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December 10, 2003

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Administrative Review of Stainless Steel Butt-Weld Pipe Fittings from Taiwan

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SUMMARY

We have analyzed the case briefs and rebuttal briefs of interested parties in response to Certain Stainless Steel Butt-Weld Pipe Fittings ("SSBWPF") From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, ("Preliminary Results") 68 FR 40637 (July 8, 2003). As a result of our analysis, we have made changes from the Preliminary Results. The specific calculation changes can be found in our Analysis Memorandum from Jon Freed: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Ta Chen Stainless Steel Pipe Co., Ltd. ("Final Analysis Memo"), dated December 10, 2003. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review:

BACKGROUND

The Department's preliminary results of review were published on July 8, 2003. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 68 FR 40637 (July 8, 2003) ("Preliminary Results").

The merchandise covered by this review is stainless steel butt-weld pipe fittings as described in the "Scope of the Review" section of the Federal Register notice. The period of review ("POR") is June 1, 2001 through May 31, 2002.

The respondents are Ta Chen Stainless Pipe Co., Ltd. (“Ta Chen”) and its wholly owned subsidiary Ta Chen International, Inc. ("TCI"), Liang Feng Stainless Steel Fitting Co., Ltd. (“Liang Feng”), and Tru-Flow Industrial Co., Ltd. (“Tru-Flow”). We are rescinding the reviews with respect to Liang Feng and Tru-Flow because neither Liang Feng, nor Tru-Flow shipped the subject merchandise to the United States during the POR.

From September 12, 2003 to September 19, 2003, the Department conducted the home market sales verification of the questionnaire responses of Ta Chen and TCI. From September 22, 2003 to September 25, 2003, the Department conducted the U.S. sales verification of the questionnaire responses of Ta Chen and TCI.

We invited parties to comment on our preliminary results of review. We received written comments on October 29, 2003, from petitioners and Ta Chen. On November 5, 2003, we received rebuttal comments from petitioners and Ta Chen. On November 12, 2003, we received a supplemental brief from petitioners covering issues relating to verification exhibits that were not served to petitioner until November 3, 2003. On November 12, 2003, we received a letter from Ta Chen clarifying its initial brief filed on October 29, 2003. On November 17, 2003, we received comments from Ta Chen rebutting petitioners’ supplemental brief filed on November 12, 2003.

We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (“the Act”).

LIST OF ISSUES FOR DISCUSSION

Comment 1: Adverse Facts Available (“AFA”)
Comment 2: Ta Chen’s Affiliation with PFP Taiwan
Comment 3: Constructed Export Price (“CEP”) Offset
Comment 4: Date of Sale
Comment 5: Classification of Home Market Sales
Comment 6: Employee Bonuses and Compensation for Directors and Supervisors Recorded in Stockholders’ Equity on the Balance Sheet
Comment 7: Selling Expenses Associated with Sales Returns in the U.S. Market
Comment 8: Home Market Indirect Selling Expenses Incurred for Sales to the United States
Comment 9: Home Market Inventory Carrying Costs Associated with U.S. Sales
Comment 10: The Inclusion of Time on the Water in U.S. Inventory Carrying Costs
Comment 11: U.S. Indirect Selling Expenses
Comment 12: Short-term Borrowing Rate for Imputed Credit in the United States
Comment 13: CEP Profit
Comment 14: Wire Transfer Fee for Payments from TCI to Ta Chen

Comment 15: U.S. Inventory Carrying Costs
Comment 16: Weighted-Average Direct Selling Expenses for U.S. Stock Sales

CHANGES TO THE COMPUTER PROGRAM

- We adjusted the values reported for home market packing and U.S. packing to reflect the minor correction to Ta Chen's packing labor ratio explained in the Sales Verification of Ta Chen Stainless Pipe Co., Ltd. in the Antidumping Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, at 2, Exhibit 1B, (October 22, 2003) ("Home Market Verification Report").

- We adjusted the values reported for home market indirect selling expenses for home market sales to reflect the minor correction explained in the Home Market Verification Report at 3 and to reflect changes to the calculation requested by the Department at verification explained in the Home Market Verification Report at 20. The worksheet demonstrating the revised calculation is in Verification Exhibit 11E.

- We are inserting a variable to represent the indirect expenses incurred in the home market for U.S. sales ("DINDIRSU") to be used in the CEP Profit calculation. See Home Market Verification Report at Exhibit 11E, see also Comment 8 of this memorandum.

- For certain invoice(s), we are adjusting the reported values for marine insurance, harbor maintenance fee, and U.S. customs duty in to reflect the minor correction explained in the Home Market Verification Report at 4 and Exhibit 1E and Exhibit 15, see also, U.S. Verification Report of Ta Chen International (CA) Corp.: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, at Exhibit 18, (October 22, 2003) (" U.S. Verification Report"). Further explanation of this change is detailed in the Final Analysis Memo at 3.

- For all sales out of TCI inventory ("stock sales"), we are adjusting the U.S. repacking expense and the warehouse expenses to reflect the minor correction. See U.S. Verification Report at 2-3 and Exhibit 1D.

- For U.S. sales that are shipped directly from Taiwan to the unaffiliated customer ("direct shipment"), we are adjusting the imputed credit expense to reflect changes explained in Comment 12 of this memorandum.

- The Department has adjusted the U.S. indirect selling expense calculation to include TCI's cost of financing. See U.S. Verification Report at 1.

DISCUSSION OF THE ISSUES:

Comment 1: Adverse Facts Available ("AFA")

The petitioners argue that section 776(a) and (b) of the Act requires each respondent to cooperate to the best of its ability to comply with the Department's requests for information and may be subject to adverse facts available ("AFA") to the extent that the record is deficient due to the respondent's failure to act to the best of its ability. Petitioners argue that Ta Chen has not acted to the best of its ability.

Petitioners assert that the CAFC in Nippon Steel Corp. v. United States, Appeal Nos. 02-1266, -1267 (Fed. Cir. Aug. 8, 2003) ("Nippon Steel") explained a two step process to determining whether to apply AFA. First, petitioners argue that an objective showing must be made that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations. Second, petitioners assert that the Department must then make a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.

Petitioners argue that Ta Chen and TCI have not cooperated to the best of their ability to answer the Department's questions. As examples of such behavior, petitioners argue that Ta Chen and TCI; (a) have not acknowledged their affiliation with PFP Taiwan; (b) have not substantiated their reliance on date of invoice as date of sale; (c) have provided documentation showing that Ta Chen misclassified certain home market sales as third country sales; (d) did not report all U.S. selling expenses attributable to returned U.S. sales; and (e) did not report home market indirect selling expenses and inventory carrying costs for U.S. sales.

Petitioners argue that any reasonable and responsible respondent would know that all of the foregoing information would be needed and expected by the Department to make accurate dumping calculations and that Ta Chen and TCI have the records to supply the data requested, but have chosen not to be forthcoming. Petitioners argue that Ta Chen and TCI should be assigned at least partial AFA in the regards indicated above.

Ta Chen did not comment on this issue.

Department's Position: We disagree with petitioners. 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 Accompanying the Uruguay Round Agreements Act ("SAA"), H.R. Rep. 316, 103d Cong., 2d Sess., vol. 1, page 870 (1994). We find that Ta Chen has fully cooperated with the Department in this administrative review because: (1) Ta Chen has not withheld any information requested by the Department; (2) Ta Chen provided all of the information during the course of the review on a timely basis; (3) Ta Chen did not impede the conduct of the review; (4) and Ta Chen did not provide information that cannot be verified. For each aspect of Ta Chen's response that petitioners identify as a basis for applying AFA, Ta Chen provided the necessary information. First, Ta Chen responded to numerous questions issued by the Department regarding its relationship with PFP Taiwan. See Ta Chen's March 26, 2003 Submission at pages 214-220, see also Ta Chen's April 24, 2003 Submission at pages 1-2, 17-20, 162-174, and exhibits 12 and 15, see also Ta Chen's May 12, 2003 Submission at pages 1-6 and 11-19. Second, Ta Chen reported in its sales listing both the purchase order date and the sale invoice date. See Comment 4 of this memorandum. Third, Ta Chen satisfactorily explained its method for excluding third country sales from its home market sales database. See Ta Chen's February 12, 2003 Submission at pages 4-5, see also Ta Chen's April 24, 2003 Submission at pages 3-4, see also Home Market Verification Report at page 6, see also Comment 5 of this memorandum. Fourth, the Department found that Ta Chen did properly report all U.S. selling expenses attributable to returned U.S. sales. See Comment 7 of this memorandum. Finally, Ta Chen provided the Department with both its indirect selling expenses incurred in Taiwan for U.S. sales and its information for inventory carrying costs incurred in Taiwan for U.S. sales. See Ta Chen's February 25, 2003 Submission at 25-27 and Exhibit 12, see also, Comments 8-10 of this memorandum.

The Department has no reason to apply facts available under section 776(a) of the Act. Even if the Department needed to apply facts available, an adverse inference would not be warranted under section 776(b) of the Act because nothing in this review indicates that Ta Chen has failed to cooperate by not acting to the best of its ability to comply with requests for information. Therefore, we did not apply an AFA rate to Ta Chen for this administrative review.

Comment 2: Ta Chen's Affiliation with PFP Taiwan

Petitioners argue that Ta Chen and PFP Taiwan are affiliated parties as defined under section 771 (33)(A)of the Act. Petitioners argue that the list of persons who are deemed members of a family in section 771(33)(A) of the Act is illustrative, not exhaustive, and that the members of a family need not all be related by blood to be affiliated under the statute's definition of "affiliated persons" because, the list includes spouses and step-children. Petitioners assert that Ta Chen and PFP Taiwan are affiliated via a familial relationship between the president of Ta Chen, Robert Shieh, and the head of PFP

Taiwan, Tsai Jung-Hui (also known as "Mr. Roger Tsai"). Petitioners note that Ta Chen has acknowledged that Robert Shieh's older brother is married to Roger Tsai's sister. Petitioners allege that Robert Shieh helped to establish PFP Taiwan and assigned Roger Tsai, a former Ta Chen employee, to manage PFP Taiwan. Petitioners also note that Ta Chen and PFP Taiwan share the same offices in Taipei.

Petitioners argue that the U.S. Court of Appeals for the Federal Circuit ("CAFC") has explained that the congressional intent underlying 771(33) of the Act was to identify control exercised by means of "corporate or family groups"in its decision of Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1326 (CIT 1999) ("Ferro Union"). Petitioners assert that Hontex Enterprises, Inc. v. United States, Slip Op. 03-17 at 38-39 (Feb. 13, 2003) ("Hontex Enterprises") established that in order to find affiliation, the Department must determine that certain potential control relationships exist between the entities. Furthermore, petitioners contend that in order to determine whether control relationships exist between the entities, the Department must find some relationship between the parties, the relationship must have the potential to influence the pricing or cost of subject merchandise, and that the temporal aspect of the relationship is not so temporary as to make the control insignificant.

Petitioners argue that the familial relationship in this case is at least as strong under section 771 (33)(A) of the Act as the familial ties relied upon by the Department and approved by the court as a reasonable interpretation of the statute in Ferro Union at 1325-26, where affiliation was based on the relationship between an uncle and allegedly estranged nephews.

Petitioners argue that the relationship between Mr. Shieh of Ta Chen and Mr. Tsai of PFP Taiwan has the potential to affect the pricing, cost, and production of the subject merchandise. Petitioners cite the Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan, 67 Fed. Reg. 35,474 (May 20, 2002) ("PET Film") and accompanying Issues and Decision Memorandum at Comment 4 in support of their assertion that section 771(33)(F) of the Act does not require the Department to find the existence of a "control group acting in concert." Rather, petitioners argue that the Department's analysis should emphasize the control group's ability or "potential to act in concert or act out of common interest" to exert restraint or direction over a company's activities. Lastly, petitioners assert that the temporal aspect of this familial relationship is longstanding, not temporary in nature, and that there is nothing in the record to suggest otherwise.

Petitioners argue that the relationship between Ta Chen and PFP Taiwan is similar to Ta Chen's relationship with San Shing Hardware Works, USA and Sun Stainless, Inc. from the first administrative review of this case. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan; Final Results of Administrative Review, 65 FR 2116, 2118, 2135-38 (January 13, 2000) ("SSBWPF from Taiwan, 1992 -1994). Petitioners assert that in that review, the Department found that San Shing Hardware and Sun Stainless were both established by current and former employees of Ta Chen. For example, petitioners assert that Mr. Roger Tsai was a director of Sun Stainless and that San Shing also rented

office space from the president of Ta Chen, Mr. Robert Shieh. Petitioners argue that the Department assigned adverse facts available in that case because it discovered that Ta Chen had direct ties with San Shing and Sun Stainless including the authority to sign checks issued by San Shing, (or other companies under which names it is operating), and Sun Stainless; physical custody of these parties' check-signing stamps; and control over San Shing's and Sun's assets including the ability to pledge these assets for a TCI loan. See SSBWPF from Taiwan, 1992 -1994.

Petitioners argue that there are similarities between the relationship between Ta Chen and PFP Taiwan and the relationship Ta Chen had with San Shing and Sun Stainless. First, petitioners assert that both were managed by a Ta Chen employee, Mr. Tsai. Second, petitioners note that PFP Taiwan has the same address as Ta Chen's Taipei office and leases office space from Ta Chen. Finally, petitioners allege that Robert Shieh assisted PFP Taiwan in setting up its company in Taiwan.

Petitioners argue that due to Ta Chen's failure to disclose its affiliation with PFP Taiwan, the Department does not possess the necessary information to calculate the most accurate dumping margin possible for Ta Chen's subject merchandise. Therefore, petitioners urge the Department to making a finding of affiliation and to assign total adverse facts available to any U.S. sale that would have matched to the SSBWPF sold by Ta Chen to PFP Taiwan.

Ta Chen disagrees with petitioners allegation that Ta Chen is affiliated with PFP Taiwan. Ta Chen argues that there is no evidence that Ta Chen has the potential to control PFP Taiwan. Ta Chen asserts that petitioners' affiliation claim is irrelevant because Ta Chen had essentially no sales to PFP Taiwan.

Ta Chen argues that petitioners' basis for affiliation, a family relationship between the President of Ta Chen (Robert Shieh) and an employee at PFP Taiwan (Roger Tsai), does not fit within the definition of familial relationships from which control may be presumed under section 771(33)(A) of the Act. Ta Chen argues that the familial ties between Robert Shieh and Roger Tsai are not as strong as the familial ties relied upon in Ferro Union 44 F. Supp. 2d at 1325-26. Ta Chen argues that the persons deemed affiliated in Ferro Union shared the same bloodline, unlike Mr. Shieh and Mr. Tsai. Ta Chen argues that the relationship between Robert Shieh and Roger Tsai does not meet the definition of family as set forth in Ferro Union, which characterized a family as "all descendants of a common progenitor.....those who are of the same lineage." See Ferro Union 44 F. Supp. 2d at 1325, citing Black's Law Dictionary.

Ta Chen notes that the petitioner cited no evidence on the record to support its claim that Robert Shieh helped to create PFP Taiwan or that Robert Shieh assigned Roger Tsai to manage PFP Taiwan. Ta Chen contends that PFP Holdings is a major multinational corporation, with a branch in Taiwan, and that Robert Shieh has no ability to get the branch, PFP Taiwan, to act contrary to its parent company and multinational owner.

Ta Chen argues that the record indicates that PFP Taiwan pays fair market value for the Taipei office space that it rents from Ta Chen. Ta Chen also argues that the record indicates that PFP Taiwan and Ta Chen's Taipei sales office operate as separate entities, each with a separate corporation, with its own records, personnel and shareholders.

Ta Chen argues that petitioners cite no supporting evidence for their claim that Taiwan customers are directed by Ta Chen Taiwan to contact PFP Taiwan to buy Ta Chen's SSBWPF in the home market. Also, Ta Chen asserts that this is not true and further that the record shows that Ta Chen has essentially no sales of SSBWPF to PFP Taiwan.

Ta Chen argues that petitioners' assertions regarding the affiliation issue in the 1992-1994 review of SSBWPF from Taiwan are both irrelevant and factually incorrect. Ta Chen notes that in that review, the U.S. Court of International Trade ("CIT") found that Ta Chen had a good faith belief that it was not affiliated to the particular customer, and that once the Department asked Ta Chen to fully describe its relationships with that customer, Ta Chen promptly did so in full. See Ta Chen Stainless Steel Pipe, Ltd. v. United States, 23 C.I.T. 804, Slip Op. 99-117, 1999 WL 1001194 at 2 n.3. Ta Chen further contends that the 1992-94 review was under a different standard for affiliation and that the United States Government acknowledged this point in the continuing court litigation covering the 1992-94 review. See Ta Chen's Case Brief at page 4 (November 5, 2003), citing Brief for the United States in Opposition to the U.S. Supreme Court, On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit, Ta Chen Stainless Steel Pipe, Ltd. v. United States, No. 02-1141, April 2003 at 2. Ta Chen claims that the U.S. Government's brief further acknowledges that before January 1, 1995 the law required a party to own another in order to be considered affiliated, but that the new definition may consider a foreign exporter to be affiliated with customers it controls but does not own. See id.

Department's Position: We disagree with petitioners. In the Preliminary Results, we did not treat Ta Chen as affiliated with PFP Taiwan. Instead, we stated that we would continue to investigate whether these companies should be considered affiliated under the statute. See Preliminary Results. The Department has analyzed the information on affiliation on the record in this review, including the case briefs submitted by the petitioners and Ta Chen. Based on the information on the record, we have determined that Ta Chen and PFP Taiwan are not affiliated within the meaning of section 771(33) of the Act.

Section 771(33) of the Act defines "affiliated" and "affiliated persons" for purposes of our antidumping analysis. Section 771(33)(A) of the Act provides that "{m}embers of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants" shall be considered affiliated. Section 771(33)(F) of the Act defines affiliates as "{t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person." Furthermore, the statutory definition of affiliated persons in section 771(33) of the Act states that control exists where

one person "is legally or operationally in a position to exercise restraint or direction" over another person. In defining control groups, the Department's analysis emphasizes the group's ability or potential to act in concert or act out of common interest to exert restraint or direction over a company's activities. See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578, 55581-55582 (October 16, 1998) ("Pipe from Thailand").

Pursuant to section 351.102(b) of the Department's regulations, in determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department will consider, among other factors: (1) corporate or family groupings, (2) franchise or joint venture agreements, (3) debt financing, and (4) close supplier relationships. The Department will not, however, find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or foreign like product. In applying this provision, the Department makes a case-by-case determination of whether the relationship has the potential to affect the subject merchandise. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, at 27297-27298 (May 19, 1997) ("Preamble").

In this instance, the familial relationship through which petitioners allege affiliation does not fit within the description of members of a family described in section 771(33)(A) of the Act. Furthermore, the familial relationship between the president of Ta Chen, Robert Shieh, and the manager of PFP Taiwan, Roger Tsai, is different than the familial relationship that was the basis for finding affiliation in Ferro Union in that Robert Shieh and Roger Tsai are not "descendants of a common progenitor." See Ferro Union, 44 F. Supp. 2d at 1325, citing Black's Law Dictionary. The absence of a common blood lineage in this case is not determinative of whether this relationship could be properly characterized as a family grouping under section 771(33)(A) of the Act, but it does distinguish this case from Ferro Union. The relationship here does not fit within the definition of family described by section 771(33)(A). Therefore, Robert Shieh and Roger Tsai are not considered members of a family under section 771(33)(A) of the Act.

The relationship between Ta Chen and PFP Taiwan cannot be properly classified as a family grouping under section 771(33) of the Act unless these two companies possess the ability, or "potential to act in concert or act out of common interest" to exert restraint or direction over each others company's activities. See Pipe from Thailand at 55581-55582. The record indicates that neither Robert Shieh nor Roger Tsai possess the ability or potential to control the activities of the other's company. The record for this administrative review does not indicate that Ta Chen or PFP Taiwan possess the potential to impact decisions of the other concerning the production, pricing, or cost of the subject merchandise or foreign like product. See section 351.102(b) of the Department's regulations. Although PFP Taiwan rents office space from Ta Chen's Taipei sales office, the rent PFP Taiwan pays for this space reflects the fair market value of the office space rented. See Home Market Verification Report at Exhibit 2D. PFP Taiwan's articles of incorporation, list of directors and stockholders, and corporate license issued

by the government of Taiwan indicate that PFP Taiwan is controlled only by its owner, PFP Holdings, and not Ta Chen. See Ta Chen's April 24, 2003 Submission at page 2 and exhibits 2, 3, and 12. The record indicates that the prices charged to PFP Taiwan on purchases of subject merchandise from Ta Chen were similar to the prices charged to other customers on similar products. See, e.g., Ta Chen's May 12, 2003 Submission; see also Home Market Verification Report, at Exhibit 2C. Furthermore, the Department verified that Ta Chen had properly reported all sales made to PFP Taiwan. See Home Market Verification Report, at 8-9 and Exhibit 2E. Petitioners' other allegations regarding Robert Shieh's involvement in establishing PFP Taiwan and that Ta Chen uses PFP Taiwan to sell subject merchandise in the home market cannot be substantiated by evidence on the record of this review. As explained above, there is no record evidence to indicate that Ta Chen or PFP Taiwan possess the potential to impact decisions of the other concerning the production, pricing, or cost of the subject merchandise or foreign like product. Therefore, we do not find that Ta Chen and PFP Taiwan are affiliated pursuant to section 771(33) of the Act or section 351.102(b) of the Department's regulations. As a result, we made no changes in our final results of review.

Comment 3: CEP Offset

Petitioners argue that Ta Chen is not entitled to a CEP offset because Ta Chen's home market sales are not at a more advanced level of trade ("LOT"). Petitioners compared the selling functions that Ta Chen provided to its U.S. sales with the selling functions it provided to its home market sales. Based on this comparison, petitioners argue that Ta Chen provided more services for its U.S. sales than it provided to its home market sales. Accordingly, petitioners argue that the LOT in the U.S. market is at the same level, or higher than the home market.

Petitioners argue that in order to adjust normal value downward by a CEP offset in accordance with section 351.412(f)(1)(ii) of the Department's regulations, Ta Chen first needs to show that its sales in Taiwan were at a different, more advanced LOT than its U.S. CEP sales. Petitioners assert that if this first condition is satisfied, then the Department would need to determine whether the difference in LOT in Taiwan and the United States would affect price comparability, as evidenced by a pattern of consistent pricing differences between sales at different levels of trade in Taiwan in accordance with section 351.412(d) of the Department's regulations. Petitioners allege that Ta Chen is not entitled to a CEP offset for lack of different levels of trade between sales in the United States and sales in Taiwan.

Petitioners assert that the Department conducts its LOT analysis by comparing the starting price from the producer to the home market customer to the starting price to the unaffiliated U.S. customer, adjusted downward for the expenses discussed in section 772(d) of the Act. Petitioners contend that the adjusted U.S. price is not a price exclusive of all selling expenses, but only those selling expenses associated with economic activities in the United States, that is, selling expenses incurred on the sales to the first unaffiliated customer in the United States in accordance with the Preamble, 62 FR at 27371. Petitioners argue that, in accord with the Preamble, the Department's LOT analysis should be blind to

the location of the party providing the U.S. selling activity and should only examine whether the claimed selling activities are associated with U.S. economic activities or not. See Preamble, 62 FR at 27371. Petitioners further contend that the aim of the analysis is to compare the home market price to an adjusted CEP price that parallels a U.S. EP price at the U.S. port of entry in accord with Micron Technology, Inc. v. U.S., 243 F.3d 1301, 1313 (Fed. Cir. 2001).

Petitioners note that Ta Chen must also establish to the Department's satisfaction that the different selling activities are actually performed at the allegedly different levels of trade. See SAA at 829. Petitioners allege that Ta Chen claimed to provide numerous services as a basis for showing that a CEP offset is warranted, but that those services, notably technical services, warranty, royalties, research and development, after-sales service, freight expenses and other direct selling expenses, were not actually performed. Petitioners argue that the Department incorrectly considered these functions when conducting its LOT analysis for the Preliminary Results.

Petitioners contend that in the Preliminary Results, the Department found that the home market has one LOT and the United States has one LOT, and that the Department must next decide whether or not the LOT in the home market is at a more advanced level than the LOT for the U.S. market. In support of its LOT analysis, petitioners offered a list of all of Ta Chen's selling functions performed for its home market customers and the selling functions performed for its U.S. customers and compared the two. Based on petitioners' list, petitioners argue that the Department failed to consider in the Preliminary Results that Ta Chen's U.S. selling activities include inventory maintenance, seller's risk of payment (as extended by Ta Chen Taiwan to TCI), selling efforts by Ta Chen Taiwan, packing expenses (including both materials and labor costs), foreign inland freight, foreign inland insurance (reported in marine insurance), containerization in Taiwan, brokerage and handling expenses incurred in Taiwan, ocean freight, marine insurance and customs duties.

Petitioners argue that the Department limited its discussion of the selling functions performed by Ta Chen Taiwan to those performed for sales to the unaffiliated U.S. customer, thereby failing to consider the selling activities performed by Ta Chen Taiwan to TCI for U.S. sales. Petitioners assert that Ta Chen does accept orders from TCI for U.S. sales, negotiates price with TCI, issues purchase orders (in lieu of pro forma invoices), negotiates customer payment terms, fields U.S. customers' complaints, bears credit risk, and communicates with TCI. Further, petitioners argue that the Department mistakenly excluded the consideration of services provided by TCI that were not related to economic activity occurring in the United States.

Finally, petitioners argue that the record in this review is very similar to the record in the 1998-1999 and 1999-2000 administrative reviews of this case. Petitioners note that in those reviews the Department denied Ta Chen's request for a CEP offset and that Ta Chen's questionnaire responses were nearly identical to its questionnaire responses in this review. See SSBWPF from Taiwan, 1999-2000; and Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping

Duty Administrative Review, 65 FR 81827 (December 27, 2000). Petitioners assert that there is no reason for the Department to grant this offset and depart from its practice of denying this adjustment in two earlier reviews, as the record regarding the selling activities offered in the U.S. and home markets has remained the same.

Ta Chen argues that sections 773(a)(7)(A) and 773(a)(7)(B) of the Act require a CEP offset or LOT adjustment for any difference wholly or partly due to a difference in LOT between the U.S. and home market sales that involves the performance of different selling activities. Ta Chen asserts that its home market sales are made at a more advanced LOT than its sales to its U.S. subsidiary (i.e., Ta Chen performs all of the necessary functions to sell to the unaffiliated customer in the home market, but only sells to its wholly-owned U.S. subsidiary, TCI, in the U.S. market). Ta Chen contends that it sells to end-users and distributors in the home market and to its master distributor subsidiary, TCI, in the United States, who in turn sells to distributors.

Ta Chen asserts that it engages in significant efforts to make sales in the home market, but not to the United States. Ta Chen further asserts that it is the function of its U.S. subsidiary, TCI, to make sales to the U.S. customers, whereas Ta Chen Taiwan only processes, and incurs costs for processing, the orders placed by TCI. Ta Chen contends that it engages in significant sales activities including travel to customers and entertainment for home market sales.

Ta Chen argues that it incurs significant inventory carrying costs on home market sales, whereas for U.S. sales, the bulk of such costs is incurred at TCI, where U.S. warehouse inventory time is enormous. Ta Chen argues that it incurs expense for carrying inventory for home market sales because it seeks to provide its home market customers with a "just in time" delivery service. Ta Chen asserts that TCI provides this function for U.S. sales, and that for U.S. sales, several months may lapse between the U.S. order and Ta Chen Taiwan's shipment. Ta Chen argues that for a commodity product such as SSBWPF, selling effort and inventory are the two major selling functions performed and the differences between them are especially determinative of LOT differences.

Ta Chen asserts that it incurs technical assistance and after-sales services costs for home market customers that it does not incur on sales to its U.S. subsidiary, TCI, and that it is irrelevant whether these costs are separately broken out in Ta Chen's response.

In support of its argument, Ta Chen cites Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274, 56275 (November 7, 2001); Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Preliminary Determination To Rescind the Administrative Review, in Part, To Revoke the Order, in Part, and Results of Antidumping Duty Administrative Review, 66 FR 51379, 51383 (October 9, 2001); and Static Random Access Memory Semiconductors From Taiwan; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 22520, 22522 (May

4, 2001), in which the Department granted CEP offsets for a less advanced LOT to a U.S. subsidiary as compared with the LOT of home market sales. Ta Chen maintains that these cases are equivalent to the instant review.

Ta Chen argues that the petitioners incorrectly include various movement expenses in the LOT analysis. Citing the SAA at 830, Ta Chen argues that the statute provides that movement or packing costs considered elsewhere in the dumping margin calculation should not be considered in the LOT analysis. Ta Chen argues that the various movement and packing costs referenced by petitioners (freight, packing, etc.) are not relevant LOT factors associated with differences in stages of distribution.

Ta Chen argues that the petitioners' method of comparing selling functions is flawed in that it ignores differences in the selling functions if enough of the selling functions are the same. Ta Chen argues that the CIT affirmed the notion that some overlap in selling activities will not preclude a determination that sales are at different stages of marketing in Micron Technology v. U.S., 243 F. 3d 1301, 1310 (Fed. Cir. 2001) citing the SAA at 829.

Finally, Ta Chen argues that without a CEP offset, a fair, apples-to-apples comparison between U.S. and home market prices will not occur because the inventory carrying costs and indirect selling expenses would be used to reduce U.S. price, but not the home market price.

Department's Position: We disagree with petitioners. The Department's analysis of Ta Chen's sections B and C questionnaire responses show that there are more sales functions in the home market than in the U.S. market. We examined the reported selling functions at verification and found that Ta Chen's selling functions to its home market customers, regardless of channel of distribution, include order acceptance and processing, delivery arrangement, extension of credit terms, inventory maintenance, technical assistance, packing, after-sales services, general selling functions, and customer service. See Ta Chen's September 12, 2002 Submission at page 7; see also Ta Chen's January 28, 2003 Submission at pages 15-16; see also Home Market Verification Report at 22. Most of these selling functions are not performed by Ta Chen Taiwan for the U.S. market. For sales to its U.S. subsidiary, TCI, Ta Chen merely processes paperwork and ships its products to TCI. TCI, not Ta Chen Taiwan, negotiates U.S. sales with unaffiliated U.S. customers and bears the risk of nonpayment. For home market sales, Ta Chen accepts customer inquiries, takes orders, negotiates price, and negotiates payment terms with the unaffiliated customers on each transaction. However, for sales to TCI, all of these functions are standardized such that changes in terms or price are reevaluated on a periodic basis. See Home Market Verification Report at 21. Thus, the key sales functions of dealing with and negotiating with unaffiliated customers are performed by Ta Chen Taiwan for its unaffiliated home market sales, but not for its unaffiliated U.S. customers. Even though Ta Chen Taiwan does perform post-sales functions for both U.S. and home market sales, the fact remains that Ta Chen Taiwan does not perform the key task of negotiating with the customer for its U.S. sales, and TCI does. Since Ta Chen Taiwan performs these functions for its home market sales and not its U.S. sales, we

cannot reasonably conclude that Ta Chen Taiwan's sales functions are the same in both markets, especially since there would be no sale at all unless the negotiation with the customer was successful.

Based on the record evidence, Ta Chen performs more sales functions in its home market than in its U.S. market. See Home Market Verification Report at 21-22.; see also Ta Chen's September 12, 2002 Submission at page 7; see also Ta Chen's January 28, 2003 Submission at pages 15-16. Accordingly, the Department has continued to grant Ta Chen a CEP offset for the final results of review.

Comment 4: Date of Sale

Petitioners contend that Ta Chen failed to satisfactorily support its use of the invoice date as the date of sale for both home market and U.S. sales. Petitioners note that Ta Chen claimed that the invoice date represents the time when the key terms are finalized, it reported in its supplemental section B questionnaire response that there are no changes between the date of order and the date of invoice. As a result, petitioners contend that the terms of sale are finally established on the date of the purchase order. Also, petitioners contend that Verification Exhibit 18 of the U.S. Verification Report confirms that the Department should reject Ta Chen's reliance on the date of invoice as the date of sale and should instead rely on the date of purchase order.

Petitioners further contend that the Department should find that Ta Chen has failed to report all home market and U.S. sales with purchase orders in the POR (and, for the home market, in the window months), since petitioners believe that there were purchase orders made within the POR that were invoiced outside the POR. As a result, petitioners contend that Ta Chen failed to report complete home market and U.S. sales databases for all sales that had a purchase order date in the POR (and, for the home market, in the window months). Petitioners argue that Ta Chen should be assigned total adverse facts available in light of its failure to provide the Department with the appropriate universe of home market and U.S. sales.

Ta Chen contends that it reported in its questionnaire responses that the terms of sale are subject to change up to the invoice date even if the terms often do not change. Respondent contends that the Department did not ask it to change its reporting methodology although it reported the order date of U.S. sales for informational purposes as well. Ta Chen contends that there was generally only a short period of time between the order date and the invoice date for sales from TCI's inventory. Thus, Ta Chen argues that it would not make much difference whether the Department used the order date or the invoice date for its calculations.

Department's Position: We disagree with petitioners that Ta Chen reported the incorrect date of sale. Page I-4 of the Department's August 15, 2002 questionnaire issued to Ta Chen, states: "The Department will normally use the date of invoice, as recorded in the exporter or producer's records

kept in the ordinary course of business. However, the Department may use a date other than the date of invoice (*e.g.*, the date of contract in the case of a long-term contract) if satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (*e.g.*, price, quantity). (Section 353.401(i) of the regulations.)"

Moreover, the Preamble to the Department's regulations explains that the Department will normally use the date of invoice as the date of sale because the commercial reality is that the parties to the transaction consider the terms to be "fixed when the seller demands payment (i.e., when the sale is invoiced)." See Preamble, 62 FR at 27349.

Ta Chen provided, and the Department has used, the date of invoice, as recorded in Ta Chen's books and records kept in the ordinary course of business. Neither Ta Chen nor petitioners have provided a reason to find that a different date, such as the order date, better reflects the date on which the material terms of sale were finally set. Ta Chen stated that the price and quantity is subject to change between the order date and the invoice date. See Ta Chen's February 25, 2003 Submission at 8. Furthermore, the Department verified that the terms of the sale actually have changed between the order date and the invoice date. See Home Market Verification Report at pages 3817, 3832 and Exhibit 14C. Therefore, we have made no changes to our calculations for the final results of review.

Comment 5: Classification of Home Market Sales

Petitioners contend that Ta Chen failed to report all of its home market sales since Ta Chen reported on page 4 of its Section B questionnaire response that it knows at the time of sale that certain home market sales to other traders are for export. Further, petitioners note that Ta Chen also stated on page 4 of its Section B questionnaire response that, although it records these sales as home market sales in its accounting records, it has treated these sales as third country sales for the Department's reporting purposes.

In testing whether these sales were classified correctly at verification, petitioners claim that the Department instructed Ta Chen to provide documentation related to the omitted sales, for which Ta Chen provided copies of the government uniform invoices ("GUIs") and commercial invoices for the sales in question. Petitioners describe a number of inconsistencies which point to the fact that Ta Chen improperly removed these sales from the home market database, when it should have properly reported these sales as home market sales.

For the final results of review, petitioners argue that the Department should apply an adverse facts available rate to any U.S. sale that could have matched to any of the subject merchandise sold in these transactions that were excluded from the home market sales database.

Ta Chen contends that it did not record home market sales where it knew that the products would be exported "as is," that is, without conversion to non-subject merchandise. Ta Chen stated that it demonstrated in each instance noted by petitioners, the merchandise was shipped as subject merchandise to a third country, and therefore, not subject to this review.

Department's Position: We disagree with petitioners. Ta Chen's supplemental questionnaire responses indicate that it appropriately excluded sales to third countries from its home market sales database. The questions that petitioners raise regarding the sales documentation for the sales at issue were answered by Ta Chen at pages 3 and 4 of Ta Chen's April 24, 2003 Submission. See also Ta Chen's February 12, 2003 Submission at 4-5. At verification, we examined Ta Chen's method that it used to identify sales that were for export to third countries. See Home Market Verification Report at 6. The invoices that we examined indicated that Ta Chen appropriately excluded sales to third country from its home market sales database. See Home Market Verification Report at Exhibit 3. Therefore, we made no changes in the final results of review with regard to this issue.

Comment 6: Employee Bonuses and Compensation for Directors and Supervisors Recorded in Stockholders' Equity on the Balance Sheet

Petitioners contend that the Department should increase Ta Chen's general and administrative ("G&A") expenses to account for bonuses and compensation paid to employees, supervisors and directors that have not been accounted for in the questionnaire response. Petitioners argue that Taiwan's Generally Accepted Accounting Principles ("GAAP") allows companies to record bonuses and compensation expenses as a reduction to retained earnings rather than as an expense on the income statement.

Petitioners contend that the Department found the treatment of compensation and bonuses as a reduction to stockholders' equity to be distortive in Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8922, (February 23, 1998) ("SRAMs from Taiwan"), and accompanying Issues and Decision Memo at Comment 8. As a result, Petitioners explain that the Department increased the reported cost of production and constructed value data for the value of the bonus and compensation payments for the companies in SRAMs from Taiwan. Petitioners also contend that the Department made similar decisions in Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Japan, 63 FR 40434, 42441 (July 29, 1998) and accompanying Issues and Decision Memo at Comment 9, Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 62 FR 25908, 25914 (May 12, 1997) and accompanying Issues and Decision Memo at Comment 11, and Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Austria, 60 FR 35551, 33557 (June 28, 1995) and accompanying Issues and Decision Memo at Comment 3.

Petitioners contend that in the instant review, Ta Chen included line items for bonuses to employees and compensation for directors and supervisors on its statement of changes in stockholders' equity on its

balance sheet rather than on its income statements for 2001 and 2002. As a result, petitioners contend that the Department should increase Ta Chen's cost of production ("COP") and constructed value ("CV") to account for bonus and compensation payments that are recorded in stockholders' equity on the balance sheet rather than on the income statement pursuant to section 773 (f)(1)(A) of the Act.

Ta Chen contends that petitioners' claim regarding the calculation of bonuses and compensation paid to employees, supervisors and directors is erroneous. Ta Chen claims that the Department requires respondents to report G&A expenses in the COP/CV database based on the fiscal year that most closely corresponds with the POR but does not follow it. Ta Chen claims that it reported its G&A on this basis and received no supplemental requests for revision of its response. Ta Chen contends that it uses G&A expenses from the fiscal year ending December 31, 2001 and recorded on pages 14 of Ta Chen's March 26, 2003 Submission, and page 12 and 15 of Ta Chen's May 5, 2003 Submission. For the fiscal year ended December 31, 2001, Ta Chen notes that there were no transactions of appropriation of earnings for bonus to employees and compensation to directors and supervisors during fiscal year 2001. Thus, Ta Chen argues that for this POR, there was no such bonus amount to be included. However, Ta Chen notes that fiscal year 2002 includes a certain bonus amount for employees' bonus and compensation for directors and supervisors on its statement of changes in stockholders' equity, which it agrees to include in the calculations for the next review.

Department's Position: We agree with petitioners in part. Ta Chen noted in its minor corrections to the response found prior to verification that it omitted a number of bonuses applicable to its packing expenses, indirect selling expenses and invoice processing expenses in the home market. See Home Market Verification Report at Exhibits 1A, 1B, 1C and 1F. Since these expenses represent actual expenses that were incurred during the POR for the production and sales of subject merchandise, we have revised our calculation of packing, indirect selling expenses incurred in the home market for both U.S. and home market sales to include these expenses. See Final Analysis Memo at 2. However, we agree with Ta Chen that the Department should use the G&A figure recorded on Ta Chen's audited financial statement for the most contemporaneous year to the POR, which in this case is 2001, for the calculation of G&A in the COP and CV database. Ta Chen's 2002 fiscal year only covers five months of the POR. Furthermore, the administrative review began before Ta Chen's 2002 fiscal year was complete, so Ta Chen did not have the opportunity to adjust the 2002 financial data, as it normally does for antidumping purposes. The use of the earlier fiscal year is consistent with previous reviews for this case. See e.g. Certain Stainless Steel Butt-Weld Pipe Fittings: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 67 FR 78417 (December 24, 2002), and accompanying Issues and Decision Memorandum at Comment 8 ("SSBWPF from Taiwan, 2000-2001"). Since there were not bonuses and other compensation excluded from the 2001 income statement, the Department does not need to adjust the G&A figure. Therefore, we made no changes to our calculations for bonuses and compensation paid to employees, supervisors and directors included in stockholders' equity in the COP and CV database.

Comment 7: Selling Expenses Associated with Sales Returns in the U.S. Market

Petitioners contend that Ta Chen failed to report the expenses incurred between TCI and Ta Chen associated with returned SSBWPF sold in the U.S. market. Petitioners do not agree that "...such charges represent adjustments to the transfer price between TCI and Ta Chen, rather than a charge between Ta Chen and the customer." See Home Market Verification Report, at 15. Petitioners contend that Ta Chen first incurred expenses on shipping the initial merchandise to TCI and ultimately to the U.S. customer. Petitioners further explain that when the fittings were returned, additional expenses were incurred by Ta Chen and TCI to ship the fittings back to Ta Chen. Petitioners contend that all expenses incurred for the sale of subject merchandise should be captured in the Department's calculations and deducted from the U.S. starting price in the dumping calculation. Consequently, petitioners argue that all the expenses incurred both to ship merchandise to TCI and then to return merchandise to Ta Chen should be captured in the Department's calculations. Furthermore, petitioners contend that page 15 of the Department's Home Market Verification Report notes that "sales returns in the United States were not reported in the section C database."

Petitioners contend that as a remedy, the Department should sum the total value of U.S. SSBWPF as reported in the Home Market Verification Report at Exhibit 8D, and determine the percentage value that these returns represent of the U.S. imports reported in Ta Chen's Section A quantity and value chart. Petitioners contend that to determine the costs associated with the returned fittings, the Department should sum together the highest per-unit value for all expenses incurred between Ta Chen and TCI (such as containerization expenses, domestic brokerage and handling expenses, ocean freight and marine insurance), and then double this value in order to calculate the in-bound and out-bound expenses for the returned merchandise. Petitioners contend that the Department should multiply the per-unit value by the percentage of returned U.S. merchandise to Ta Chen's total U.S. imports of fittings, to calculate the per-unit cost of returned merchandise that would be used to reduce the gross unit price.

Ta Chen contends that the income statements provided in Verification Exhibit 6B shows that there were no sales returns for the fittings mill in 2001. In addition, Ta Chen claims that the one U.S. sale identified during the POR as a return on the 2002 income statement was in fact a short shipment, for which no additional shipping expenses were incurred. Therefore, Ta Chen contends that it did not fail to report all U.S. selling expenses to the Department for returned merchandise.

Department's Position: We disagree with petitioners that Ta Chen failed to properly report the expenses incurred between TCI and Ta Chen associated with returns of SSBWPF sold in the U.S. market. At verification, the Department examined this issue and found that Ta Chen had accounted for these expenses. The Department's Home Market Verification Report explains, "{w}e noted that Ta Chen had a number of returns from export markets, including the United States. Ta Chen explained that sales returns in the United States were not reported in the section C database. However, for

allowances, Ta Chen reported the adjusted quantity and value of the sale between TCI and the unaffiliated customer. However, Ta Chen explained that it did not report any of the sales allowances that TCI charged back to Ta Chen, because such charges represent adjustments to the transfer price between TCI and Ta Chen, rather than a charge between Ta Chen and the customer." See Home Market Verification Report at 15. Furthermore, Ta Chen's sales return ledger only contains one such adjustment for sales return of SSBWPF sold in the U.S. during the POR. See Home Market Verification Report at Exhibit 8D. The other entries in Ta Chen's sales return ledger are either outside the POR, from non-U.S. markets, are for non-subject merchandise, or represent adjustments for short shipments. See id. Additionally, Ta Chen did not actually incur any additional freight expenses since the merchandise was not actually shipped back to Taiwan. Therefore, we find that Ta Chen has accounted for any expenses associated with return of U.S. sales. Thus, we have made no changes to our calculations for the final results of review.

Comment 8: Home Market Indirect Selling Expenses Incurred for Sales to the United States

Petitioners contend that the Department confirmed at verification that Ta Chen failed to include the indirect selling expenses incurred by Sales Department 3 for U.S. sales in its section C questionnaire response, although the Department asked twice for this information. Therefore, petitioners argue that the Department should reduce the gross unit price for U.S. sales by the amount of the indirect selling expenses incurred by Sales Department 3 for U.S. sales.

Ta Chen contends that it reported all of its home market indirect selling expenses incurred for sales to the United States. Ta Chen claims that it reported them in the same way as it had done in many prior reviews and which the Department had accepted. At verification, Ta Chen maintains that the Department contemplated an alternative methodology for calculating home market indirect selling expenses incurred for sales to the United States. Ta Chen claims that it promptly provided the requested information. Ta Chen states that it will be satisfied with either methodology.

Department's Position: We agree with petitioners in part. We agree with petitioners that Ta Chen did not include any indirect selling expenses incurred in Sales Department 3 in its reported DINDIRSU calculations. See Home Market Verification Report at 20. However, we disagree with petitioners' contention that we should reduce the gross unit price for U.S. sales by the amount of the indirect selling expenses incurred by Sales Department 3 for U.S. sales. Section 351.402(b) of the Department's regulations states that "[i]n establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid." See also SAA at 823, which states that "constructed export price will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses (and profit) associated with economic activities occurring in the United States." These expenses are not associated

with economic activity in the United States relating to the sale to an unaffiliated purchaser. Furthermore, the variable DINDIRSU is used only in the calculation of CEP profit in the calculation of the dumping margin. Therefore, using the information provided in Verification Exhibit 11C, we revised our calculations for the final results of review to include the expenses in Sales Department 3 in the calculation of DINDIRSU for the CEP profit calculation. For a detailed description of our calculation, see our Final Analysis Memo at 2-3.

Comment 9: Home Market Inventory Carrying Costs Associated with U.S. Sales

Petitioners contend that Ta Chen failed to include the average number of days that inventory is held by Ta Chen in its U.S. sales listing. Petitioners contend that Ta Chen's explanation for not reporting home market inventory carrying costs associated with U.S. sales ignores the fact that the reported average number of days in inventory includes the number of days that the inventory destined for the United States is held in inventory. Petitioners further note that the Home Market Verification Report at 20-21 explains that the home market inventory carrying costs reported at verification include all of the inventory carrying costs in the entire company for all products. As a result, petitioners contend that the Department should increase the amount of inventory carrying costs for U.S. sales by the average number of days that inventory is held by Ta Chen in the home market.

Ta Chen contends that home market inventory carrying costs should not be removed from U.S. price because it believes they are not associated with commercial activity in the United States. In addition, Ta Chen contends that inventory carrying costs are related to the production of the subject merchandise, not the sales of the subject merchandise. Further, Ta Chen contends that the reported inventory carrying costs for U.S. sales was found to be overstated to Ta Chen's detriment at verification. Ta Chen contends that TCI had no short-term borrowings in U.S. dollars, and thus, the lower short-term borrowing rates as reported by the Federal Reserve should be used in the imputed credit and inventory carrying cost calculations for U.S. sales, rather than the long-term rate that Ta Chen used to calculate inventory carrying costs and imputed credit costs in its questionnaire responses. Ta Chen contends that after making this adjustment, Ta Chen's inventory carrying costs and imputed credit costs for U.S. sales will drop regardless of any adjustments for home market or time on the water inventory time. Ta Chen contends that any errors in its U.S. inventory carrying costs were thus in aggregate to Ta Chen's detriment as far as overstating the dumping margin from its actual value.

Department's Position: We disagree with petitioners. Section 351.402(b) of the Department's regulations states that "[i]n establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid." Also, the SAA at 823 states that "constructed export price will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses (and profit) associated with economic activities occurring in the United States." Holding inventory for goods

destined for the United States in Taiwan is not economic activity in the United States associated with the sale to an unaffiliated purchaser. As a result, we will not make any changes to our final results of review for inventory carrying costs incurred in Taiwan in the calculation of the dumping margin. Ta Chen's arguments regarding its short-term borrowings in U.S. dollars are addressed in Comment 12 of this memorandum.

Comment 10: The Inclusion of Time-on-the-Water in U.S. Inventory Carrying Costs

Petitioners contend that Ta Chen failed to include time-on-the-water in its calculation of inventory carrying costs in the United States even though it reported this figure in the narrative of its questionnaire response. Petitioners contend that the Department should increase TCI's inventory carrying costs by the average number of days that the merchandise is in transit over the ocean.

Ta Chen contends that the Department explained in a previous review of SSBWPF Taiwan, Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review, 63 FR 67855 (December 9, 1998) at Comment 2:

> "{T}he inventory carrying costs incurred for the time on the water between Taiwan and the United States should not be deducted from the price used to calculate CEP. The Department has addressed this issue in the past in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty administrative Reviews, 63 FR 33320, 33344 (June 18, 1998) and Color Picture Tubes From Japan; Final Results of Antidumping Duty Administrative Review, 62 FR 34201, 34206 (June 25, 1997). In both instances, the Department stated that it is clear from the Statement of Administrative Action ("SAA") that under section 772(d) of the Act we should deduct from CEP only those expenses associated with commercial activity in the United States, which relate to the resale to an unaffiliated purchaser. In Color Picture Tubes From Japan, we further explained that the SAA indicates CEP "is now calculated to be, as closely as possible, a price corresponding to a price between non-affiliated exporters and importers." 62 FR at 34207 (quoting the SAA at 823). Section 351.402(b) of the Department's new regulations codifies this principle, stating that we will make adjustments under section 772(d) for expenses associated with commercial activity in the United States, no matter where it was incurred. Therefore, consistent with section 772(d) and the SAA, we deduct only those expenses representing activities undertaken to make the sale to the unaffiliated customer in the United States. We ordinarily do not deduct indirect expenses incurred in selling to the affiliated U.S. importer. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of

> Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825, 11834 (March 13, 1997); Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17168 (April 9, 1997).
>
> We do not consider the portion of Ta Chen's inventory carrying costs during the period of transit to be associated with commercial activity in the United States. These expenses were incurred from the date of exportation to the date the affiliated importer received the subject merchandise in the United States and, therefore, relate to the sale to Ta Chen's U.S. affiliate and not to the sale to the unaffiliated customer. See Certain Stainless Wire Rods From France: Amended Final Results of Antidumping Duty Administrative Review (Steel Wire Rods), 62 FR 25915, 25916 (May 12, 1997). Accordingly, for these final results we have not deducted such costs from the CEP."

Therefore, Ta Chen argues that the reasons stated above for time on the water, any inventory carrying costs and indirect selling expenses incurred in Taiwan should not be netted from its U.S. CEP price.

Department's Position: We disagree with petitioners. Time-on-the-water is an in-transit cost that should not be included in the reported inventory carrying costs of TCI. In-transit inventory carrying costs are indirect selling expenses relating to the sale to the affiliate and, consequently, are not associated with U.S. economic activity or related to the resale of the merchandise. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590, 35619 (July 1, 1999). The Department has maintained this position in previous reviews for this case. See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results of Antidumping Duty Administrative Review, 65 FR 81827 (December 27, 2000) and accompanying Issues and Decision Memorandum at Comment 3. Therefore, in accordance with section 351.402(b) of the Department's regulations and with previous reviews, we will not include the time-on-the-water in the calculations of TCI's inventory carrying costs.

Comment 11: U.S. Indirect Selling Expenses

Petitioners contend that Ta Chen failed to rely on TCI's financial statements that were most contemporaneous with the POR for reporting the total value of U.S. indirect selling expenses. Petitioners claim that by using the 2001 financial statements, Ta Chen ignored the Department's longstanding policy of using the financial statements that most closely represent the period of review, thus precluding the Department's ability to calculate the most accurate dumping margin possible. Therefore, petitioners contend that the Department should recalculate TCI's U.S. indirect selling expenses based on TCI's fiscal year 2002 financial statements, since the 2002 financial statements most closely represent the period of review.

Furthermore, petitioners contend that Ta Chen failed to include TCI's cost of financing in the U.S. indirect selling expense calculation as reported in the U.S. Verification Report at 1. Therefore, petitioners assert that the Department should rely on TCI's fiscal year 2002 financial statements, including TCI's 2002 interest expense, for the final results of review.

Ta Chen contends that TCI used the indirect selling expenses from its financial statement that most closely corresponds to the POR. Ta Chen claims that this is the approach that it has used in all prior reviews which the Department has accepted. Ta Chen contends that petitioners' request to use a financial statement that covers a period that ends after the POR is erroneous because section 772(d)(1) of the Act states that the costs to be used in the dumping calculation are those that are incurred "in selling the subject merchandise" and that costs incurred after the POR cannot be incurred in selling the subject merchandise during the POR. Further, Ta Chen argues that the SAA at 824, states that only costs "reasonably attributed" to the sales of subject merchandise during the POR may be used. Ta Chen contends that costs incurred after the POR cannot be reasonably related to the POR.

Also, Ta Chen argues, that should the Department choose to use the audited financial statements for 2002, it would have to remove certain expenses before including the 2002 information in the calculation of the dumping margin, such as: (1) legal fees incurred by TCI to defend against anti-dumping cases, since it is the Department's practice not to increase the dumping margin for efforts to defend against and comply with the U.S. antidumping law; and, (2) costs TCI reported elsewhere in TCI's questionnaire response on a transaction-specific basis, such that it would double count such costs to consider them as part of U.S. indirect selling expenses as well.

Department's Position: We agree with petitioners in part. However, we disagree with petitioners' contention that by using the 2001 financial statements, Ta Chen ignored the Department's policy of using the financial statements that most closely represent the period of review, thus precluding the Department's ability to calculate the most accurate dumping margin possible. In the Preliminary Results, the Department used TCI's operating costs from its 2001 audited financial statements to calculate its U.S. indirect selling expenses, which included greater time overlap with the POR. Ta Chen's 2002 fiscal year only covers five months of the POR. Furthermore, the administrative review began before Ta Chen's 2002 fiscal year was complete, so Ta Chen did not have the opportunity to adjust the 2002 financial data, as it normally does for antidumping purposes. The use of the earlier fiscal year is consistent with previous reviews for this case. See, e.g., SSBWPF from Taiwan, 2000-2001, 67 FR 78417, and accompanying Issues and Decision Memorandum at Comment 8. Therefore, we have continued to base our U.S. indirect selling expense calculation on fiscal year 2001 data and have made no changes for the final results of review.

However, we agree with petitioners that TCI's cost of financing should be included in the calculation of U.S. indirect selling expenses. Therefore, we have recalculated TCI's U.S. indirect selling expenses to include TCI's interest expenses. For a detailed explanation, see Final Analysis Memo at Attachment 1.

Comment 12: Short-term Borrowing Rate for Imputed Credit in the United States

Ta Chen contends that it is the Department's practice to use the U.S. Federal Reserve Bank short-term rate for determining imputed credit costs when a respondent has no actual short-term borrowing in U.S. dollars, according to Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42849 (August 19, 1996); and Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 67 FR 63616 (October 15, 2002). Ta Chen contends that the Department established that Ta Chen had no actual short-term borrowing in the U.S. market at verification by reviewing the loan documents and holding discussions with company officials. Therefore, Ta Chen contends that the Department should use the U.S. Federal Reserve Bank short-term borrowing rates reported on *www.fereralreserve.gov* to determine imputed credit costs in the U.S. market.

Petitioners argue that the Department should reject Ta Chen's claim that TCI had no short-term U.S.-dollar borrowings during the POR, and that the Department should instead rely on the U.S. Federal Reserve Bank's short-term borrowing rate for the calculation of U.S. credit and U.S. inventory carrying costs. Petitioners claim that Ta Chen's claim is not supported by the Department's verification report, TCI's verification exhibits, TCI's financial statements, TCI's accounting books and records, or Ta Chen's certified submissions in this review.

Petitioners contend that TCI's audited financial statements demonstrate that TCI entered into an agreement with Foothill Capital Corporation which provided short-term revolving letter-of-credit accommodations. Petitioners further contend that TCI's audited financial statements indicate that a restricted bank account was established to accept customers' payments on the letters of credit, which in turn are used by Foothill to pay off the short-term advances. Petitioners argue that given the credit terms that TCI extends to its customers, the revolving letter of credit from Foothill must be a short-term loan, because TCI must repay the letter of credit when it receives payment from its customers. Finally, petitioners argue that Verification Exhibit 18 provides documentary evidence that the restricted bank account established to accept U.S. customers' payment on letters of credit, which in turn are used by Foothill to pay off the short-term advances were used in the course of making sales to the United States, and hence demonstrate that such short-term financing exists in the United States.

Petitioners disagree with Ta Chen's contention that, at verification, the Department found that TCI had no actual U.S.-dollar short-term borrowings during the POR. Petitioners point out that Ta Chen submitted its calculation for TCI's U.S.-dollar-denominated short-term loans in exhibit C-6 of Ta Chen's October 4, 2003 Submission and Exhibit 10 of Ta Chen's February 25, 2003 Submission. In addition, petitioners claim that the U.S. Verification Report at Exhibit 9 provides evidence that TCI had short-term borrowings which it did not acknowledge in its case brief. Furthermore, petitioners contend

that TCI did not disclose all of its U.S.-dollar short-term loans to the Department. For example, petitioners explain that TCI's audited financial statements indicate that TCI had an overdraft balance of $761,169. Petitioners claim that no bank would permit any banking customer to maintain an overdraft balance in its account and not charge interest and fees. Thus, petitioners maintain that Ta Chen had short-term loans to cover its overdraft position at the bank.

In addition, petitioners contend that there is nothing in the U.S. Verification Report that suggests that TCI's reported U.S. short-term borrowings were long-term loans. Rather, petitioners contend that the Department verified the short-term interest rate that Ta Chen reported and that no documentation on the record supports the conclusion that these loans were in fact long-term loans. See Ta Chen's February 25, 2003 Submission Consequently, petitioners contend, that contrary to Ta Chen's assertion, the Department did find that TCI had short-term borrowings at verification and was able to identify the interest rate that TCI obtained for its loans.

Petitioners argue that the Department must base its decision on substantial evidence on the record rather than on undocumented and misleading statements made at TCI's verification which contradict Ta Chen's prior questionnaire response and verification exhibits. Thus, petitioners assert that the Department should rely on the verified short-term interest rate reported in Ta Chen's submissions, TCI's verification exhibits, and TCI's audited financial statements and accounting system to calculate U.S. credit expenses and U.S. inventory carrying costs for U.S. sales.

On a separate issue relating to TCI's short term cost of borrowing, petitioners argue that Ta Chen should not use Ta Chen's short term cost of borrowing U.S. dollars to calculate imputed credit ("IMPCREDITU") for U.S. sales that are shipped directly from Taiwan to the unaffiliated customer ("direct shipment"). Petitioners refer to the U.S. Verification Report at Exhibit 18 to illustrate that TCI, not Ta Chen, extends the credit terms to the U.S. customer. Petitioners argue that Chapter 8 of the Department's dumping manual explains that the Department will "...impute the cost of credit by determining the number of days payment is outstanding and the interest rate the company paid, or would have paid, if it borrowed the same money...to finance its accounts receivable." Thus, petitioners argue that the IMPCREDITU for all of Ta Chen's U.S. sales should be based on TCI's short-term cost of borrowing U.S. dollars.

In Rebuttal, Ta Chen contends that, contrary to petitioners claims, it properly used Ta Chen Taiwan's U.S.-dollar short-term interest rate for U.S. direct shipment sales. Ta Chen contends that the payment terms that Ta Chen extends to TCI means that Ta Chen Taiwan, rather than TCI, is financing the direct shipment sales, and since Ta Chen claims that TCI had no short-term borrowing in the United States, the appropriate interest rate to use for the direct shipment sales is Ta Chen Taiwan's U.S. dollar short-term interest rate incurred in the home market.

Department's Position: We disagree with Ta Chen on both issues. TCI's short-term interest rate as recorded in Ta Chen's submissions, TCI's verification exhibits, TCI's accounting system, and TCI's financial statements is the appropriate rate of interest to apply to the calculation of U.S. inventory carrying costs and imputed credit for all sales to the United States. At verification, we confirmed that loans reported to the Department as the basis for calculating TCI's short-term cost of borrowing were in fact lines of credit used to finance accounts receivables in the United States. See U.S. Verification Report at 12; see also, Ta Chen's October 4, 2003 Submission at Exhibit C-6; see also Ta Chen's February 25, 2003 Submission at Exhibit 10.

With regard to the cost of borrowing that is to be imputed for direct shipment sales, we disagree with Ta Chen. As explained in Policy Bulletin 98.2, Imputed Credit Expenses and Interest Rates, (February 23, 1998) ("Policy Bulletin 98.2"), the imputation of credit cost is a reflection of the time value of money that must correspond to a figure reasonably calculated to account for such value during the gap period between delivery and payment, and it should conform with "commercial reality." See Policy Bulletin 98.2 citing LMI-La Metalli Industriale, S.p.A. v. United States, 912 F.2d 455 (Fed. Cir. 1990) ("LMI"). Imputed credit represents "the cost to the respondent for not receiving immediate payment for its sales." See Policy Bulletin 98.2. Although Ta Chen argues that its financial statements indicate that it extends credit for U.S. sales, the credit extended relates to the transaction between Ta Chen and TCI, not Ta Chen and the unaffiliated U.S. customer. TCI extends payment terms to the unaffiliated U.S. customer for all U.S. sales. See Ta Chen's February 25, 2003 Submission, at 10. The date of payment reported in Ta Chen's section C database is "the date of deposit in TCI's bank account." See Ta Chen's October 4, 2003 Submission, at C-12. Since TCI, and not Ta Chen, extends credit and receives payment for all U.S. sales, TCI's short-term cost of borrowing U.S. dollars is the appropriate basis for imputing credit. Therefore, we applied TCI's cost of borrowing to calculate U.S. credit expenses for all U.S. sales for the final results of review. For a detailed explanation, see Final Analysis Memo at 4.

Comment 13: CEP Profit

Ta Chen contends that it has argued in prior reviews and in court that the CEP profit adjustment should take into account U.S. inventory carrying costs and imputed credit costs specific to the subject merchandise. Ta Chen contends that these enormous costs are specific to fittings and are not shared by other products sold by TCI. Ta Chen contends that the CEP profit rate for fittings was overstated. Furthermore, Ta Chen contends that an adjustment to TCI's company-wide average interest costs does not account for these enormous fitting-specific costs, which, as a percent of cost, are far higher than the company-wide average.

Ta Chen contends that the Department overstates the CEP profit ratio because it ignores imputed credit costs and U.S. inventory carrying costs incurred by TCI. Furthermore, Ta Chen argues that the CEP profit adjustment is further exaggerated since the Department calculates the CEP profit adjustment by

multiplying the CEP profit ratio by the same U.S. inventory carrying and imputed credit costs that it ignored to calculate the CEP profit ratio. Ta Chen contends that the downward CEP profit adjustment was thereby greatly overstated, which in turn, overstated the dumping margin.

Ta Chen notes that the Department has rejected the CEP profit argument in prior reviews, and the issue is now before the CIT. Ta Chen notes that it attached its case and rebuttal briefs to the court and incorporated them by reference into the case brief. Ta Chen claims that the purpose of submitting these briefs as an attachment to its case brief is to preserve the argument now before the court in the hope that, pursuant to court litigation, the Department has reassessed or decided to revisit its position.

Petitioners contend that the Department's CEP profit calculation and CEP profit adjustment to the U.S. CEP price are supported by substantial evidence on the record and is otherwise in accordance with law.

Petitioners argue that the statutory authority for the Department's adjustment derives from section 772(d)(3) of the Act, which instructs the Department to reduce the starting price to the first unaffiliated U.S. customer by the profit allocated to expenses incurred for selling, distributing and further manufacturing activities in the United States with respect to a respondent's subject merchandise; and section 772(f) of the Act which provides a "special rule for determining profit" on CEP sales.

Petitioners contend that in the preliminary results of review, the Department calculated CEP profit in accordance with the Act, the Department's regulations and the Department's Policy Bulletin No 97/1 found at http://ia.ita.doc.gov/policy/bull97-1.htm. Petitioners explain that the Department calculated the actual profit rate of the subject merchandise sold in the home and U.S. markets, by determining the amount of the total actual expenses and total actual revenue reported on the respondent's computer sales listing. It then used these actual figures to deduct total actual expenses from total actual revenue to obtain total actual profit reported for U.S. and home market sales. Since the Department used the total actual expenses reported on the computer sales listing, petitioners argue that the Department's calculations, were made in accord with section 772(f)(2)(B) of the Act, which defines "total United States expenses" to include commissions, expenses that bear a direct relationship to the U.S. sales (e.g., credit expenses, guarantees, warranties), and any selling expenses that the seller bears on behalf of the buyer, any other selling expenses, and U.S. further manufacturing costs.

Therefore, petitioners argue that the Department should reject Ta Chen's argument that the Department should include imputed credit expenses (CREDITU) and inventory carrying costs (INVCARU) in its calculation of total United States expenses used to determine U.S. profit.

First, petitioners argue that such a calculation would blur and redefine the statutory concept of total actual profit, (now calculated as the difference between actual revenue and actual expense), by defining actual expenses as a hybrid of actual and imputed interest expenses. Petitioners contend that it would

be both nonsensical and contrary to the thrust of section 772(f)(2)(D) of the Act to replace actual interest expenses that are recorded in the accounting books and records with imputed expenses.

Second, petitioners contend that the Department's CEP formula provides a logical methodology for calculating the ratio of total actual profit earned to total actual expenses and applying this ratio to individual U.S. CEP sales in a manner that is consistent with information derived from the respondent's accounting books and records.

Third, petitioners argue that the Department's practice of considering total actual expenses in the CEP profit calculation is reasonable, because actual net interest expenses recorded in the respondent's books and records reflect the actual cost to finance, among other things, its accounts receivable and inventory, as emphasized in the Department's Policy Bulletin 97/1. which states that ". . . there is no need to include imputed interest amounts in the profit calculation since we have already accounted for actual interest in computing "actual profit" under section 772(f). . . . however, when allocating a portion of actual profit to each U.S. CEP sale, we will include imputed credit and inventory carrying costs as part of the total U.S. expenses allocation factor. This is consistent with section 772(f)(1) which defines the term total U.S. expenses as those described under section 772(d)(1) and (2)."

Moreover, petitioners contend that the CIT held with respect to CEP profit that "{t}here is also nothing that categorically prevents the inclusion of imputed expenses. Rather, imputed expenses should be omitted from actual profit if they duplicate expenses already accounted for." See Thai Pineapple Canning Industry Corp., Ltd. v. United States, 23 CIT 286, 296 (1999), aff'd, 273 F. 3d 1077 (Fed. Cir. 2001) ("Thai Pineapple"). Therefore, petitioners maintain that actual net interest costs, which are included in "total expenses," already account, inter alia, for the cost of financing inventory and accounts receivable. Thus, according to petitioners, the inclusion of imputed inventory carrying costs and credit expenses would be duplicative and would result in a wrongful overstatement of expenses and understatement of CEP profit, as indicated by the court in Thai Pineapple.

Petitioners contend that in the Amended Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada, 67 FR 15528, 15529 (April 2, 2002) ("Greenhouse Tomatoes"), the Department used the same methodology to calculate CEP profit. Petitioners argue that Ta Chen's contention, expressed in its October 29, 2003 case brief,(initial brief at 6 and reply brief at 9-10), that the Department admitted that it should include imputed credit and inventory carrying costs in total U.S. expenses used to determine total actual profit is inaccurate. Rather, petitioners argue that the Department's reference is to total actual expenses, confirmed by the computer program used in Greenhouse Tomatoes. See Petitioners' Rebuttal Brief, at page 14 and Attachment 2 at line 530, (November 5, 2003).

Furthermore, petitioners argue that the Department stated its intention to exclude imputed credit and inventory carrying costs in the Preamble to the Department's current regulations, where the Department

specifically explained it ". . . does not take imputed expenses into account in calculating cost. Moreover, normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit." See Preamble, 62 FR at 27354. The Department reiterated this sentiment in the final results of its 1999-2000 review and 2000-2001 review, stating that "{n}ormal accounting principles only permit the deduction of actual booked expenses, not imputed expenses, in calculating profit. Inventory-carrying costs and credit expenses are imputed expenses, not actual booked expenses, so we have established a practice of not including them in the calculation of total actual profit. See Certain Stainless Steel Butt-Weld Pipe Fittings: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 67 FR 78417 (December 24, 2002), and accompanying Issues and Decision Memorandum at Comment 2; Certain Stainless Steel Butt-Weld Pipe Fittings: Final Results of Antidumping Duty Administrative Review, 66 FR 65899 (December 21, 2001), and accompanying Issues and Decision Memorandum at Comment 3. Petitioners contend that by relying on a respondent's net interest expenses, as recorded in its normal books and records, the Department has considered the actual cost of financing incurred by the company to hold, among other things, its accounts receivable and inventory. Thus, the reliance on the actual net interest expenses already reflects and takes into account the cost of credit for sales and inventory carrying costs of merchandise reported by respondents in their sales responses.

Similarly, petitioners argue that legislative history undercuts Ta Chen's contention that "total expenses" includes imputed credit and inventory carrying costs. Although petitioners acknowledge that section 772(f)(2)(c) of the Act does not expressly speak of "total actual expenses" and mentions instead "total expenses," they explain that the SAA at 825 states that "The total profit is calculated on the same basis as the total expenses." Furthermore, petitioners note that section 772(f)(2)(D) of the Act defines "total profit" explicitly as "total actual profit." Therefore, petitioners contend that "total expenses" can only be interpreted as "total actual expenses" and not a mixture of actual and imputed expenses as Ta Chen has argued.

Petitioners argue that the SAA gives authoritative guidance on this issue. Petitioners contend that "{t}he Statement of Administrative Action . . . shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application." See 19 U.S.C. § 3512(d). Petitioners argue that "total expenses," which Congress indicated in the SAA at 825 are "total actual expenses," just as "total profit" is expressly "total actual profit." Therefore, petitioners argue that there is no other way that one can reasonably understand the SAA's guidance that total profit and total expenses are to be calculated on the same basis -- that is, on an actual basis. As a result, petitioners argue that the Department's reliance on Ta Chen's total actual expenses is appropriate for the final results of review.

Finally, petitioners argue that the Department's CEP profit calculation does not violate the obligations of the United States under the WTO's antidumping agreement. Petitioners argue that the Department's

calculation of CEP profit does not violate the obligations of the United States under the World Trade Organization's Antidumping Agreement. Petitioners contend that Articles 2.3 and 2.4 of the Antidumping Agreement discuss only generally when U.S. price is to be determined by means of a constructed export price. Petitioners contend that nowhere in Articles 2.3 and 2.4 is there any language that expressly states how the adjustment for profits accruing on CEP sales should be computed. In other words, petitioners explain that nothing in Articles 2.3 and 2.4 compels Ta Chen's interpretation favoring use of imputed inventory carrying costs and imputed credit costs in lieu of actual credit costs for purposes of calculating total expenses for CEP profit.

Petitioners note that Ta Chen's case brief asserts that an Act of Congress should not be construed in a way that violates the obligations of the United States under public international law if some other interpretation remains that does not cause such a problem. See Ta Chen's Case Brief at 12 (October 29, 2003); see e.g., Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804). In this instance, however, petitioners argue that there has been no showing by Ta Chen that the United States is required under public international law to compute CEP profit as Ta Chen wishes, and no decision to this effect has been rendered under the World Trade Organization's dispute settlement system. In fact, petitioners note that Articles 2.3 and 2.4 of the Antidumping Agreement can be understood to require or at least permit total actual expenses to be employed in arriving at total actual profit and CEP profit, as the Department has done in its review. Accordingly, petitioners argue that Ta Chen's argument should be dismissed.

Department's Position: We agree with petitioners that the Department's CEP profit calculation and CEP profit adjustment to the U.S. CEP price are supported by substantial evidence on the record and is calculated in accordance with section 772(d)(3) of the Act, the Department's regulations, and the Department's Policy Bulletin No 97/1, all of which require the Department to reduce the starting price to the first unaffiliated U.S. customer by the profit allocated to expenses incurred for selling, distributing and further manufacturing activities in the United States with respect to a respondent's subject merchandise. As we noted in the last two reviews, it is the Department's practice to calculate the CEP profit ratio based on actual expenses, not imputed expenses. Normal accounting principles only permit the deduction of actual booked expenses, not imputed expenses, in calculating profit. Inventory-carrying costs and credit expenses are imputed expenses, not actual booked expenses, so we have established a practice of not including them in the calculation of total actual profit. See SSBWPF from Taiwan, 2000-2001, 67 FR 78417, and accompanying Issues and Decision Memorandum at Comment 2; see also Certain Stainless Steel Butt-Weld Pipe Fittings: Final Results of Antidumping Duty Administrative Review, 66 FR 65899 (December 21, 2001), and accompanying Issues and Decision Memorandum at Comment 3 ("SSBWPF from Taiwan, 1999-2000"); see also Thai Pineapple at 296.

The Department acknowledges that the CIT, in two cases, has directed the Department to include all expenses included in total United States expenses in the calculation of total expenses. See FAG Italia

Spa v. United States, 97-07-00260-5, Slip. Op. 2000-154 (CIT, Nov. 21, 2000); SNR, Roulements v. United States, 118 F. Supp. 2d 1333 (CIT, 2000); Notice of final Results of Antidumping Review of Circular Welded Non-Alloy Steel from Mexico: November 1, 1998 through October 31, 1999 ("Pipe from Mexico"), 66 FR 21311 (April 30, 2001) and accompanying Issues and Decisions memo at Comment 4.

In both SNR and FAG Italia, the CIT held that Commerce's CEP methodology with respect to imputed expenses was not in accordance with law. The United States has appealed both judgements. However, in Ausimont SPA v. United States, Slip. Op. 01-92 (CIT August 2, 2001), the CIT sustained Commerce's methodology. Consequently, as we have stated in the past two administrative reviews of this case, until such time as these decisions are final, the Department will continue to apply its current methodology in excluding imputed expenses when calculating profit. See ("SSBWPF from Taiwan, 2000-2001") and ("SSBWPF from Taiwan, 1999-2000"). Therefore, we made no changes to our calculations in the final results of review.

Comment 14: Wire Transfer Fee for Payments from TCI to Ta Chen

Petitioners argue that Ta Chen failed to report the wire transfer fee associated with payment from TCI to Ta Chen ("CREDIT2U") for certain sales from TCI's inventory. Petitioners argue that TCI pays a wire transfer fee for the payment of invoices for direct shipment sales from Ta Chen. See U.S. Verification Report at Exhibit 18. Petitioners argue that this same fee must be incurred on each stock sale as well. However, petitioners assert that Ta Chen has reported no expense for the CREDIT2U field in its U.S. sales database for a number of stock sales. Petitioners argue that the Department should calculate a per-unit wire transfer fee for all U.S. sales where the CREDIT2U field is equal to zero.

Ta Chen argues that it properly reported the bank charge (wire transfer fee) for TCI's U.S. warehouse stock sales under the variable CREDIT2U. Ta Chen argues that for some sales the figure is so small that, even after four decimal places, the amount is still zero. Further, Ta Chen argues that the method requested by petitioners to calculate the unit wire transfer fee would grossly overstate its wire transfer fees.

Department Position: We disagree with petitioners. The Department identified all U.S. observations where a zero was reported in the CREDIT2U field and found that in each case, the reported value of zero accurately reflects the per-unit CREDIT2U expense when rounded to the nearest thousandth decimal point. The Department verified Ta Chen's method for allocating CREDIT2U expenses to stock sales and direct shipment sales. See U.S. Verification Report at pages 17-18, and Exhibit 16 at 5366-5368. Since the Department found that Ta Chen accurately reported its wire transfer fees, we made no change to our calculations for wire transfer fees from TCI to Ta Chen for the final results of review.

Comment 15: U.S. Inventory Carrying Costs

Petitioners argue that Ta Chen miscalculated its inventory carrying costs for U.S. sales ("INVCARU"). Petitioners argue that Ta Chen erroneously included the cost of goods sold ("COGS") and the value of direct shipment sales in its calculation of the average number of days in TCI inventory, without reporting a value in INVCARU for direct shipment sales to the United States.

Ta Chen argues that there are no inventory carrying costs incurred in the U.S. for direct shipment sales because Ta Chen ships directly to the unaffiliated U.S. customer. In addition, Ta Chen contends that it did exclude direct shipment sales from its calculation of U.S. inventory carrying costs. See Ta Chen's April 24, 2003 Submission at 5-6; Ta Chen's February 25, 2003 Submission at 108; U.S. Verification Report at page 11 and verification exhibit 8, at 2200-2210.

Department Position: We disagree with petitioners that Ta Chen improperly calculated INVCARU. We examined this issue at the U.S. verification and found that Ta Chen excluded the COGS and value of U.S. direct shipment sales when it calculated its average number of days in TCI inventory. See U.S. Verification Report at page11 and Exhibit 8, see also, Ta Chen's October 4, 2003 Submission, at Exhibit C-8. Therefore, we made no change to our calculations for this issue for the final results of review.

Comment 16: Weighted-Average Direct Selling Expenses for U.S. Stock Sales

Petitioners argue that Ta Chen is applying the weighted-average direct selling expenses for U.S. stock sales instead of reporting the actual import-specific expenses for U.S. stock sales pursuant to section 351.401(g) of the Department's regulations. Petitioners contend that Ta Chen is able to tie each U.S. sale from TCI inventory to a specific importation from Taiwan. Petitioners argue that the U.S. Verification Report at Exhibit 23 shows that Ta Chen can tie each U.S. stock sale to a specific importation by linking the heat number, the product number, and the mill test report ("MTR") for each sale. Petitioners contend that the reporting of actual expenses rather than averaged expenses is important because some of the averaged expenses appear to be lower than the expenses reported on a transaction specific basis.

Ta Chen argues that tracing the heat number and MTR of a fitting sold from TCI's U.S. warehouse does not permit the reporting of movement costs of the fitting from Taiwan on a transaction-specific basis because one heat number can often trace to many MTRs. As an example, Ta Chen asserts that the heat number for the product petitioners identified in their brief traces to nine separate MTRs. In addition, Ta Chen argues that the Department has already held in a prior review that, even if tracing was possible, the Department would not require it here because it would be too burdensome, as it would have to be done one-by-one on approximately 25,000 sales.

Department Position: We disagree with petitioners. The Department shares petitioners' conviction that entry-specific expenses for U.S. sales are more accurate, and therefore preferable. However in this instance, the Department does not find that it is practicable or possible to determine entry-specific expenses. As in previous reviews, the Department verified the extent to which Ta Chen is able to report entry-specific expenses for U.S. sales out of TCI inventory. We found that it is not possible to use the heat number and mill test report to link stock sales to a specific entry for all of TCI's stock sales. We noted in the U.S. Verification Report that there are three types of scenarios that prevent them from being able to use the heat number to report import specific expenses for stock sales: (1) when TCI imports from Ta Chen, all subject merchandise goes into inventory in their warehouses and they do not keep track of the shipment each SSBWPF came from; (2) the same heat number may appear on multiple shipments from Ta Chen to TCI; and (3) TCI's inventory turnover time is so long that they often will have multiple heat numbers for the same product on one invoice to the U.S. customer. See U.S. Verification Report at 15-16 and pages 6008A-6009B of exhibit 17. Thus, it would be virtually impossible for Ta Chen to connect all stock sales to a specific entry. Moreover, even if the petitioners' proposed method could link all stock sales to a specific entry, Ta Chen would face the burden of merging its accounting software with its software that tracks mill test reports. See U.S. Verification Report at 15-16.

The situation has not changed since previous reviews. In the most recent review, the Department determined in that although "Ta Chen could report direct sales expenses for a majority of samples done by the Department at verification, we determined that this process would be too burdensome for Ta Chen to make a complete report." See e.g., Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results of Antidumping Duty Administrative Review, 66 FR 65899 (December 21, 2001) and accompanying Issues and Decision Memorandum at Comment 4.

In regards to petitioners' contention that certain weighted-average expenses are lower than when reported on an entry-specific basis, the Department does not find the result unusual in that Ta Chen's shipments to TCI are larger than its shipments to unaffiliated U.S. customers. Thus, the per-unit expenses associated with larger shipments would be smaller because they are allocated to a larger number of units. See U.S. Verification Report at 15.

For this review, there is no evidence on the record showing that Ta Chen can trace all of its CEP expenses to specific imports absent a manual analysis. Moreover, the record evidence shows that even with a manual analysis a certain percentage of the expense would still need to be allocated on a weighted-average basis. Considering that the burden on Ta Chen to report entry specific expenses would be great and that the benefit of doing so would be minimal, we are accepting Ta Chen's weight-averaged methodology as a reasonable way of calculating CEP expenses, and we made no changes to our calculations for the final results of review.

RECOMMENDATION:

Based on our analysis of both the comments received and our own findings, we recommend adopting all of the above changes and positions and adjusting the model match and margin calculation programs, accordingly. If these recommendations are accepted, we will publish our final results of review, including Ta Chen's final weight-averaged dumping margin in the Federal Register.

AGREE____ DISAGREE____

_____

James J. Jochum
Assistant Secretary
for Import Administration

_____

Date

Public Document