject merchandise to the United States. During the course of the review, petitioners did not comment on this issue in its numerous comments concerning YUSCO's questionnaire response, supplemental responses, and pre-verification issues. Further, because the provision of evidence such as the proof of sale of an affiliated party's affiliate to a third and unaffiliated party is beyond the scope of the questionnaire, YUSCO had no obligation to provide such documentary evidence on the record prior to verification.

Furthermore, we disagree with petitioners that further review of this issue is required: at verification, the Department did not choose to examine the documentary evidence concerning YUSCO's alleged affiliation with the U.S. customer(s) since: (1) we examined the issue thoroughly at verification; (2) YUSCO's customer(s) were not directly affiliated with YUSCO but rather with its home market affiliate, which did not produce or sell the subject merchandise; and, (3) the information submitted at verification did not provide a reason to believe or suspect that any evidence submitted by YUSCO would contradict the information recorded in YUSCO's questionnaire responses. Therefore, we have made no changes in the final results based on YUSCO's alleged affiliation with its U.S. customer(s).

Comment 4: YUSCO's Affiliation with China Steel Corporation ("China Steel")

Petitioners

Petitioners contend that YUSCO failed to report its affiliation and, consequently, its affiliated-party transactions with China Steel. Petitioners contend, that contrary to record evidence, YUSCO has denied that there is any affiliation between YUSCO and China Steel.

Petitioners contend that the following facts support the affiliation between YUSCO and China Steel: (1) at verification, YUSCO reported that China Steel bought a member of the Yieh Loong Group in February 2000; (2) at verification, YUSCO explained that subsequent to China Steel's acquisition of Yieh Loong, the chairman of the Yieh Loong Group and YUSCO, renamed the Yieh Loong Group to the Yieh Group; (3) China Steel's Chairman and Vice-President serve on Yieh Loong's Board of Directors; (4) the Vice General Manager of Gains Investment Corp., a wholly-owned company of China Steel Corp., serves as the supervisor on the Board of Yieh Loong; (5) subsequent to China Steel's acquisition of Yieh Loong, the chairman of the Yieh Loong Group and YUSCO, renamed the Yieh Loong Group to the Yieh Group; (6) according to a January 1999 article in Metal Center News, YUSCO is the largest subsidiary of the Yieh Loong Group, which has invested $800 million in YUSCO since 1988 and is one of nine subsidiaries of the Yieh Loong Group, whose predecessor company was founded in 1978; (7) the Yieh Group's website[9] shows YUSCO, Yieh Loong and China Steel as being part of the Yieh Group, and lists Yieh Loong as a subsidiary of China Steel; (8) the Department determined in Final Determination of Hot-Rolled Carbon Steel Flat Products from Taiwan, 66 FR 49618 (September 28, 2001) ("Hot-Rolled from Taiwan") that China Steel is Yieh Loong's parent, and as such are affiliated parties, as a result of China steel's acquisition of Yieh Loong's stock; (9) the Department determined in Hot-Rolled from Taiwan that China Steel's sales to Yieh Loong, Yieh Phui and Yieh Hsing are to affiliated parties and required China Steel to report all affiliated parties' resale information to the first unaffiliated party; (10) the Department determined that Yieh Phui and Yieh Hsing are affiliated with China Steel

[9] See <www.yieh.com>.

through Yieh Loong; and (11) in its memorandum regarding affiliated resellers in Hot-Rolled from Taiwan, the Department found that Yieh Loong, Yieh Phui and Yieh Hsing shared the same chairman, which resulted, petitioners contend, in the Department's determination that Yieh Loong's affiliates, Yieh Phui and Yieh Hsing, were affiliated with China Steel by reason of control.

Petitioners further claim that China Steel and YUSCO are affiliated by reason of China Steel's control over Yieh Loong (as Yieh Loong's parent corporation, by stock ownership, through common officers/directors and by control), and that China Steel is affiliated with YUSCO by reason of Yieh Loong's control over YUSCO (through common officers/directors and by control in accordance with section 771(33) of the Act). Petitioners note that in the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5554, 5566 (February 4, 2000) ("Cold-Rolled from Brazil"), the Department claimed that "The SAA recognized that, even in the absence of an equity relationship, control may be established 'through corporate or family grouping' (See SAA at 838), i.e., a corporate or family group may constitute a 'person' within the meaning of section 771(33) of the Act. In such a case, the control factors of individual members of the group (e.g., stock ownership, management position, board membership) are considered in the aggregate."

As a result of this reasoning, petitioners contend, the Department found that China Steel was affiliated with Yieh Loong and also was affiliated with Yieh Loong's affiliates, Yieh Phui and Yieh Hsing, in Hot-Rolled from Taiwan. By adopting and applying the Department's analysis in Hot-Rolled from Taiwan and carrying that analysis through to YUSCO, petitioners argue that the Department will find that, by reason of stock ownership, overlapping officers and directors, and control, China Steel controls Yieh Loong, and therefore, they are affiliated parties.

Petitioners also assert that the department must determine whether affiliates of Yieh Loong, such as YUSCO, are also affiliated with China Steel. In Hot-Rolled from Taiwan, petitioners claim, the Department found that Yieh Loong's affiliates Yieh Phui and Yieh Hsing were affiliated with China Steel based on the following factors:[10] (1) Yieh Loong's affiliates Yieh Phui and Yieh Hsing share a common chairman who has control of each company; (2) Yieh Loong stated in its Section A questionnaire response that it was affiliated with several companies, including Yieh Hsing, Yieh Phui and Persistence Hi-Tech; (3) Yieh Loong's 1999 audited financial statements list Yieh Hsing, Yieh Phui, and Persistence Hi-Tech as related parties; and, (4) China Steel and Yieh Loong were able to compel their affiliated parties to submit portions of the requested downstream sales data.

[10] See the memorandum from Patricia Tran to the File, "Certain Hot-Rolled Carbon Steel Flat Products from Taiwan - - China Steel Corporation (China Steel), Yieh Loong Enterprise (Yieh Loong), and affiliated resellers," dated April 19, 2001, and included in petitioners September 4, 2002 case brief at enclosure 7.

Petitioners state that as a result of the factors noted above, the Department should make the same conclusion with regard to YUSCO. First, petitioners contend that if China Steel controls Yieh Loong through stock ownership and officers/directors, it can also control YUSCO through Yieh Loong, in particular, through the chairman which is common to both companies. Second, petitioners note that Yieh Loong publicly claims on its website that YUSCO is an affiliated party.[11] Lastly, petitioners argue that because YUSCO is Yieh Loong's largest subsidiary, Yieh Loong can control the actions of YUSCO. Thus, petitioners argue that the Department should find that China Steel is affiliated with Yieh Loong and hence, with YUSCO, through China Steel's and YUSCO's affiliation with Yieh Loong, as in Hot-Rolled from Taiwan.

Finally, petitioners argue that the Department should assign total AFA to YUSCO for withholding essential information concerning its affiliation and sales in the home market from the Department. Petitioners note that the Department gave YUSCO at least two opportunities to disclose the information presented above. Petitioners note that because both China Steel and YUSCO have stainless steel production, the Department cannot analyze the quality and depth of the problems that exist with the data submitted in this case without a complete and clear understanding of all of YUSCO's affiliations. As a result, petitioners argue that the Department should assign total AFA to YUSCO in the final results.

YUSCO

YUSCO contends that it is not affiliated with China Steel. YUSCO maintains that the petitioners' allegation that YUSCO is affiliated with China Steel fails to consider the Department's calculation in Cold-Rolled from Brazil that mathematically establishes the degree of ownership between two companies. YUSCO argues that by multiplying its small percentage of stock in Yieh Loong by China Steel's nearly 40 percent ownership in Yieh Loong, the affiliation between YUSCO and China Steel falls below the Department's threshold. Consequently, according to YUSCO, there is no affiliation between YUSCO and China Steel.

To support its position, YUSCO cites Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404 (April 15, 1997), where the Department found insufficient evidence to support a finding of affiliation between POSCO and Union Steel based solely on both companies' independent affiliation with Dongkuk Steel Mill. YUSCO contends that the same reasoning should apply in this case.

[11] See <www.yieh.com> corroborated by information provided in the proprietary version of exhibit 18 of YUSCO's October 4, 2001 section A questionnaire.

Department's Position: We disagree with petitioners that YUSCO and China Steel are affiliated under section 771(33) of the Act which states that states:

> [T]he following persons shall be considered to be "affiliated" or "affiliated persons:
> (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
> (B) Any officer or director of an organization and such organization.
> (C) Partners.
> (D) Employer and employee.
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
> (G) Any person who controls any other person and such other person.

Section 771(33) of the Act further states that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

The relationship between Yieh Loong and China Steel is well documented. See Hot-Rolled from Taiwan, where the Department determined that Yieh Loong and China Steel were affiliated parties, and collapsed them for the purposes of calculating the dumping margin. See memorandum to the file from Michael Heaney and Patricia Tran dated April 19, 2001, Antidumping Duty Investigation on Certain Hot-Rolled Carbon Steel Flat Products from Taiwan: Affiliation Issue Regarding China Steel Corporation (China Steel) and Yieh Loong Enterprise, Co., Ltd. (Yieh Loong). In addition, in Hot-Rolled from Taiwan, the Department found China Steel affiliated with Yieh Loong and other members of the Yieh Group which were affiliated resellers of the subject merchandise. See memorandum to the file from Patricia Tran, dated April 19, 2001, Certain Hot-Rolled Carbon Steel Flat Products from Taiwan - China Steel Corporation (China Steel), Yieh Loong Enterprise (Yieh Loong), and affiliated resellers.

The affiliation between Yieh Loong and YUSCO is also well documented. As the petitioners noted, they share a common chairman and they have common stock ownership. Therefore, pursuant to the statute, Yieh Loong and YUSCO are affiliated.

The issue facing the Department, according to petitioners, in this case, is whether YUSCO and China Steel are affiliated. There are three means by which the Department could find them to be affiliated - - by common ownership or control (direct affiliation), affiliation by indirect stock ownership as described in Cold-Rolled from Brazil, or through collapsing China Steel and Yieh Loong. The Department has analyzed YUSCO and China Steel's relationship through all of these methodologies, and determined that the record does not support a finding of affiliation.

There is no evidence on the record that YUSCO and China Steel share, nor have petitioners alleged that they share, common family members, officers or directors, partners or employees. Therefore, the record does not support a finding of direction affiliation between YUSCO and China Steel. Furthermore, the record does not indicate that China Steel has any control over YUSCO's management, production or pricing. Thus, the record does not warrant a finding that China Steel and YUSCO either "directly or indirectly" control, or are controlled by, or under common control with, any person, as described in 771(33)(F) of the statute. Therefore, the facts on the record do not establish affiliation between China Steel and YUSCO by common control.

Petitioners also allege that YUSCO and China Steel are affiliated through China Steel's 40-percent participation in a joint venture with Yieh Loong, and Yieh Loong's shareholder interest in YUSCO. In Cold-Rolled from Brazil, the Department used a quantitative methodology to determine whether the stock ownership in one company, which has stock ownership in a second company, results in at least 5 percent indirect ownership in the second company. By multiplying Yieh Loong's ownership percentage in YUSCO and China Steel's ownership percentage in Yieh Loong, as specified in Cold-Rolled from Brazil, we obtain a percentage that falls far below the 5 percent level required to demonstrate affiliation in accord with section 771(33)(E) of the Act. Therefore, YUSCO and China Steel are not affiliated through indirect stock ownership.

The petitioners' argument that YUSCO should be treated as an affiliate of China Steel, because other members of the Yieh Group were treated as affiliated in Hot Rolled from Taiwan, does not justify a finding of affiliation between YUSCO and China Steel in this case. The facts differ greatly between the companies reviewed in Hot Rolled from Taiwan, and this case. Unlike in Hot Rolled from Taiwan, we made no determination to collapse China Steel and Yieh Loong in this case. Yieh Loong did not sell subject merchandise in this administrative review. Therefore, facts of the collapsing analysis in Hot Rolled from Taiwan do not apply in this administrative review.

For all of the reasons stated above, we do not believe that YUSCO and China Steel should be considered affiliated for the final results of review.

Comment 5: Classification of Home Market Sales

Petitioners argue that YUSCO failed to properly classify all of its sales as either home, third-country or U.S. sales, despite the fact that it has the information available to do so. Consequently, petitioners contend that YUSCO improperly classified third-country sales as home market sales, non-subject sales as home market sales, home market sales as U.S. sales, and U.S. sales as home market sales. Petitioners assert that YUSCO has failed to cooperate to the best of its ability in classifying its sales, and as a result, the Department should apply AFA by using the highest margin calculated in the final determination of the original investigation.

Petitioners contend that the following examples provide evidence of YUSCO's misclassification of sales:

(1) Petitioners claim that YUSCO distinguishes "U"[12] sales that are booked as home market sales in its records from "U" sales that are booked as third-country sales in its records based on the distinction as to whether YUSCO prepared an export license or not. Therefore, according to petitioners, if YUSCO knew the destination of the merchandise, but did not prepare the export license, it recorded a "U" sale as a home market sale in its records. Petitioners also contend that if YUSCO knew the destination of the merchandise and prepared the export license, it recorded "U" sales as a third-country sales in its records. Consequently, petitioners contend, that the only distinguishing factor between a "U" sale that is recorded as a home market sale and a "U" sale that is recorded as an export sale is whether YUSCO was responsible for the preparation of the export license;

(2) Petitioners contend that one sale examined by the Department at verification indicates that YUSCO misclassified third-country sales as home market sales. Petitioners cite an instance where the order acknowledgment prepared by YUSCO designated the destination of the merchandise in a third country and identified the sale as an export sale. However, petitioners explain that YUSCO reported the sale as a home market sale because the customer requested YUSCO to ship the merchandise to a domestic destination, and the customer, rather than YUSCO, prepared the export documents. As a result, petitioners contend that these sales should be classified as third-country sales since YUSCO had knowledge of the final destination at the time of the order acknowledgment;

(3) Petitioners contend that YUSCO knew or had reason to know that its "UZ"[13] home market sales were destined for export markets. According to petitioners, YUSCO's

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[12]"U" sales are sales which YUSCO knew at the time of sale that its customers would either export YUSCO's SSSS and/or further manufacture SSSS into subject or non-subject merchandise prior to exportation. See page 2 of YUSCO's October 4, 2001 section A response.

[13]"UZ" sales are sales which YUSCO sold to home market customers with the knowledge that the customer would manufacture YUSCO's subject merchandise into non-subject merchandise prior to exportation. See page 2 of YUSCO's October 4, 2001 section A response.

customers informed YUSCO at the outset of the sales negotiations that the merchandise would be exported; and,

(4) Petitioners contend that YUSCO's "U" sales contain sales to affiliated parties which may or may not have been exported as subject merchandise. Petitioners claim that there is no reason for YUSCO not to have properly classified its sales to its affiliates, and that, the Department cannot second guess as to the proper classification of YUSCO's "U" sales.

Petitioners contend that YUSCO's failure to properly classify its sales as home market or third-country sales, stems from its failure to properly apply the Department's knowledge-of-destination test. They claim YUSCO views the test to only apply to absolute knowledge of the destination of the sale. Rather, petitioners state, the Department's rules with regard to knowledge of destination, do not contemplate only absolute knowledge of destination, but encompass imputed knowledge as well. Petitioners assert that the Department requires respondents to report whether they "knew or had reason to know" whether the merchandise was to be exported as subject merchandise at the time of sale.

Petitioners contend that YUSCO had reason to know the final destination of its merchandise, since YUSCO would logically consider the destination of its merchandise in order to properly price its merchandise for particular market. Further, petitioners assert that YUSCO gains knowledge of destination based on its customer's request for export packing and delivery information. Therefore, petitioners argue, that YUSCO has sufficient information in its records to appropriately apply the Department's standard knowledge-of-destination test.

Petitioners contend that the Court of International Trade ("the Court") upheld the fact that the Department's knowledge test was not limited to absolute knowledge in <u>Tung Mung Development Co., Ltd. v. United States</u> ("<u>Tung Mung</u>"), Slip Op. 01-83, July 3, 2001, and that absolute knowledge is only part of the Department's test.

Finally, petitioners argue that the Department should apply total AFA in the final results, since YUSCO's failure to properly classify its sales as home market, third-country or U.S. sales is beyond remedy, because sufficient information is not on the record to effect proper classification and because it is not the Department's responsibility to develop the record on behalf of YUSCO.

YUSCO

YUSCO argues that it properly reported all of its home market sales in accordance with the Department's and the Court's analysis. YUSCO claims that in the original investigation[14] the Department determined, and the Court affirmed,[15] that certain YUSCO sales were home market sales and not third country sales. YUSCO contends that in the first administrative review, it reported its sales based on the Department's findings in the original investigation. Further, YUSCO claims that the Department acknowledged in the first administrative review that YUSCO had appropriately and accurately reported the complete universe of home market sales in accordance with the Department's supplemental questionnaire and the Court's decision in Allegheny Ludlum.[16]

YUSCO claims that in this second administrative review, petitioners argue as they did in the first review that YUSCO's "U" and "UZ" sales were improperly reported as home market sales, when in the original investigation, petitioners argued that those YUSCO sales were third-country sales. YUSCO contends that the Department recognized in the first review, that if YUSCO's sales should have been reported as home market sales in the investigation, that same category of sales should have been reported as home market sales in the administrative reviews. YUSCO claims that nothing has changed in this review from the prior review.

YUSCO explains that at verification, the Department reviewed YUSCO's sales ledger, general ledger, computer program used to select U.S. and home market sales and other sales documents including YUSCO's monthly sales summaries. In addition, YUSCO claims that the Department verified the completeness of YUSCO's sales reporting. YUSCO states that the Department traced all of the relevant sales record for a number of sales, and that there were no discrepancies noted. Consequently, YUSCO contends that the record evidence verified by the Department demonstrates that YUSCO properly reported all home market sales in accordance with the Department's and the Court's requirements. As a result, YUSCO argues that the Department should have rejected petitioners argument that YUSCO misclassified its sales.

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[14] Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan, 64 FR 30592 (June 8, 1999).

[15] See Allegheny Ludlum v. United States, 215 F. Supp. 2d 1322 (December 28, 2000)("Allegheny Ludlum"), comment 4.

[16] Stainless Steel Plate in Coils From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 66 FR 64950 (December 17, 2001).

Finally, YUSCO claims that very little has changed in this most current review and argues that the Department should continue to find, as it did in the Preliminary Results, that YUSCO has reported all of its home market sales correctly.

Department's Position: We agree with YUSCO that it has appropriately and accurately reported the home market sales required to calculate a dumping margin in this review, and that very little has changed in its reporting from the previous review. We note, as we did in the past review,[17] that by reporting all of its "U," "UZ," "D" and "S"[18] sales in this review, YUSCO rectified the reporting deficiencies found in the original investigation, where it did **not** report sales in the home market destined for export, either as subject, further-manufactured, or non-subject merchandise. Further, YUSCO reported these sales in compliance with the Department's instructions. In addition, at verification, we conducted extensive tests of YUSCO's home market and export databases: We examined YUSCO's daily sales summary by month for the POR, selected the months of July 2000 and June 2001,[19] and traced from the sales journal for export and for home market sales, to the GUI, the order acknowledgment, and the computer sales listing recorded in the response.[20] We then traced all the "UAS" sales (*i.e.*, home market sales destined for the United States) from the sales ledger to the order acknowledgment and to the computer sales listing.[21] We found no sales that were inappropriately omitted from the response, and we found all sales listed on the computer sales listing in YUSCO's sales journal.[22] We found no discrepancies between the information recorded in the computer sales listing and the information recorded in YUSCO's sales

[17]See Stainless Steel Sheet and Strip From the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 64950 (December 17, 2001) and accompany Issues and Decision Memo at Comment 1.

[18]YUSCO considers "D" and "S" sales to be home market sales. See page 2 of YUSCO's October 4, 2001, section A response.

[19]These are the first and last months of the POR.

[20]See the Department's April 24, 2001 supplemental questionnaire in the first administrative review, Antidumping Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan: Questionnaire Regarding Designation of Home Market Sales; Second Antidumping Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan: Supplemental Questionnaire to Sections A, B, and C dated March 22, 2002; Second Antidumping Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan: Supplemental Questionnaire to Sections A-D, dated April 26, 2002.

[21]See page 12 of the YUSCO verification report.

[22]See page 12 of the YUSCO Verification Report.

ledgers.[23] Furthermore, we found that YUSCO provided, and timely filed, all of the information requested by the Department in the course of the review. As a result, we determine that it cooperated to the best of its ability in the conduct of the review.

Therefore, we have determined, as we did in the previous review, that YUSCO's reporting method does not result in a misreporting or misclassification of sales. As a result, we will calculate the antidumping duty margin for this review based on the information as submitted on the record and verified in the course of this review. Consequently, we have made no changes to our calculations for the final results.

Comment 6: The Use of AFA

Petitioners contend that the most reasonable total AFA for YUSCO should be based on the highest dumping margin published in the Department's final determination of the original investigation of 34.95 percent ad valorem, issued to YUSCO in the original investigation.

Department's Position: We disagree with petitioners. For the reasons set forth in Comments 3 - 5 above, we have found no reason to base YUSCO's margin on AFA based on section 776(a)(2) of the Act. YUSCO has not withheld any information requested by the Department; YUSCO provided all of the information during the course of the review on a timely basis; it did not impede the conduct of the investigation; nor did it provide information that cannot be verified. Consequently, since all information submitted was verified to be accurate and timely filed, section 776(b) of the Act, which authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information, does not apply. Therefore, we will not apply an AFA rate of 34.95 percent to YUSCO for this review.

B. Issues with Respect to Chia Far

Comment 7: Adverse Facts Available

Petitioners state that the Department should apply total AFA to Chia Far for this review based on the following reasons:

(1) Significant reporting problems relating to Chia Far's U.S. CEP sales;

(2) Significant discrepancies with source documentation related to Chia Far's U.S. CEP sales; and

[23] See id.

(3) Chia Far's failure to report all of its depreciation expenses in the new Pu-shin plant.

We address each item below in greater detail, and we include Chia Far's rebuttal comments for each issue.

Additionally, we have determined that Chia Far has acted to the best of its ability and therefore, we find that it is not appropriate to apply total AFA to Chia Far as discussed in the Department's position below.

Petitioners

Petitioners argue that discrepancies found at verification and identified by petitioners in the verification exhibits relating to Chia Far's reporting of certain U.S. CEP sales, discrepancies with the source documentation for certain U.S. CEP sales which indicate that the accounting records presented to the Department at verification are not the original set of accounting records, and unreported depreciation expenses for the new Pu-Shin plant, in combination, warrant the application of total AFA. Petitioners state that under section 776 of the Act, adverse inferences may be used when a party fails to cooperate to the best of its ability to comply with the Department's requests for information. Accordingly, petitioners contend that Chia Far has failed to cooperate to the best of its ability in this review. Thus, petitioners argue that total AFA is warranted in this administrative review and the Department should assign Chia Far the highest dumping margin from the final determination of the original investigation of 34.95 percent ad valorem.

Petitioners state that should the Department decide that total AFA is not warranted for Chia Far, then it should assign partial AFA using the highest available margin for the following: U.S. sales with discrepancies related to the value of the reported sale; U.S. sales where the internally generated documents of Chia Far do not agree with third-party source documentation; and U.S. sales where the accounting records do not support the U.S. sales listing. Additionally, petitioners explain that for depreciation expenses for the Pu-Shin plant, the Department should account for all depreciation expenses from the common service department related to the rolling mill and account for the depreciation expenses for the bright annealing line and skin pass mill.

Chia Far

Chia Far argues that there were virtually no discrepancies found at verification. Chia Far explains that the discrepancies found by the Department were minimal and routinely treated as minor problems, which were corrected in the Preliminary Results. Chia Far cites to: the verification reports; the Preliminary Results, in which Chia Far's calculated dumping margin was 1.01 percent; and the lack of use of any facts available in the Preliminary Results. Chia

Far also contends that the discrepancies identified by petitioners in the verification exhibits, questioning the validity of the source documentation, are non-existent and do not constitute a basis for warranting the use of total AFA in the final results. Additionally, Chia Far notes that the quantity and value of all U.S. CEP sales in the POR were verified by the Department, including the net amounts. Furthermore, Chia Far argues that there was no depreciation to report for the Pu-Shin plant, and therefore no depreciation to under-report.

(1) Significant reporting problems related to Chia Far's U.S. CEP sales

Petitioners

Petitioners contend that there are significant reporting problems related to Chia Far's/Lucky Medsup Inc.'s ("Lucky Medsup's") (i.e. Chia Far's U.S. affiliated reseller) U.S. CEP sales listing including: (a) the original terms of sale were reported for invoice 11240, and not the net quantity and unit price for the final sale; (b) not all freight expenses may have been reported for some shipments because they may have departed from a different port in Taiwan; (c) one U.S. sales transaction had additional unreported movement expenses (d) the net value of invoice 11001 was over-reported; and (e) the net value of invoice 10901 was over-reported.

Chia Far

Chia Far contends that the discrepancies with Chia Far/Lucky Medsup's U.S. sales listing noted above are either non-existent, do not affect the margin calculation, or are so minor that the Department simply corrected them in the Preliminary Results including: (a) the original terms of sale were reported for invoice 11240, but the Department found this to be a minor issue and simply corrected the quantity and unit price in the Preliminary Results and should continue to do so in the final results; and this was the only invoice in the U.S. sales database to incur such a problem, and thus, was an isolated incidence; (b) all movement charges were verified by the Department, regardless of which port was actually used; and petitioners did not provide any evidence indicating that there was additional freight, port charges, or ocean freight incurred in Taiwan other than what was actually paid by Chia Far and verified by the Department; (c) one U.S. sales transaction did incur additional unreported movement expenses, but it replaced a much larger freight expense, that had originally been reported; and occurred for only one invoice in the U.S. sales database; (d) the net value of invoice 11001 was correctly reported and verified by the Department; (e) the net value of invoice 10901 was correctly reported and verified by the Department.

(2) Significant discrepancies with source documentation related to Chia Far's U.S. CEP sales

Petitioners

Petitioners argue that there are significant discrepancies with source documentation related to Chia Far's U.S. CEP sales listing including: (a) the net value of invoice 11001 differs between the sale journal and the U.S. sales listing, and does not relate to the credit note issued by Lucky Medsup; (b) the net value of invoice 10901 differs between the sales journal and the U.S. sales listing, and does not agree with the amount of the credit note issued by Lucky Medsup; (c) the net value for invoice 10701 differs between the sales journal, cash receipts journal, and the U.S. sales listing; (d) the net value for invoice 11261 differs between the cash receipts journal and the U.S. sales listing; and (e) payment was not recorded in the cash receipts journal for invoice 11272, and no adjusting entries appear in the general ledger relating to this invoice.

Chia Far

Chia Far contends that the discrepancies identified by petitioners with source documentation are either non-existent or due to normal commercial record-keeping practices of Lucky Medsup including: (a) the net value of invoice 11001 differs between the sales journal and the U.S. sales listing because of credit notes applied to that sale, but relating to previous sales, in accordance with Lucky Medsup's standard practice of issuing credit notes and applying them to a later sale for that customer, which was verified by the Department; an additional difference in net values for invoice 11001 is the result of the difference in weight recorded by Chia Far and the customer on returned material; also, for purposes of reporting the U.S. sales listing to the Department, Chia Far applied credit notes to the actual invoices for which they were issued; (b) the net value of invoice 10901 differs between the sales journal and the U.S. sales listing because of a credit note applied to that sale, but relating to a previous sale, as described for invoice 11001 above, and because of a credit note issued for invoice 10901, but applied to a later sale; (c) the net value of invoice 10701 differs between the sales journal and the U.S. sales listing because of a credit note applied to that sale, but relating to a previous sale, as described for invoice 11001 above; petitioners were comparing the net invoice amount for Chia Far's sales to Lucky Medsup relating to invoice 10701 rather than the net invoice amount from Lucky Medsup to the first unaffiliated U.S. customer; additionally, the cash receipt journal was not 100 percent accurate, but the sales journal and general ledger are accurate and are used to compile the financial statements; (d) the net value of invoice 11261 differs between the cash receipts journal and the U.S. sales listing because of credit notes applied to that sale, but relating to previous sales, as described for invoice 11001 above, and because of any credit notes issued for invoice 11261, but applied to a later sale; and (e) payment was inadvertently not recorded in the cash receipts journal for invoice 11272, however, the cash receipts journal are not used to compile the financial statements. Chia Far argues that it is rather the sales journal and bank statements which are used to compile financial statements so the failure to record in the cash receipts journal is not crippling. Furthermore, Chia Far argues payment was recorded in the sales journal and bank statements.

(3) Chia Far's failure to report all of its new Pu-Shin plant's depreciation expenses.

Petitioners

Petitioners contend that Chia Far failed to report all of its depreciation expenses for its new Pu-Shin plant because of its reliance on Taiwanese GAAP. Petitioners state that Taiwanese GAAP is distortive because it permits the capitalization of the Pu-Shin plant's costs until the first month of the post start-up period, or that period when the plant reaches its full capacity, even though the plant may be producing commercial merchandise. Thus, petitioners argue that the Department should reject Taiwanese GAAP by including all of Chia Far's Pu-Shin plant's depreciation expenses in its cost of production calculation.

(a) Petitioners argue that Chia Far understated the Pu-Shin plant's reported depreciation costs by failing to report depreciation expenses for the bright annealing line and skin pass mill. Petitioners explain that since Chia Far is only permitted to capitalize expenses until the first month following the start-up period, according to Taiwanese GAAP, and that the start-up period ended in July 2001, then all assets entered into the fixed assets ledger in July 2001 are associated with production lines that have finished the start-up phase of production. Petitioners contend that the bright annealing line and skin pass mill were at the same level of development as the coil build-up line and the rolling department, which were reported, because all of the above's assets were recorded concurrently, and therefore, the depreciation expenses for the bright annealing line and skin pass mill should be reported.

(b) Additionally, petitioners contend that Chia Far under-reported the depreciation costs related to the allocation of depreciation costs from its Pu-Shin plant's common service department to the rolling mill. Petitioners argue that Chia Far divided the allocated common service department depreciation costs that are attributed to the rolling department by three, therefore, assigning only one-third of the common service department's depreciation costs to the cold rolling mill within the rolling department. Thus, petitioners explain that the other two-thirds of the common service department's depreciation costs, allocated to the rolling department, are not accounted for in the costs reported to the Department. Petitioners state that the Department should either reject or correct Chia Far's depreciation expenses for the common service department of the Pu-Shin plant for the final results.

Petitioners explain that under U.S. GAAP, capitalization of tangible asset costs and non-capital manufacturing costs is not permitted if the asset is used in an "income-producing activity" according to the Accountants' Handbook, Volume One: Financial Accounting and General Topics. See Accountants' Handbook, Vol. One: Financial Accounting and General Topics, 1999, by Dr. Carmichael, Steven B. Lilien, Martin Mellman, at 16.23 (property, plant, equipment and depreciation) and 17.16 (intangible assets). Thus, petitioners explain that under U.S. GAAP, once a commercially salable product is manufactured, no costs may be capitalized. Petitioners contend that Chia Far's reliance on Taiwanese GAAP resulted in an understatement of its costs for subject merchandise, because it was producing merchandise for commercial sale prior to its defined post start-up period started.

For support of rejecting a country's GAAP, petitioners cite Hot-Rolled from India, where the Department rejected the respondent's, Ispat's, capitalization of production costs for a new facility, even though it was permissible under Indian GAAP. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 50406 (October 3, 2001) and accompanying Issues and Decision Memo at Comment 12 ("Hot-Rolled from India").

Chia Far

Chia Far contends that under Taiwanese GAAP, depreciation is not recorded until the plant is operational, however, for the Department's purposes, Chia Far reported depreciation expenses for the operational parts of the plant during the POR, the coil build-up line and the cold rolling mill, which were recorded after the POR. Chia Far argues that therefore, it did not exclude depreciation expenses for the new Pu-Shin plant, but reported depreciation only for the operational lines during the POR. Furthermore, Chia Far contends that the Department verified Chia Far's accounting records prepared under Taiwanese GAAP, and made no finding that they were distortive.

(a) Chia Far argues that two of the four lines of the plant, the bright annealing line and skin-pass mill, were being constructed during the POR, and were not reported to the Department. Chia Far explains that these two lines were not completed, nor operational until July 1, 2001, one day after the POR. Chia Far states that the Pu-Shin plant became completely operational on July 1, 2001, which is demonstrated in Chia Far's accounting records. Additionally, Chia Far argues that during the POR, it did not produce any subject merchandise on the bright annealing line and skin-pass mill. Chia Far explains that the merchandise that was produced on the coil build-up line or cold rolling mill in the new Pu-Shin plant was sent to the existing Yu-Shih plant if it needed bright annealing or a skin pass. Chia Far argues that the Department verified there was neither test nor commercial production using the bright annealing line or the skin pass mill during the POR, thus there is no statutory basis to include these depreciation expenses from a period after the POR in the depreciation expenses. Moreover, Chia Far contends that petitioners cite no statutory or regulatory authority to support the inclusion of depreciation expenses for the bright annealing line or the skin pass mill based on the record of this review. Chia Far contends that petitioners' arguments for using U.S. GAAP, because it does not allow the capitalization of tangible asset costs and non-capital manufacturing costs when an asset is used in an income-producing activity or even partially used, supports Chia Far's exclusion of reporting depreciation expenses for the bright-annealing line and the skin-pass line, since they were under construction and being assembled during the POR. Chia Far asserts that regardless of whether Taiwanese or U.S. GAAP is used, depreciation cannot be included for unfinished, unused lines, unlike the case, Hot-Rolled Steel from India, where the assets were operational.

Moreover, Chia Far contends that according to section 773(f)(1)(A) of the Act the Department should continue to not include depreciation outside of the POR for the two lines in question because it states that costs "shall normally be calculated on the basis of the records of the exporter or producer, if such records are kept in accordance with the GAAP of the exporting country...and reasonably reflect the costs associated with the production and sale of the merchandise." See section 773(f)(1)(A) of the Act. Chia Far also states that the SAA provides that "{c}osts shall be allocated using a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the product under investigation or review..." See SAA, at 834-35.

Additionally, Chia Far argues that petitioners do not provide verifiable records to prove that Chia Far has excluded depreciation expenses and cites to AIMCOR and SKW Metals & Alloys, Inc. v. United States, where "Minasligas' verified financial statements provided the Department with the means to make a rational decision supported by substantial evidence. {Petitioner} does not provide verifiable records to prove otherwise." See AIMCOR and SKW Metals & Alloys, Inc. v. United States, F. Supp 2d 1345 (CIT 1999) ("AIMCOR v. United States").

(b) Chia Far agrees with petitioners that it allocated only one-third of the common service department's depreciation expenses, assigned to the rolling department, to the cold rolling mill. Chia Far explains that its cost-accounting system accumulates manufacturing overhead at the department level and not the production line level, and thus must be allocated to the lines in the rolling department. Chia Far states that the depreciation is divided into three parts: the cold-rolling mill, the bright annealing line and the skin-pass line. Chia Far explains that it excluded depreciation expenses for the latter two because they were still under construction and had no production during the POR, as explained above.

Furthermore, Chia Far contends that because no depreciation was reported in the POR in accordance with Taiwanese GAAP, the Department should not use the depreciation reported by Chia Far for the Pu-Shin plant, because it made no finding in the Preliminary Results that Taiwanese GAAP was distortive. Chia Far states that the Department verified that no depreciation expenses were recorded in the audited financial statements in the POR for the Pu-Shin plant. Additionally, Chia Far explains that the coil build-up line and cold-rolling mill were constructed, tested, and had only very limited production in the new plant during the

POR, and thus can be classified as test production, rather than commercial production. Chia Far cites to Micron Technology, Inc. v. United States, where the Case states that it is distortive of the Department to allocate "all construction, installation, and testing costs to current period production," rather than to "capitalize{d} and amoritize{d} these costs over the periods in which these benefits accrue." See Micron Technology, Inc. v. United States, 893 F. Supp 21 (CIT 1995) ("Micron v. United States"). Chia Far also explains that in Micron v. United States, the Case noted that the Department had deviated from its "established practice" by refusing to accept the capitalization of these test production and related construction expenses." See id.

Department's position: We agree with Chia Far that the discrepancies found by the Department at verification were minor and do not warrant the application of AFA to Chia Far for the final results (for further explanation of AFA, please see Comment 1 of this memorandum, section 776(b) of the Act, and SAA, at 870). In very few instances did the Department find errors in the data reported for the U.S. CEP sales transactions we examined at verification. Further, verification is not intended to examine all data related to a particular sales transaction in order to determine the reliability of each piece of data with a given sales transaction. As we explained in Steel Bar from France, "the Department's verification process is akin to an "audit" and the Department has the discretion to determine the specific information it will examine in its audits." See Notice of Final Determination at Less Than Fair Value: Stainless Steel Bar from France, 67 FR 3143 (January 23, 2002) and accompanying Issues and Decision Memo at Comment 4 ("Steel Bar from France"). Moreover, the courts concur that verification is a spot check and it is not intended to be an exhaustive examination of the respondent's records. See Mansato v. United States, 698 F. Supp 275, 281 (CIT 1988). Also, see Bomont Industries v. United States, 733 F. Supp. 1507, 1508 (CIT 1990) (comparing verification to an audit). The courts have also noted that Congress has given Commerce wide latitude in formulating its verification procedures. See Micron Tech., Inc. v. United States, 117 F.3d 1386, 1396 (CAFC 1997). Based on the information examined at verification, we are relying on Chia Far's responses as submitted, subject to the minor corrections previously noted in the Preliminary Results and elsewhere in this Issues and Decision Memorandum. The Department has useable data on the record of this proceeding for the U.S. sales at issue and has incorporated this data into its analysis for the Preliminary Results and will continue to use this data for the final results.

(1) Significant reporting problems relating to Chia Far's U.S. CEP sales.

We discovered only a few minor discrepancies at the U.S. CEP verification of Lucky Medsup concerning U.S. sales, and made corrections to these sales in the Preliminary Results. Several of the other discrepancies noted by petitioners refer to differences between Lucky Medsup's accounting records and the U.S. sales listing, which Chia Far explains related to credit notes. We examined Lucky Medsup's practice of issuing credit notes for an invoice and applying to a later sale for the same customer at verification and noted no discrepancies. See Verification of

CEP sales for Lucky Medsup Inc. in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan, at page 5 (July 1, 2002) ("Lucky Medsup Verification Report"). Thus, the differences between the net value of invoices and the U.S. sales listing are represented by credit notes, which were examined at verification by the Department and were properly reported by Chia Far for these U.S. sales. Moreover, as discussed above, the Department does not necessarily examine all data related to a particular sales transaction to verify its reliability, therefore, petitioners' contentions that Lucky Medsup misreported U.S. sales data ignores the fact that the Department verified these sales and confirmed the reliability of the data concerning the sales in question. Furthermore, petitioners contend that for additional invoices, Chia Far's shipments have departed from a different port, as discussed in the Lucky Medsup Verification Report at pages 6-7. The Department examined all movement expenses for the sales in question from the date of shipment from the plant to the terms of delivery for the customer and noted no discrepancies. See Lucky Medsup Verification Report at pages 6-7. Also, see Verification of Sales and Cost for Chia Far Industrial Factory Co., Ltd. in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan, at page 15-16 (July 1, 2002) ("Chia Far Verification Report").

(2) Significant discrepancies with source documentation related to Chia Far's U.S. CEP sales.

Several of the discrepancies noted by petitioners refer to differences between Lucky Medsup's accounting records and the U.S. sales listing, which Chia Far explained related to credit notes. As discussed above, we examined Lucky Medsup's practice of issuing credit notes for an invoice and applying to a later sale for the same customer at verification and noted no discrepancies. We agree with Chia Far that petitioners were comparing the net invoice amount for Chia Far's sales to Lucky Medsup relating to invoice 10701 rather than the net invoice amount from Lucky Medsup to the first unaffiliated U.S. customer. We also examined Lucky Medsup's accounting records and tied the sales journal to Lucky Medsup's income statement, and noted no discrepancies. See Lucky Medsup Verification Report at page 5. Furthermore, we noted in our report that "the financial statement is based on the total of bank deposits," and thus all payments received by Lucky Medsup would be captured in the financial statement. See id.

(3) Chia Far's failure to report all of its depreciation expenses at the new Pu-Shin plant.

In response to petitioners' argument that Taiwanese GAAP is distortive, it is the Department's practice to follow the normal records of the exporter or producer if such records are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise under consideration. See section 773(f)(1)(A) of the Act. Chia Far capitalized the costs of the Pu-Shin plant until the entire plant was operational in accordance with Taiwanese GAAP. During the POR, only the cold rolling mill and coil build-up line were operational, while the bright annealing line and skin pass mill were still under construction and were not completed until after the POR. See Chia Far Verification Report, at page 17. Since the cold rolling mill and coil build-up line were operational during the POR, we used Chia Far's reported depreciation expenses for these two lines in the Pu-Shin plant from the depreciation recorded in the post-startup period for the Preliminary Results, and will continue to do so for the final results. In Hot-Rolled from India, the Department determined the plant was operational and thus the capitalization of certain expenses was rejected. See Hot-Rolled from India and accompanying Issues and Decision Memo at Comment 12. However, unlike Hot-Rolled from India, the new Pu-Shin plant was not fully operational, and thus we are including the depreciation expenses only for the operational lines in the Pu-Shin plant during the POR. Additionally, we agree with Chia Far that petitioners have not provided any records to show that Chia Far has excluded depreciation expenses for the two unfinished lines.

In regards to the allocation of the common service department's depreciation costs, we agree with petitioners that Chia Far should report all of the common service department's depreciation costs attributed to the rolling department. The common service department is a cost center in the new Pu-Shin plant which is involved in the production of merchandise on all of the lines. Section 773(f)(1)(A) of the Act directs the Department to rely on cost allocations when they have historically been used by the producer. See section 773(f)(1)(A) of the Act. Also, see SAA, at 834. Also, see Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands, 66 FR 50408 (October 31, 2001) and accompanying Issues and Decision Memo at Comment 13 ("Hot-Rolled Steel from the Netherlands"). In its normal cost accounting system, Chia Far has historically allocated common service department's depreciation costs (including depreciation) to the production departments based on labor hours. Accordingly, Chia Far allocated the common service department's depreciation costs incurred in the Yu-Shih plant during the POR to the production departments based on relative labor hours. However, for the common service costs incurred in the new Pu-Shin plant during the POR, Chia Far used a different allocation methodology resulting in the allocation of the common service costs to the rolling department production lines that had no production, as they were under construction during the POR. Consistent with Chia Far's historical allocation methodology, we will allocate the common service costs incurred at the Pu-Shin plant during the POR to the production departments based on relative labor hours. This methodology results in allocating all the common service costs allocated to the rolling department to the cold rolling mill, as it was the only line with production during the POR.

The Department also disagrees with Chia Far that it made no finding on Taiwanese GAAP for the reporting of depreciation expenses in the Preliminary Results. The Department rejected Taiwanese GAAP by using Chia Far's reported depreciation expenses for the Pu-Shin plant in the Preliminary Results. The Department did this because Chia Far's reporting of depreciation for the new Pu-Shin plant, according to Taiwanese GAAP, did not reasonably reflect the costs associated with the two operational lines in the Pu-Shin plant. The Department examined at verification that the cold rolling mill and coil build-up line were operational during the POR and not in construction, installation, or a testing phase. Thus, unlike the facts addressed by the Court in Micron v. United States, Chia Far was at commercial production on the two operational lines for the Pu-Shin plant. The Department will continue to use Chia Far's reported depreciation expenses for the Pu-Shin plant for the final results.

Thus, for the final results, the Department will use the data on the record of this proceeding for the issues discussed, subject to minor corrections previously noted in the Preliminary Results, and elsewhere in this Issues and Decision Memorandum. Additionally, the Department finds that the discrepancies discovered at verification are minor and have already been amended in the Preliminary Results. Further, we find that the further discrepancies noted by petitioners are minor or are not supported by the record. Therefore, we do not believe these minor discrepancies on the record warrant the application of total AFA to Chia Far. However, for the final results, we will amend the reported depreciation expenses for the Pu-Shin plant to include all of the common service department's depreciation expenses allocated to the rolling department.

Comment 8: Affiliated-Party Purchases

Petitioners contend that Chia Far's affiliated party sold protective film to Chia Far at a loss, and therefore, the value of the protective film is understated in the cost database. Petitioners cite Chia Far's January 4, 2002, submission where Chia Far described its purchases of protective film from an affiliated party (for further explanation see Chia Far Final Analysis Memorandum). Petitioners argue that Chia Far has refused to submit the required information regarding inputs received from affiliated suppliers. Petitioners also contend that Chia Far's claim that the protective film accounted for an insignificant percentage, approximately one percent of the total cost of manufacturing, is wrong. Petitioners explain that it is unreasonable to compare the protective film to the total cost of manufacturing, because this includes the cost of materials, mainly finished coils (for further explanation see Chia Far Final Analysis Memorandum). Petitioners argue that the Department should compare the cost of protective coating to Chia Far's conversion costs, which is the sum of direct labor and factory overhead attributed to the production of subject merchandise. Petitioners explain that as a result, protective coating qualifies as a major input, and warrants application of the Department's major input rule. According to section 773(f)(3) of the Act, if the Department has reason to believe that the sales transaction value of a major input supplied by an affiliated party is less than the cost of production of such input, then the Department may determine the value of the major input based on its cost of production.

Petitioners contend that the Department should apply total AFA because Chia Far has refused to submit the information to allow the Department to conduct the major input rule in this case. Thus, petitioners' claim that Chia Far has not cooperated to the best of its ability.

Additionally, petitioners explain that the Department should find that Chia Far's purchases of protective film coating from its affiliated party were not an arm's length prices. Petitioners also argue that alternatively, as partial AFA, the Department should increase the cost of materials for each control number reported in the cost database by the percentage of underpricing that Chia Far reported in its January 4, 2002 response (for further explanation of the percentage of underpricing see Chia Far Final Analysis Memorandum).

Chia Far contends that the protective film is not an input into the manufacture of subject merchandise because it is a packing expense. Chia Far also argues that protective film is not a major input pursuant to section 773(f)(3) of the Act since it represents approximately one percent of the total cost of manufacturing. Chia Far explains that petitioners provided no support that the affiliated supplier sold the protective film at a loss to Chia Far. Moreover, Chia Far contends that the protective film is not a major input because the Department did not treat the protective film as a major input in its Preliminary Results. Chia Far argues that petitioners have the burden to prove that a packing expense is a major input, which they have not done. Chia Far contends that the Department cannot apply the major-input rule to a minor input according to NSK., et al v. United States. See NSK., et al v. United States, Slip Op. 2002-61 (CIT, July 8, 2002) ("NSK v. United States").

Department's position: We agree with Chia Far that protective film is not a major input, and does not qualify for application of the major input rule. The CIT, in NSK v. United States, stated that the major input rule, according to section 773(f)(3) of the Act, applies only to major inputs. Thus, the Department may not apply the major input rule to protective film, because it is used for packing, and is not an input into the processing of finished coils.

For a summary of the Department's findings, see Chia Far Final Analysis Memorandum and the Chia Far Verification Report, at page 26. Therefore, as reported, we have made no changes to the cost of materials for protective film.

Comment 9: G&A Expenses

Petitioners contend that Chia Far improperly excluded loss of inventory shortage, loss on inventory valuation, and miscellaneous losses from their G&A expenses. Petitioners explain that it is the Department's practice to include all expenses in the G&A calculation as long as they are general business expense items that are not part of a separate line of business. See Stainless Steel Sheet and Strip From the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 64950 (December 17, 2001) and accompanying Issues and Decision Memo at Comment 5 ("SSSS from Korea"); Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") from Taiwan, 64 FR 28983, 28989 (May 29, 1999) ("DRAMs from Taiwan"); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel

Wire Rod from Spain, 63 FR 40391, 40393 (July 29, 1998) ("Wire Rod from Spain"); and U.S. Steel v. United States, 998 F. Supp. 1151 (CIT 1998) ("U.S. Steel v. United States").

Chia Far contends that U.S. Steel v. United States is not relevant because the case concerned the issue of limiting offsets to G&A expenses. Chia Far argues that in Wire Rod from Spain, the Department determined that finished goods inventory write-downs should not be added to the production costs in calculating cost of production or constructed value, because it is not a cost of production, in accordance with Spanish GAAP. Chia Far explains that the Department found that the write-down is an accounting provision, not an actual production cost, and therefore, did not add the finished goods inventory write-downs to G&A. See Wire Rod from Spain, and accompanying Issues and Decision Memorandum, at Comment 7. Chia Far contends that the same is true for Taiwanese GAAP, which Chia Far follows. Chia Far argues that petitioners provide no support for the Department to change this policy.

Department's position: We agree with petitioners that loss on inventory shortage, loss on inventory valuation, and miscellaneous losses should be included in Chia Far's G&A expense calculations. Because these items are general business expense items related to the general operation of the company, they should be included in the G&A expense calculations. For G&A expense items, the Department considers the nature of the G&A activity and relationship between this activity and the general operations of the company. See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From Taiwan, 64 FR 56308, 56323 (October 19, 1999) ("DRAMs from Taiwan"). It is the Department's practice to include expenses related to the general operations of the company as a whole in its calculation of G&A expense. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30574, 30590 (June 8, 1999). Moreover, in the Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico, the Department adjusted costs to account for loss on physical inventory because the Department considers physical inventory losses to be related to the general activities of the company as a whole. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico, 67 FR 55800 (August 30, 2002) and accompanying Issues and Decision Memo at Comment 15. In addition, in the Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan, the Department included lower-of-cost-or-market ("LCM") adjustments on raw materials in its G&A expense calculations. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan, 65 FR 34658 (May 31, 2000) and accompanying Issues and Decision Memo at Comment 8. Also, see Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands, 65 FR 742 (January 6, 2000) and accompanying Issues and Decision Memo at Comment 4. The Department's practice is also not to include revaluation of finished good inventory in its G&A expense calculations, only the provision association with raw materials and work-in-process ("WIP") inventories. See Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Plate in Coils from South Africa, 64 FR 15459, 15472 (March 31, 1999). However, Chia Far gave no indication that the loss on inventory shortage and loss on inventory valuation concerned finished good inventory. See Chia Far Verification Report at pp. 34-35. Therefore, for the final results, we will include losses on inventory shortage, losses on inventory valuation, and miscellaneous losses incurred in 2001, in our calculation of G&A expenses for Chia Far (for an explanation of the G&A Ratio Period Expenses, see infra).

Comment 10: Appropriate Period for G&A and Interest Expense Ratios

Petitioners argue that the Department's practice is to use the audited fiscal year financial statement that most closely corresponds to the POR to calculate period expense ratios such as general and administrative ("G&A") and interest expenses and cite Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Final Results Antidumping Duty Administrative Review, 66 FR 11555 (February 26, 2001) and accompanying Issues and Decision Memo at Comment 3 ("Large Printing Presses from Japan"). Petitioners also refer to the Department's Section D questionnaire where the Department requests "the full-year G&A expense and COGS reported in your company's audited fiscal year financial statements for the fiscal year that most closely corresponds to the POR." See the Department's Section D questionnaire, at page D-12 (August 30, 2001); the Department's Section D questionnaire provision which explains the reporting of net interest expenses; and the Department's May 3, 2002, supplemental questionnaire instructing Chia Far to rely on its 2001 financial statements for these calculations at page 1.

Petitioners contend that when an equal number of months of the period of review or investigation correspond to two fiscal years, as in this current proceeding, the Department favors the more recent set of financial statements. Petitioners cite Silicon Metal from Brazil, where the Department states that it "correctly used Electrosilex's most recently audited financial statements to calculate Electrosilex's G&A expenses, because G&A expenses are period expense" and that "employing the methodology used in this instance is both consistent with Department policy, and accurately reflects expenses realized during the most recent fiscal year for which financial statements were available." See Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 63 FR 6899, 6906 (February 11, 1998) ("Silicon Metal from Brazil"). Thus, petitioners argue that it is the Department's practice to base G&A and interest ratios on the full-year audited fiscal year financial statements that most closely correspond to the period of investigation or review, and when the period is equally divided between two fiscal years, to rely on the most recently completed fiscal year. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea, 65 FR16880 (March 22, 2000) and accompanying Issues and Decision Memo at Comment 8. Petitioners contend that the Department incorrectly relied on both the 2000 and 2001 audited fiscal year financial statements in the Preliminary Results, and therefore, should rely only on Chia Far's 2001 fiscal year financial statements, with appropriate adjustments, for the G&A and interest expense ratios.

Chia Far contends that the Department has the discretion to use data from two years, which supports the Department's mandate to calculate the dumping margin "as accurately as possible." Chia Far argues that in Bethlehem Steel Corporation, et al, v. United States, the CIT supported the Department's decision to include G&A expenses for that period which "most closely corresponds" to the POR. See Bethlehem Steel Corporation, et al, v. United States, Slip Op. 2000-63 (June 2, 2000) ("Bethlehem v. United States"). Chia Far contends that since both fiscal years equally correspond to the POR, the Department should continue to use the average of two fiscal years for G&A and interest ratios.

Department's position: We agree with both petitioners and Chia Far that it is the Department's practice to use the audited fiscal year financial statement that most closely corresponds to the POR to calculate G&A and net interest expense ratios. However, we agree with petitioners that since the POR equally corresponds to two fiscal years, the Department will use the most recent audited fiscal year financial statement, which is Chia Far's 2001 audited financial statements for this administrative review. See Silicon Metal from Brazil. Thus, in the final results we will revise the G&A and net interest expense ratios to reflect only Chia Far's 2001 audited financial statements, and not an average of 2000 and 2001.

Comment 11: Inventory Carrying Costs Incurred in Taiwan for U.S. Sales

Petitioners argue that the Department improperly recalculated inventory carrying costs incurred by Chia Far in Taiwan for U.S. sales, and that Chia Far had originally calculated inventory carrying costs correctly by reflecting the time between the end of production and the date of entry into the United States, as specified in the Department's August 30, 2001 Section C questionnaire. Petitioners cite the Department's August 30, 2001 Section C questionnaire, where it states to "report the unit opportunity cost incurred from the time of final production in the country of manufacture to the time of arrival in the United States." See the Department's August 30, 2001 Section C questionnaire, at page C-29. Petitioners contend that the Department should eliminate the additional programming language inserted in the Preliminary Results for inventory carrying costs incurred in the country of manufacture for U.S. sales (DINVCARU) as described in the Antidumping Duty Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan: Analysis Memorandum for Chia Far Industrial Co., Ltd., at page 5, (July 1, 2002) ("Chia Far Preliminary Analysis Memorandum").

Chia Far contends that the Department made two errors when it recalculated inventory carrying costs for U.S. sales. First, Chia Far explains that since the entry date (ENTRYDTU) is later than the shipment date (SHIPDTU), the resulting calculation by the Department of SHIPDTU - ENTRYDTU would result in a negative calculation, thereby incorrectly increasing the value of DINVCARU. Furthermore, Chia Far explains that the value of total cost of manufacturing (TCOMU) should be included in the calculation.

Petitioners contend that if the Department further recalculated the inventory carrying costs according to the changes suggested by Chia Far, the Department would reduce the domestic inventory carrying costs to zero. Thus, petitioners argue the Department should not recalculate inventory carrying costs as it did in the Preliminary Results, nor recalculate inventory carrying costs per Chia Far's suggested changes.

Chia Far contends that the Department informed Chia Far at verification that the questionnaire was incorrect. Thus, Chia Far argues that the Department used the correct methodology to calculate inventory-carrying costs in the Preliminary Results.

Department's position: We agree with petitioners the Department should not have recalculated inventory carrying costs at the preliminary results of review. The inventory carrying costs reported by Chia Far in the questionnaire response were reported correctly. See Notice of Final Results in the Antidumping Duty Administrative Review of Certain Stainless Steel Butt-weld Pipe Fittings from Taiwan and Intent Not to Revoke in Part, 65 FR 81827, (December 27, 2000) and accompanying Issues and Decision Memo at Comment 3. Therefore, we have used the figures reported by Chia Far to calculate inventory carrying costs in these final results of review.

Comment 12: CEP Transactions

Chia Far contends the Department incorrectly deleted CEP transactions in its margin calculation program by including only sales in the POR, July 1, 2000 through June 30, 2001, and not the "window," April 1, 2000 through June 30, 2001. Chia Far explains that only seven CEP sales should have been deleted based on observation number, and seven EP sales deleted for being outside the POR, whereas the Department deleted thirty sales from its margin calculation program.

Petitioners contend that the window period only applies to the determination of normal value. Petitioners explain that in the Department's original questionnaire, in an administrative review the Department will compare individual U.S. sales to an average normal value for a "contemporaneous month." See Department's August 30, 2001 questionnaire, at I-3. Petitioners explain that the preferred comparison month for home market sales is the same month in which the particular U.S. sale was made; however, if no home market sales were made in the same month as the U.S. sale, then the Department will search for a normal value match within a six-month window, by first searching the U.S. sale's month, then going three months prior, and then two months after the U.S. sale. Petitioners state that the Department may compare U.S. sales to home market sales that are outside the period of review, and therefore, it established the window period including the corresponding months to be considered in the 90/60 day test. Petitioners contend that according to 19 C.F.R. 351.414(e)(2) this window period applies only to normal value, and not to U.S. sales.

Moreover, petitioners explain that inclusion of CEP sales within the window period in the model match program is inconsequential, because even though an identical or similar match is found for these sales outside the period of review, these U.S. sales are properly excluded from the margin program. Thus, petitioners explain, there is no effect on the dumping margin calculations. Petitioners contend that the Department properly defined CEP sales as those U.S. sales falling within the period of review.

Department's position: We agree with petitioners that the window period applies only to the determination of normal value in accordance with 19 C.F.R. 351.414(e)(2). According to 19 C.F.R. 351.414(e)(2), the Department will base normal value on a weighted average of sales of the foreign like product on sales incurred during a contemporaneous month, which is: first, "the month during which the particular U.S. sale under consideration was made;" second, "if there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sale in which there was a sale of the foreign like product;" and third, "if there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sale in which there was a sale of the foreign like product." See 19 C.F.R. 351.414(e)(2).

Moreover, we agree with petitioners that the inclusion of CEP sales within the window period in the model match program does not affect Chia Far's dumping margin, because these sales are properly excluded from the margin program. By keeping the CEP sales within the window period in the model match program, potential normal value models may be created comprised of a weighted average of foreign like products sold during the contemporaneous month, or according to the 90/60 day test. However, since these CEP sales within the window are properly excluded from the margin program, any potential normal values which match to these excluded CEP sales will have no match in the margin program, and thus be excluded. Therefore, we will continue to exclude CEP sales outside the window period from the margin program for the final results.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results and the final weighted-average dumping margin in the Federal Register.

AGREE____________ DISAGREE____________

____
Faryar Shirzad
Assistant Secretary
for Import Administration

____
Date