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February 2, 2004

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 Final Results of Antidumping Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan

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SUMMARY

We have analyzed the case briefs and rebuttal briefs of interested parties in this review. As a result of our analysis, we have made changes from the preliminary results of review for Chia Far Industrial Factory Co., Ltd. ("Chia Far") and Yieh United Steel Company Ltd. ("YUSCO"). These changes can be found in the Analysis for the Final Results in the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan - Yieh United Steel Company Ltd., dated February 2, 2004 ("YUSCO Final Analysis Memorandum"), and Analysis for the Final Results in the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan - Chia Far Industrial Factory Co., Ltd ("Chia Far"), dated February 2, 2004 ("Chia Far Final Analysis Memorandum").

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

BACKGROUND

The Department of Commerce ("the Department") published its notice of preliminary results of antidumping administrative review of stainless steel sheet and strip in coils ("SSSS") from Taiwan on August 6, 2003. See Stainless Steel Sheet and Strip in Coils From Taiwan; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 46582 (August 6, 2003) ("Preliminary Results").

The merchandise covered by this order is SSSS as described in the "Scope of the Review" section of the Federal Register notice. The period of review ("POR") is July 1, 2001 through June 30, 2002.

We received written comments from petitioners on August 8, August 13, August 29, September 24, October 2, and October 17, 2003, concerning YUSCO's supplemental questionnaire responses. YUSCO submitted supplemental questionnaire responses on August 29, 2003, and September 22, 2003, at the Department's request.

We conducted a verification of the sales information provided by YUSCO from September 22 to September 30, 2003.

We invited interested parties to comment on our Preliminary Results. We received written comments on November 18, 2003, from petitioners[1] addressing our analysis of YUSCO, Tung Mung Development Corporation ("Tung Mung"), Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), and Chia Far. We received rebuttal briefs from Chia Far on November 2, 2003, and from YUSCO on November 3, 2003, concerning petitioners' comments. On December 9, 2003, the Department discovered that YUSCO's September 22, 2003 response was improperly bracketed, and requested YUSCO to resubmit its response. On December 16, 2003, YUSCO re-submitted its September 22, 2003 response with revised bracketing.

LIST OF ISSUES FOR DISCUSSION

A. Issues with Respect to Tung Mung and Ta Chen

Comment 1: Rescission of Review for Ta Chen
Comment 2: Adverse Facts Available ("AFA") for Tung Mung

B. Issues with Respect to YUSCO

Comment 3: Affiliation with Yieh Loong Enterprise Company Ltd. ("Yieh Loong") and China Steel Corporation ("CSC")
Comment 4: Classification of Home Market Sales
Comment 5: Affiliated Parties in the Home Market
Comment 6: Returned Sales
Comment 7: Affiliation and Collapsing with a Certain Downstream Further Manufacturer
Comment 8: Freight Expense Reported by Affiliated Parties in the Home Market
Comment 9: Cost Reconciliation

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

C. Issues with Respect to Chia Far

CHANGES TO THE COMPUTER PROGRAM

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

YUSCO

- We disregarded home market sales in the HM4 and HM5 databases, and only used sales included in the HM1, HM2 and HM3 databases in our margin analysis. See Comment 4.

- We coded all of YUSCO's sales to a certain reseller in the home market as sales to affiliated parties for the purposes of conducting an arm's length test. See Comment 5.

- We deleted the returned sales from the computer sales listing in the home market. See Comment 6.

- We revised the financial expense ratio to account for the change in the Department's treatment of foreign exchange gains and losses, and to adjust for certain offsets to its foreign exchange gains and losses. See Comment 10.

- We adjusted YUSCO's G&A expense ratio to exclude foreign exchange gains and losses attributable to accounts payable. See Comment 10.

- We made changes to the computer program as a result of minor corrections at verification:

    - We revised cost of manufacturing and variable cost of manufacturing in the COP, CV and U.S. sales databases to account for certain changes to direct labor made as a result of auditor's adjustments.

    - We made changes to credit and ICC ratios in the U.S. and home markets to account for errors in the reported interest rate.

    - We revised the commercial invoice date for U.S. sales that were reported in error.

CHIA FAR

- We recalculated U.S. warranty expense to include all of the appropriate warranty expense recorded as export losses. See Comment19.

- We increased COP for certain expenses recorded in Chia Far's financial statements that are in accord with the GAAP in Taiwan but have been found to be distortive by the Department. See Comment 22.

- We decreased COGS by the total value of further processing and packing expenses reported during the POR in order to reflect all the appropriate costs that are included in the cost of manufacturing. See Comment 23.

- We revised the financial expense ratio to account for the change in the Department's treatment of foreign exchange gains and losses. See Comment 24.

- Additionally, as we explained in Comment 23, we revised the amount of COGS used as the denominator in the financial expense ratio to exclude packing and further processing costs. See Comment 24.

DISCUSSION OF ISSUES

F. ISSUES WITH RESPECT TO TUNG MUNG AND TA CHEN

Comment 1: Rescission of Review for Ta Chen

Petitioners contend that although Ta Chen certified in this review, as it did in prior reviews, that it did not have any entries of the subject merchandise into the United States during the POR, it also acknowledged making sales in the United States of subject merchandise during the POR which entered prior to the suspension of liquidation on June 8, 1999, which is between two and three years prior to the period covered by this administrative review.

Petitioners also note that the Department preliminarily rescinded this administrative review with respect to Ta Chen in accord with section 351.213(d)(3) of the Department's regulations. See Stainless Steel Sheet and Strip in Coils From Taiwan; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 46582, 46584-85 (August 6, 2003) ("Preliminary Results"). Petitioners contend that the Department based its decision on Ta Chen's certification that it did not export subject merchandise to the United States and on the Department's inquiry sent to U.S. Customs and Border Protection ("Customs") on June 24, 2003, for which it received no evidence that Ta Chen made any shipments of subject merchandise to the United States during the POR. See memorandum to the file dated July 16, 2003 ("July 16th Customs Memorandum") and Preliminary Results at 46584-85.

In addition, petitioners note that the Court of Appeals of the Federal Circuit ("CAFC") upheld the Department's rescission of the first administrative review of stainless steel plate in coils ("SSPC") with respect to Ta Chen and YUSCO in Allegheny Ludlum Corp. v. United States, 346 F. 3d 1368 (Oct. 15, 2003) ("Allegheny II") which found that both the Department's regulations and policy on rescission and its application of the regulations and policy were supported by substantial evidence on the record as a whole and otherwise in accordance with law. Petitioners explain that in its final results of review in the third administrative review of SSPC, the Department cited the CAFC's decision in rescinding that review of Ta Chen and YUSCO. See Notice of the Final Rescission of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Taiwan, 68 FR 63067 (November 7, 2003) ("SSPC-3") and accompanying Issues and Decision Memorandum at Comment 2.

However, petitioners contend that the CAFC did not preclude the Department from conducting a review of Ta Chen as requested by petitioners. Instead, petitioners claim that: (1) the CAFC did not think that congressional intent requires the Department to conduct an annual review in such cases; (2) that the sections 751(a)(1) and (a)(2)(c) of the Trade and Tariff Act of 1930, as amended, ("the Act") do not preclude the Department's policy on rescission; (3) that Congress did not express any intent on how the Department should accomplish accurate and current cash deposit rates; and (4) that the Department had adequately explained its decision not to follow its normal practice and require Ta Chen to link its U.S. resales during the POR to pre-suspension entries. See Allegheny II, Slip Op. at 4 – 9. Therefore petitioners argue that nothing in Allegheny II prevents the Department from going forward with an administrative review of Ta Chen.

Petitioners contend that the Department should conduct a full review of Ta Chen, as it did for YUSCO and Chia Far, for the following reasons:

- Petitioners contend that it is the Department's belief that the sine qua non for conducting an administrative reviews is that entries occurred during the POR, even if there were U.S. resales during the POR. See SSPC-3 and accompanying Issues and Decision Memorandum at Comment 2. Petitioners argue that it is imperative to conduct an administrative review of this merchandise since (a) injury occurs whenever dumping of the middleman's U.S. resales takes place during the POR, and (b) the middleman's U.S. resales during the POR are allegedly made from entries of the subject merchandise into the United States which occurred two or three years prior to the POR.

- Petitioners explain, as they have in past reviews, that antidumping duties would not need to be assessed and collected on any U.S. resales made during the POR derived from merchandise which entered the United States prior to the suspension of liquidation. Petitioners contend that a review of such U.S. resales could yield a more accurate and current cash deposit rate for any future entries during the life of the order. Moreover, petitioners contend that the new cash deposit rate would be based upon the middleman's U.S. resales, in the same manner as the rate set in the original investigation. Petitioners contend that the Department's belief that Ta Chen's U.S. middleman resales during the POR are not sales of subject merchandise is at odds with the treatment of Ta Chen's U.S. middleman resales in the original investigation.

- Petitioners argue that the Department's policy concerning the rescission of a review requires the respondent to strictly link its U.S. sales during the POR to pre-suspension entries of subject merchandise as set forth in Final Results of Antidumping Duty Administrative Review: Certain Stainless Steel Wire Rods from France, 61 FR 47874, 47875 (September 11, 1996). Nevertheless, petitioners contend that the Department excused Ta Chen from this task in light of Ta Chen's certifications that it had no entries during the POR and the Department's Customs inquiries showing no shipments during the POR. Petitioners contend that requiring Ta Chen to link each of its U.S. resales during the POR to pre-suspension entries (a) would not be onerous for Ta Chen, because it must have made some sort of assessment of its papers to make its certifications to this effect in the first place, and (b) would be more detailed and precise than the check by Customs.

- Similarly, petitioners contend that Ta Chen should be expected to answer Section A of the Department's questionnaire, providing a comprehensive list of affiliates, including those in the United States. Petitioners contend that the Department's Customs inquiry of July 16, 2003, limited the Department's request to records showing exports or entries during the POR by "Ta Chen Stainless Steel Pipe, Limited." However, petitioners contend that there are other affiliates of Ta Chen in the United States, such as AMS, that might also have exported subject merchandise from Taiwan or entered it into the United States during the POR. Petitioners allege that the Department's inquiry is worded so that Customs would have had no reason to look into its records for entries of subject merchandise by any other company, such as AMS. Petitioners explain that having Ta Chen identify its affiliates in Section A would reduce the risk

of an incomplete check on entries during the POR since Ta Chen has not provided a Section A response and requisite affiliations since the original investigation.

- Furthermore, petitioners contend that Ta Chen told the Department during the verification of two recent administrative reviews of the antidumping duty order against stainless steel butt-weld pipe fittings from Taiwan that Ta Chen's U.S. subsidiary, Ta Chen International (CA) Corp. ("TCI") made numerous sales of subject merchandise from its Cherry Avenue warehouse in Long Beach, California. In fact, petitioners contend that Ta Chen told the Department that it sold nearly one-half of its subject coiled inventory during the 2001/2002 period. As a result, petitioners contend that there should be no reason why the Department should not have Ta Chen report these sales, since petitioners argue that any dumping and associated injury occur at the time of the U.S. middleman resale of the SSSS.

Therefore, petitioners contend that, in the interests of thoroughness, fuller development of the record, updating of cash deposits, and identification of middleman dumping, the Department should not rescind this review of Ta Chen.

Department's Position: We disagree with petitioners' contention that we should not rescind this administrative review with respect to Ta Chen. First, there is no evidence on the record for petitioners' allegation that Ta Chen acknowledged making resales of SSSS in the United States during the POR from merchandise entered into the United States prior to the suspension of liquidation. Petitioners did not cite the source of this information in its case brief, and we have no evidence on the record that would support this contention. Second, in any case, all of petitioners' arguments concerning the rescission of Ta Chen have been expressly rejected by the CAFC and the Court of International Trade ("CIT"). On October 15, 2003, in the litigation pursuant to the first administrative review of SSPC, the CAFC affirmed the Department's rescission policy. See Allegheny II. Specifically, the CAFC ruled "that additional information linking sales and entries would merely be cumulative in view of information already before the agency." See Allegheny II at 1374. Furthermore, in an appeal of the second review of SSPC, the CIT affirmed the Department's decision to rescind an administrative review, just as in this case, on the grounds that the Department found there were no entries of subject merchandise during the POR, and because sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and are therefore not subject to review. See Allegheny Ludlum Corp. v. United States 240 F. Supp. 2d. 1374 (CIT 2003), ("Allegheny III").

As we explained in the preliminary results of this review, in its letter of September 20, 2001, Ta Chen informed the Department that it had no shipments of subject merchandise to the United States during the POR. We confirmed this information through a Customs data inquiry. See Customs No Shipment Inquiry, dated June 24, 2003, and Third Administrative Review; Stainless Steel Sheet and Strip in Coils from Taiwan - No Shipment Inquiry for Ta Chen Stainless Steel Pipe Co., Ltd., dated July 16, 2003. Furthermore, as we stated in the final results of the first administrative review of SSSS from Taiwan, neither the statute nor the regulations require a respondent to affirmatively demonstrate proof of entry of

its resales in order to obtain a rescission, when substantial evidence indicates no entries of the subject merchandise entered the United States during the POR. See Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 6682 (February 13, 2002) ("SSSS-1"), and accompanying Issues and Decision Memorandum at Comment 1; and, Stainless Steel Plate in Coils from Taiwan; Final Rescission of Antidumping Duty Administrative Review, 68 FR 63067 (November 7, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

Customs has not provided the Department with any information to indicate that there have been any Ta Chen entries of subject merchandise since the suspension of liquidation at the preliminary stage of the investigation by Ta Chen. There is sufficient information on the record to establish the lack of sales, entries, or shipments of Ta Chen during the POR. Therefore, as stated by the CIT with respect to this issue in the case of stainless steel plate and coil from Taiwan, which was also raised in the second administrative review of this case, "...requiring Ta Chen to answer Commerce's questionnaire and supplemental questions would have yielded information that was already established by the record." See Allegheny III. The CIT went on to say that accepting the certified statements of a respondent that had no shipments during the POR and verifying those statements with a Customs inquiry is not contrary to the notion that the burden of creating the record rests with the respondent. See id. The CIT stated that it will defer to the Department's "...sensibility as to the depth of the inquiry needed..." and that the Department has "...wide latitude in its verification procedures." See id. The CIT further stated that the Department can determine when it deems additional documentation unnecessary. See id. Accordingly, in this instance, the Department finds requesting additional information unnecessary because Ta Chen has stated that it has no entries during the POR.

In the current administrative review, the Department has reviewed the record and conducted inquiries with Customs. The Department has concluded, based on record evidence in this administrative review, as we did in the two previous reviews, that there have been no entries of subject merchandise into the United States during the POR by Ta Chen. See SSSS-1 and accompanying Issues and Decision Memorandum at Comment 31; Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 76721 (December 13, 2002)("SSSS-2") and accompanying Issues and Decision Memorandum at Comment 2. As the information on the record is clear, we find that the respondent is not obligated to demonstrate linkage between re-sales during the POR and pre-suspension liquidation entries. Therefore, we have made no changes to our Preliminary Rescission with respect to this issue and we are rescinding the review with respect to Ta Chen for the final results of review.

Comment 2: Adverse Facts Available for Tung Mung

Petitioners contend that Tung Mung failed to submit any questionnaire responses and stated that it did not intend to participate in this review. As a result, petitioners note that the Department preliminarily determined that Tung Mung had not cooperated to the best of its ability in this review. See Preliminary

Results at 46585. Given that Tung Mung's behavior remains uncooperative, petitioners argue that the Department should continue to assign total AFA to Tung Mung for the final results of review.

However, petitioners argue that rather than selecting 21.10 percent ad valorem as the cash deposit rate for Tung Mung, the Department should employ the rate of 34.95 percent ad valorem, the highest margin found to date in this antidumping proceeding. Petitioners argue that since Tung Mung's failure to cooperate to the best of its ability is undisputed, the Department's choice of a margin lower than the highest margin calculated in this proceeding is ill-advised.

Petitioners contend that the Department's choice of 21.10 percent ad valorem in the preliminary results of review rests on the lack of evidence that any of Tung Mung's exports during the POR involved a middleman. See Preliminary Results at 46585. Petitioners contend that in the preliminary results of review, the Department failed to burden respondent with responsibility for developing the record. Therefore, petitioners argue, lacking information from Tung Mung, the Department cannot reasonably know whether Tung Mung sold the subject merchandise in the United States during the POR via its middleman or an affiliate of the middleman. Furthermore, petitioners contend that rather than encouraging cooperation, the Department's selection of 21.10 percent ad valorem could have encouraged non-cooperation given that the assigned rate does not take middleman dumping into account. Finally, petitioners argue that the imposition of the rate of 34.95 percent ad valorem is neither punitive, nor poses an "undue burden," nor is unrepresentative, since, according to petitioners, the statute operates through an assessment of antidumping duties on Tung Mung's subject merchandise and not in personam.

Petitioners contend that the Department created an unsupported presumption in its preliminary results of review that Tung Mung no longer engages in selling its merchandise in the United States through its middleman or through an affiliate of the middleman. Petitioners argue that, for the final results of review, the Department should assign a single, weighted-average cash deposit rate of 34.95 percent ad valorem as total AFA for Tung Mung regardless of how the merchandise is routed to the United States, given that the statute operates against the subject merchandise, once imported, and not against the producers and exporters abroad, and given the Department's responsibility to avoid manipulation of the statute and given the Department's practice in market economy cases of assigning a single, weighted-average cash deposit rate to a foreign producer's subject merchandise.

Department's Position: We agree with petitioners that the Department should apply AFA to Tung Mung because it failed to provide any information on the record for this administrative review. Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the

best of its ability to comply with requests for information. See also the Statement of Administrative Action to the URAA, H. Doc. 103-316 (1994) at 870 ("SAA") (further discussing the application of AFA). Tung Mung received the Department's questionnaire and refused to provide any information on the record. Therefore, for the final results of this review, consistent with the Preliminary Results, we are applying an AFA rate to Tung Mung.

However, we disagree with petitioners' argument that the AFA rate should be the 34.95 percent ad valorem antidumping rate from the final determination in the original investigation. As stated in the Preliminary Results, the 34.95 percent rate represents a combined rate applied to a channel-specific transaction in the investigation of this proceeding based on middleman dumping by Ta Chen. We have no record evidence in this segment of the proceeding that Tung Mung's exports to the United States during the POR involved a middleman, and it would be inappropriate, therefore, to use this middleman-inclusive rate as AFA in this case. Furthermore, the Department's determination in this case is consistent with the CIT's ruling in Allegheny III. In Allegheny III, the CIT affirmed the Department's second administrative review of SSPC, and agreed with the Department that in the context of a cooperative respondent, such as YUSCO, "Plaintiff's assertion that it would be appropriate to infer middleman dumping in this proceeding is without merit." See Allegheny III at 1359. The CIT also disagreed with the plaintiff that the Department's choice of AFA, which did not take middleman dumping into account, encourages producers to be uncooperative and manipulative. See id. Just as the Department applied a "non-middleman" AFA rate in that case for YUSCO, it has applied a "non-middleman" AFA rate for Tung Mung in the instant review. For the Department to change its practice in this case and apply a middleman AFA rate to Tung Mung would be both unreasonable and inconsistent with the Department's practice and the CIT's ruling in Allegheny III. Therefore, for the final results, we are continuing to apply the highest margin from any segment of the proceeding for a producer's direct exports to the United States without middleman dumping, which is 21.10 percent.

B. ISSUES WITH RESPECT TO YUSCO

Comment 3: Affiliation with Yieh Loong and CSC

Petitioners contend that YUSCO's denial of its affiliation with CSC and its affiliates is commercially unrealistic, illogical, and not supported by record evidence. Petitioners argue that YUSCO is affiliated with CSC and its affiliates by way of a stock transaction that occurred in 1999 and 2000 involving Yieh Loong Enterprise Co., Ltd. ("Yieh Loong"), Mr. I.S. Lin, chairman of YUSCO ("Mr. Lin"), certain investment companies, and CSC. Petitioners argue that the record contains conflicting accounts of CSC's acquisition of the Yieh Loong stock in 1999 and 2000, and that YUSCO's account is not supported by record evidence. Petitioners argue, based on press reports from 1999 and 2000 (placed on the record by petitioners), that Mr. Lin established ten investment companies which he jointly owns with CSC, and through which CSC acquired ownership in Yieh Loong. Petitioners contend that YUSCO's conflicting account of CSC's acquisition of Yieh Loong stock, outlined in YUSCO's September 22, 2003 supplemental response, is not supported by evidence on the record. Petitioners

urge the Department to reject YUSCO's account and find that during the POR, YUSCO was an affiliate of CSC.

Petitioners contend that the news articles from 1999 demonstrate the following information concerning the affiliation between CSC and its affiliates, Yieh Loong, and Mr. Lin, which in turn demonstrates their affiliation with YUSCO: (1) the statement made by the chairman of CSC that CSC did not want to purchase shares of Yieh Loong directly from the Taiwanese stock exchange, because CSC wanted to purchase Yieh Loong's shares at a fixed price; (2) In order to purchase Yieh Loong shares at a fixed price, the chairman of CSC explained that Mr. Lin transferred a 20 percent share of Yieh Loong's stock to ten of his investment holding companies, which continued to belong to Mr. Lin after the transfer of Yieh Loong's shares; (3) Mr. Lin still controlled the ten investment companies who acquired Yieh Loong shares; and (4) Yieh Loong executives confirmed that CSC, through its nine investment firms, acquired a 40 percent interest in Mr. Lin's ten investment companies so that CSC could indirectly become a major shareholder of Yieh Loong. Petitioners cite CSC's June 30, 2001 financial statements, which explained the creation of the nine investment companies and their subsequent purchase of Yieh Loong shares, as evidence that YUSCO created ten investment companies prior to the creation of the nine investment companies.

Petitioners contend that YUSCO's dismissal of these press accounts has not been convincing. Petitioners argue that verification exhibit 2U, which provides YUSCO's narrative account of the stock transactions that occurred in 1999 and 2000, is not a source document, and therefore, is not credible. Moreover, petitioners argue that the press reports are convincing and describe the role Mr. Lin and the ten investment companies played. Petitioners argue that Mr. Lin, CSC, and YUSCO created a "strategic alliance" by means of joint ownership and control of Yieh Loong ,as described in the press reports from 1999.

Petitioners also argue that it is illogical for CSC to gain an effective majority of 40 percent of Yieh Loong's shares, but then to accept Mr. Lin as the chairman of Yieh Loong's board in place of a CSC representative. Petitioners contend that the chairman of the board, under the law in Taiwan, generally has the power to perform every act in connection with the business operations of the company and, in practice, may engage in significant transactions without seeking the approval from the company's board of directors. Furthermore, petitioners argue that since the Yieh Group and CSC are multinational companies, they would have no reason to create elaborate stock transactions as described in the 1999 press reports. Therefore, petitioners contend that YUSCO's explanation of the events surrounding the sale of Yieh Loong stock to CSC is not supported by substantial evidence on the record.

Petitioners argue that the information provided in YUSCO's September 22, 2003 supplemental questionnaire response demonstrates that YUSCO and CSC and its affiliates were, at a minimum, affiliated for a certain period of time that ran concurrent to an earlier review and/or the investigation and that, therefore, earlier records should be re-opened. Petitioners contend that YUSCO misrepresented itself in earlier reviews by omitting information concerning its relationship with CSC and its affiliates and

that, therefore, the results of earlier reviews and/or the investigation are compromised. Petitioners argue that the Department should re-open the records of the reviews and/or the investigation and determine that YUSCO failed to cooperate to the best of its ability and impeded the Department's findings by not timely disclosing its affiliation with CSC and its affiliates. As a result, petitioners argue that the Department should assign to YUSCO the highest dumping margins from any segment of the proceeding for the current period, and for the earlier reviews and/or the investigation.

Petitioners argue that even if YUSCO's description of the events regarding YUSCO's relationship with CSC is accepted, YUSCO should be determined to be affiliated with CSC and its affiliates based on evidence on the record in this review. Petitioners argue that YUSCO, Yieh Loong, and CSC and its affiliates are affiliated by reason of shared board members, officers and directors, stockholding (direct and indirect), and shared control. Petitioners argue that according to section 771(33) of the Act, the Department need only find one of these connections to make a determination of affiliation. Petitioners argue that because YUSCO's board of directors include a board member who also sits on the board at CSC, affiliation exits under section 771(33)(B) of the Act. Petitioners argue that the case for affiliation is further strengthened by CSC's and Mr. Lin's joint control of Yieh Loong. Petitioners argue that as a result of this joint control, Yieh Loong is in a position to control YUSCO.

Additionally, petitioners argue that YUSCO's affiliation with CSC and its affiliates is relevant to the Department's dumping analysis despite the Department's statement in the Preliminary Results that, "...even if the Department were to find that all of these parties were affiliated, it would have no impact on our dumping analysis." Petitioners contend that a determination of affiliation between YUSCO and CSC would change the Department's dumping analysis since the Department would require CSC and its subsidiaries that produce the subject merchandise (such as Tang Eng) to disclose their involvement in YUSCO's development, production, sale, and distribution of subject merchandise; to report downstream sales of subject merchandise produced by YUSCO; and to report the cost and transfer price of any raw materials used in the production of the subject merchandise in the course of the major input test.

Finally, petitioners argue that the Department should return YUSCO's September 22, 2003 supplemental questionnaire response due to improper bracketing. Petitioners renew their request for YUSCO to justify proprietary treatment for the information submitted in its September 22, 2003 response, under section 351.304(d) of the Department's regulations. In addition, the petitioners argue that the Department should re-bracket certain portions of the verification report, because certain portions of the bracketed information are publicly available.

YUSCO argues that the Department rejected petitioners' claim that YUSCO and CSC are affiliated in the Preliminary Results. See Preliminary Results at 46586. Furthermore, YUSCO notes that the Department found this allegation to be unsupported by statute, regulations or practice in the first administrative review. See SSSS-1 and accompanying Issues and Decision Memorandum at Comment 4. YUSCO further notes that in the Preliminary Results, the Department determined that any affiliation,

or lack of affiliation, between YUSCO and CSC would have no impact on the dumping margin because sales between these parties would account for less than five percent of the total quantity of sales in the HM. YUSCO contends that the Department closely examined this issue at verification and found no discrepancies with the information provided by YUSCO in its submissions. YUSCO contends that because there have been no factual changes to the record since the Preliminary Results, the Department has no reason to change that determination, nor to overturn its determination in the first administrative review.

YUSCO contends that the press reports cited by petitioners as proof of affiliation, from an English language news service in a third country, are not credible. YUSCO contends that petitioners characterization of YUSCO's denial of an affiliation with CSC as "commercially unrealistic and illogical" is post hoc criticism having no bearing on the actual transactions that took place and that were verified by the Department. YUSCO notes that petitioners do not discuss the many primary source documents examined by the Department at verification, and the interviews conducted with YUSCO employees at verification, which the Department used to reach its determination of non-affiliation.

YUSCO contends that petitioners demand that the Department reopen past administrative reviews and apply AFA to YUSCO is without legal basis. Furthermore, YUSCO contends that the facts petitioners pose as the basis for reopening these reviews are false. YUSCO argues that petitioners' contention that Mr. Lin's four investment companies simultaneously held title to the nine companies that acquired Yieh Loong shares in November 2000 is untrue. YUSCO contends that these four companies sold their shares in February 2000, and that this fact was found to be accurate by the Department at verification.

Finally, YUSCO contends that petitioners' arguments concerning its alleged affiliation with CSC under section 771(33) of the Act are invalid and based on a misguided interpretation of section 771(33)(B) of the Act. YUSCO contends that petitioners' argument that affiliation exists through a common director between YUSCO and CSC because there is a representative of a certain affiliate of YUSCO on the board of directors of YUSCO, and a different representative of this same certain affiliate on the board of directors of CSC is unsound and is not in accord with section 771(33)(B) of the Act. YUSCO contends that, because the same person is not on the board of directors of YUSCO and CSC, there is no common board members between the two companies as required by section 771(33)(B) of the Act. Furthermore, YUSCO contends that the Department already considered and rejected petitioners' argument that there is affiliation under sections 771(33)(B) through 771(33)(F) of the Act in the first administrative review.

Department's Position: We disagree with petitioners that YUSCO was affiliated with CSC during the POR by way of the stock transaction that occurred in 1999 and 2000 involving Yieh Loong, Mr. Lin, certain investment companies and CSC. On September 22, 2003, YUSCO submitted a detailed explanation of the stock transaction that occurred in 1999 and 2000. The proprietary version of the verification report sets forth the tests that we conducted, the documents we examined and the

employees that we interviewed in order to confirm the accuracy of the information submitted in YUSCO's September 22, 2003 response and 6 prior supplemental questionnaire responses directed at determining YUSCO's affiliation with CSC. See Sales Verification of Yieh United Steel Corporation in the Antidumping Administrative Review of Certain Stainless Steel Sheet and Strip in Coils from Taiwan, dated October 28, 2003, ("YUSCO Verification Report") at pages 11-20. At verification, we examined primary source documents covering every step of the complex transactions described in YUSCO's September 22, 2003 response. See YUSCO Verification Report at pages 11-20 and Appendix I. We agree that verification exhibit 2U is not a primary source document, in that it is not a record kept in the normal course of business of any of the companies that we examined at verification. However, the documents that we examined at verification, such as articles of incorporation, business registrations, business licence, audited financial statements, list of shareholders and officers, sales contracts, incorporating documents and notes to the financial statements showing long-term investments, annual reports, shareholding tables, and other documents identified in the proprietary version of the YUSCO Verification Report, are primary source documents. None of the these documents revealed that YUSCO was affiliated with CSC by virtue of the stock transactions that occurred in 1999 and 2000. Furthermore, our verification failed to confirm the accuracy of the news reports from 1999 and 2000, which, petitioners allege, prove that Mr. Lin established ten investment companies in 1999 and 2000 which he jointly owns with CSC. Additionally, our verification did not find any evidence of the above-mentioned ten investment companies referenced as alleged YUSCO affiliates in the news reports of 1999 and 2000. Further, we disagree that stock transactions that took place in 1999 and 2000 warrant a determination of affiliation between YUSCO and CSC, then or now.

Finally, we disagree with petitioners that a determination of affiliation between YUSCO and CSC would have any impact on the calculation of the dumping margin in this review. The volume of sales transactions between YUSCO and CSC and its affiliates is so insignificant that we would not require reporting of CSC's downstream sales of YUSCO's subject merchandise. Furthermore, the record of this review does not list CSC or its affiliates as suppliers of raw material to YUSCO. Therefore, the record, does not indicate the necessity for submitting CSC or its affiliates to the major input test.

In respect to proprietary treatment of information submitted by YUSCO, we agree with petitioners that YUSCO over-bracketed its September 22, 2003 response. We returned YUSCO's response for re-bracketing, and YUSCO re-filed its bracketing revisions on December 16, 2002.

As a result, we have made no changes to our calculations for the final results of review.

Comment 4: Classification of Home Market Sales

Petitioners contend that in the original investigation of this review, the Department found, and the CIT affirmed, that (a) it is YUSCO's burden to accurately classify and report all of its home market sales, that (b) the standard governing the classification and reporting of sales to the Department is the "know-or-have-reason-to know" test, and that (c) YUSCO's internal sales order system is so flawed as to be

an inadequate basis for correctly classifying YUSCO's sales. See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan, 64 FR 30592, 30598 (June 8, 1999) ("Final Determination"); appealed and ultimately affirmed in Allegheny Ludlum Corp. v. United States, 239 F. Supp. 2d 1381 (September, 10, 2002) ("Allegheny Investigation-II"), affirmed Tung Mung, et. al., 03-1073, 03-1095 (January 15, 2004) ("Tung Mung II").

Petitioners contend that in this administrative review, YUSCO failed to properly apply the knowledge test to each home market sale at the time of sale, limited the Department's knowledge test to actual knowledge for the classification of certain sales, and relied on the same flawed internal sales order system when it classified and reported its sales to the Department. Petitioners argue that YUSCO's classification of home market sales as export or domestic, based on the preparation of the government uniform invoice ("GUI") or the export declaration, directly challenges the Department's know-or-have-reason-to know test since YUSCO did not take into account its knowledge of its customer's business, domestic or export packing, destination, and usage codes indicating whether merchandise would be consumed in Taiwan and whether such merchandise would be converted to non-subject merchandise prior to export in classifying its sales as domestic or export sales.

Thus, petitioners contend that YUSCO wrongly classified its sales solely on the strength of its actual knowledge and disregarded imputed knowledge. As a result, petitioners argue that YUSCO's databases for home market, U.S., and third-country sales are skewed and cannot serve as the basis for the Department's dumping analysis.

Petitioners contend that the CIT in Tung Mung Development Co., Ltd. v. United States, Slip Op. 01-83 at 46-47 (July 3, 2001) ("Tung Mung I") and affirmed in Tung Mung II, emphatically rejected YUSCO's actual knowledge argument, citing precedent and analysis that the knowledge test includes both actual and imputed knowledge in affirming the Department's application of total AFA in the original investigation. Petitioners contend that Tung Mung II maintains that reliance on actual knowledge alone requires deference to self-serving allegations despite contrary evidence that the producer should know where the subject goods were actually to be consumed. Finally, petitioners argue that Tung Mung II pointed out that "YUSCO's arguments that its indirect export sales were not home market sales all rest ultimately on YUSCO's internal order coding system and documentation, which the record demonstrates were flawed from inception as methods of categorizing sales in conformance with Commerce's instructions and the United States antidumping laws." See Tung Mung II at 49.

Petitioners also argue that the Department's finding in the original investigation that YUSCO failed to report certain home market sales (specifically U* and UZ sales) did not result in the Department or the court instructing YUSCO that such sales should always thereafter be treated as home market sales in future administrative reviews. Rather, petitioners contend that the Final Determination at 30598 stated that YUSCO failed to report a substantial portion of sales possibly consumed by home market customers. Moreover, petitioners argue that the Department explained that ". . . YUSCO has

admitted that a large portion of its sales are further processed prior to exportation," (See Final Determination at 30598) and the Court observed that YUSCO admitted having knowledge that "at least some" (not all) of its home market customers further manufactured YUSCO's merchandise prior to export. See Tung Mung II at 54. Thus, petitioners contend that YUSCO's assertion in this review that the Department and the court instructed YUSCO to classify and report its U* and UZ sales as home market sales is baseless.

As a result, petitioners contend that in this review, YUSCO failed to carry out its responsibility to provide an accurate reporting of its sales to the Department and to apply the proper legal standard. Petitioners contend that it further relied on the same internal sales order system that the Department and the CIT discredited in the original investigation.

Petitioners contend the narrative portion of YUSCO's responses and supplemental responses contradict statements made in Exhibit 10 of its January 9, 2003 supplemental questionnaire response, and show that YUSCO classified a number of sales as home market sales when it in fact knew that the sales were ultimately destined for export. See petitioners' proprietary case brief at pages 7 through 12.

Petitioners contend that the YUSCO Verification Report further demonstrates that YUSCO classified sales reported in its HM4 data file as home market sales, even though it knew the destination of the merchandise (either a third country or the United States), delivered the merchandise to a port, and packaged the merchandise for export. Thus, petitioners argue that YUSCO failed to look at the imputed knowledge that it had for the HM4 sales file database.

Furthermore, petitioners contend that YUSCO inappropriately focused on the location of the customer in Taiwan, the location of that customer's customer, and whether value-added tax ("VAT") was paid by the downstream customer in Taiwan in classifying the sales recorded in the home market database HM1 ("HM1"), home market database HM2 ("HM2"), home market database HM3 ("HM3") and home market database HM ("HM4") data files as home market or export sales. Petitioners claim that none of these factors is dispositive for the classification of merchandise as either home market, third-country or U.S. sales, but rather, YUSCO should have relied on knowledge of its customer's business, domestic or export packing, destination, and usage codes indicating whether merchandise would be consumed in Taiwan and whether such merchandise would be converted to non-subject merchandise prior to export to demonstrate its actual or imputed knowledge concerning destination at the time of sale. Consequently, petitioners argue that YUSCO misreported certain home market sales as third-country sales, and certain third-country sales as home market sales in its computer sales listing.

Petitioners contend that the YUSCO Verification Report reveals that YUSCO misclassified and misreported some of the sales examined at verification. Petitioners argue that even though YUSCO classified and reported three certain selected sales as home market sales, the Department found ". . . no evidence that YUSCO had reason to believe that any of these sales were destined for the home

market." See YUSCO Verification Report at page 30. Thus, petitioners contend that YUSCO misrepresented these three sales as home market sales when it should have classified them as third-country sales.

Petitioners argue that the Department also misconstrued the knowledge test in its conduct of the annual administrative reviews since the original investigation. For example, in the first administrative review (which is currently on appeal in Chia Far Industrial Factory Co., Ltd. v. United States, CIT Consol. Court No. 02-00243 ("Chia Far")), petitioners note that the Department stated that YUSCO ". . . appropriately and accurately reported the complete universe of home market sales required to calculate a dumping margin" (1) by reporting all of its U* and UZ sales in addition to its D sales and thus supposedly rectifying the reporting deficiencies of the original investigation where YUSCO did not report sales in the home market destined for export, and (2) by reporting the U* and UZ sales to the Department purportedly in accordance with the court's decision in the original investigation's appeal. See SSSS-1 and accompanying Issues and Decision Memorandum at Comment 1. This statement, petitioners believe, reveals that the Department misapplied the knowledge test and misread the court's decision in the original investigation.

Therefore, for the final results of review, petitioners argue that the Department should determine that YUSCO failed to appropriately apply the knowledge test to each sale at the time of sale. Consequently, petitioners argue that the Department cannot rely on YUSCO's home market or U.S. market data bases in the calculation of the antidumping duty margin for the final results of review.

YUSCO contends that this same argument by petitioners has been rejected by the Department in the two previous administrative reviews of SSSS from Taiwan. YUSCO contends that in those administrative reviews, the Department acknowledged that it had properly reported HM sales in accordance with the Department's supplemental questionnaire and the CIT's decision. See Allegheny Ludlum v. United States, 215 F. Supp. 2d 1322 (December 28, 2000) ("Allegheny Investigation-I"), 1326 (which articulated the Department's findings) and 1330 (which found that the Department properly classified certain sales as home market sales).

YUSCO concedes that, in the original investigation of this case, the Department found that it had failed to report certain HM market sales, and the CIT has affirmed this determination by the Department. However, YUSCO contends, in all subsequent administrative reviews, it has reported HM sales based on the Department's determination in the original investigation. YUSCO notes that in the original investigation, petitioners argued that the certain sales in question were improperly reported as third-country sales, while in subsequent administrative reviews petitioners have argued that these same sales are improperly reported as HM sales. YUSCO argues that nothing has changed, either factually or legally, to justify the Department in changing its treatment of these certain sales from the treatment accorded by the Department's determination in the original investigation.

YUSCO contends that petitioners' argument that it misreported sales in its HM4 database as home market sales is incorrect. YUSCO contends that it identified in the HM4 database all sales that might be deemed as home market sales, based on the CIT's determination in Allegheny Investigation -I and the Department's practice in the previous two reviews. YUSCO contends that it did this in an effort to fully cooperate in this review, and to provide to the Department all the sales possibly needed to calculate a dumping margin. YUSCO contends it did this despite the fact that YUSCO believed that these sales should be treated as export sales.

YUSCO further argues that petitioner's reliance on the likely usage code on the order acknowledgment as an indicator of whether to classify the sale as a HM, U.S. market, or third-country sale, is misguided. YUSCO contends that it cannot know or have reason to know how to classify the sales based on this likely usage code. YUSCO contends that the usage code indicates only the likely end use of the merchandise, and points out that it does not indicate by whom the merchandise will be used, nor that the customer is required to produce subject merchandise from the merchandise sold to it. YUSCO argues that, therefore, YUSCO cannot have either actual or implied knowledge, based on the likely usage code, of whether the subject merchandise it has sold to certain customers would be processed into non-subject merchandise before export, or exported without further processing.

YUSCO contends that petitioners' argument that it reported U.S. sales as home market sales is without merit. YUSCO contends that petitioners' argument that it should have known that subject merchandise sold by YUSCO to its affiliate was destined to be sold to the U.S. market as subject merchandise is rendered invalid by the fact the Department determined at verification that the affiliate had no sales of subject merchandise to the U.S. market. YUSCO contends that, similarly, there is no evidence on the record to support petitioners' contention that it under-reported its HM sales by hiding them as unreported third-country sales. YUSCO contends that the Department verified its HM sales and found no discrepancies from the information that it presented in questionnaire responses. YUSCO contends that petitioners' argument that it should not have reported its indirect export sales is without merit. YUSCO argues that it reported these sales based on the Department's instructions and in accordance with the methodology dictated by the Department.

Department's Position: We disagree with petitioners that YUSCO's databases for home market, U.S., and third-country sales are so skewed that they cannot serve as the basis for the Department's dumping margin in this review. YUSCO reported its home market sales in five separate databases. The vast majority of those sales are recorded in HM1, which records sales to unaffiliated parties in the home market. Petitioners did not contest the accuracy or validity of YUSCO's classification or reporting of these sales based on its actual or imputed knowledge of the destination of these sales. In addition, our verification did not reveal any errors or discrepancies in the classification of these sales. See YUSCO Verification Report at 25 and YUSCO Final Analysis Memorandum at Appendix I.

YUSCO presented sales to affiliated parties in the home market in HM2. Petitioners did not contest the accuracy or validity of YUSCO's classification of these sales based on its actual or imputed

knowledge of the destination of these sales. Furthermore our verification did not reveal any errors or discrepancies in the classification of these sales. See id.

YUSCO presented sales to a bonded warehouse operated by an unaffiliated party in the home market in database HM3. YUSCO explained that it believed that merchandise that enters a bonded warehouse must be further processed and exported. See YUSCO's March 19, 2003 response at 9 and 10 and the YUSCO Verification Report at 25. YUSCO also provided copies of two different laws explaining the purposes and rules for operating a bonded warehouse. See YUSCO's March 19, 2003 response at exhibits 6 and 7. In addition, YUSCO explained that the operator of the bonded warehouse has the right to withdraw material for home market consumption if it chooses. See YUSCO's March 19, 2003 response at exhibit 6, article 40 (explaining the procedures for withdrawing material from the bonded warehouse for home market consumption). Consequently, YUSCO reported these sales as home market sales although it claims that it believed that at the time of the sale, the sales in HM3 were destined for export. However, YUSCO did not identify which sales, if any, that it knew at the time of sale would be further manufactured into non-subject merchandise prior to export. In addition, YUSCO explained that has no control over its unaffiliated customer, should it withdraw the merchandise from the bonded warehouse after further manufacturing and sell it in the home market. See YUSCO's October 23, 2002 questionnaire response at B-2 and B-3.

Furthermore, YUSCO claims that it reported these indirect export sales as home market sales in accordance with the findings in the original investigation and the CIT's determination in Tung Mung II that YUSCO made "repeated admissions that it knew that its customers further manufactured much of their purchases of its product domestically." See Tung Mung II at 47-49. The CIT further argued that YUSCO's "knowledge provides substantial evidence supporting Commerce's determination that YUSCO knew or should have known that its indirect export sales would be further manufactured in YUSCO's home market and should properly have been included in the list of home market sales provided to Commerce." See Tung Mung II at 49. (In the original investigation, these passages addressed YUSCO's failure to report any sales that are now included in HM3 and HM4.) Consequently, YUSCO reported these sales as home market sales, and our verification did not reveal any errors or discrepancies in the classification of these sales. See YUSCO Verification Report at page 25 and 26; and YUSCO Final Analysis Memorandum at Appendix I.

Therefore, since YUSCO established that the legal purpose of a bonded warehouse is to further process then export merchandise, and since there is no evidence on the record showing that the merchandise sold to its unaffiliated bonded-warehouse customer was eventually exported or sold in the home market as subject merchandise, it has established that it has knowledge that the unaffiliated bonded-warehouse customer consumed the subject merchandise in the home market prior to export. Therefore, we have accepted the sales recorded in HM3 as home market sales for the purposes of these final results of review.

YUSCO presented all other sales to affiliated and unaffiliated customers in the home market who reported that the final destination of the merchandise was a foreign country in HM4. YUSCO explained that, because it did not prepare the export declaration and the packing slip for these sales, it classified these sales as home market sales, although it believed that the purchaser would export the merchandise. See YUSCO's October 23, 2002 response at B-3.

However, YUSCO failed to explain that HM4 includes sales to a number of categories of customers. For example, YUSCO included sales to affiliated parties, for which it has an affirmative obligation to identify the final destination of the downstream merchandise, and to report any downstream sales of subject merchandise in the home market when YUSCO's sales to the affiliated parties did not pass the arm's-length test. See YUSCO Verification Report at 26. YUSCO further included sales to unaffiliated domestic trading companies, foreign trading companies, and trading companies who sold both in the home market and third countries. See YUSCO Verification Report at pages 26 to 30. YUSCO also sold merchandise to unaffiliated distributors and end users, and to bonded warehouses who further processed the merchandise prior to export. See YUSCO Verification Report at pages 26 to 30. In each of these cases, YUSCO failed to identify to the Department what it knew at the time of the sale concerning the final disposition and market of the sale. For example, it failed to identify those trading companies that process the subject merchandise into non-subject merchandise prior to export, or who sell subject merchandise exclusively in third-countries, without further processing.

In addition, there are numerous internal discrepancies and logical inconsistences in the information provided for each sale. For example, YUSCO explained that the sales department assigns a packing code based on its information concerning the destination of the merchandise. However, our verification revealed a number of sales that were delivered to a destination in Taiwan for further processing, for which the internal documentation records export packing. See YUSCO Verification Report at 26 and 27, verification exhibits 4D, 4F, and Attachment I of the proprietary version of the YUSCO Final Analysis Memorandum. Yet, there is no way to ascertain this information from the record, absent verification. In addition, there is no way to know whether the merchandise that was delivered to a local plant for further processing was really packed for export as stated on the order information sheet, especially if the further-processed merchandise requires a very different type of packing. Furthermore, YUSCO reported a number of sales made to unaffiliated manufacturers in Taiwan destined for export. In some cases, the order information sheets identify both the export destination and the customers located in the third-country. Yet YUSCO recorded these sales as home market sales in its sales ledgers. See YUSCO Verification Report at 27 to 29 and verification exhibit 4M. As a result, the Department has no certainty that YUSCO properly identified which sales, if any, were exported through an unaffiliated party, and therefore constitute export sales which need not be reported, or which were further-manufactured into non-subject merchandise, and therefore, consumed in the home market, and were properly reported as home market sales.

Section 776(a) of the Act provides that when information has been requested and not provided, the Department may use facts available to fill in the "gaps." Accordingly, for all of the reasons stated above, the Department must apply facts available with respect to YUSCO's HM4 sales.

YUSCO also reported downstream sales of subject merchandise made by its affiliate, Yieh Mau, in HM5. YUSCO explained at verification that the sales in HM5 include all the types of sales found in HM1, HM2, HM3 and HM4. See YUSCO Verification Report at pages 30 to 35. That is, HM5 includes sales to affiliated and unaffiliated parties destined for the home market, sales to affiliated and unaffiliated parties destined for export to third countries after further manufacturing into non-subject merchandise, and sales to affiliated and unaffiliated parties destined for export to third countries without further manufacturing. See YUSCO Verification Report at pages 30 to 35. As a result, based on the information on the record, it is not possible to determine which of Yieh Mau's sales were sold to unaffiliated customers in the home market, consumed in the home market prior to export as nonsubject merchandise, or further manufactured in the home market prior to export as subject merchandise. In addition, the HM5 database was rife with the same type of contradictions found in HM4: sales were delivered to domestic manufacturers for further manufacturing with export packing and sales destined to third countries were recorded as home market sales in YUSCO's books and records. See verification exhibit 40. Thus, again consistent with section 776(a) of the Act, because the necessary information pertaining to the HM5 sales has not been supplied by YUSCO, the Department may apply facts available to YUSCO's HM5 sales.

As petitioners have noted, YUSCO's database in past reviews has been the source of litigation over the years and the Department has consistently scrutinized it at verification. Although the Department has accepted such reporting over the last two reviews of this order and SSPC from Taiwan, it has acknowledged continued difficulties with YUSCO's reporting methodology for certain sales. Thus, YUSCO was aware of potential problems with its database and reporting methodology for the last three reviews and has taken no steps to fix this problem, such that, even after the extensive tests conducted at verification in this review, YUSCO was still unable to provide definitive proof that the indirect export sales provided in HM4 and HM5 were either exported as subject merchandise, or consumed in the home market prior to export, or further-processed and exported as subject merchandise. As a result of this failure to provide information, the HM4 and HM5 databases are not usable for the purposes of calculating the final results of review. However, since YUSCO also provided the Department with all other information which it requested and acted to the best of its ability in this review, adverse inferences are not warranted. Thus, as facts available, the Department has considered as a whole all of the reported databases, and determined that the appropriate use of facts available, in this instance, is to use the three remaining databases for which we can identify whether the sales were made in the home market or consumed in the home market prior to export. Therefore, we conducted our model match and margin analysis using only HM1, HM2 and HM3. See YUSCO Final Analysis Memorandum.

Petitioners requested that we apply total AFA to YUSCO for its failure to clearly identify its home market sales. Although we agree that application of facts available is warranted, we disagree that total AFA is appropriate, given that YUSCO responded to all of the Department's questionnaires and acted to the best of its ability in providing all other information to the Department. Accordingly, as facts available we have disregarded the HM4 and HM5 sales and will conduct our analysis using only HM1, HM2 and HM3 sales. See YUSCO Final Analysis Memorandum.

Comment 5: Affiliated Parties in the Home Market

Petitioners contend that YUSCO and Yieh Mau failed to properly identify sales to affiliated parties in their home market databases. Petitioners contend that YUSCO identified certain customers as unaffiliated in the database in contrast to its explanation in the narrative response that those same customers were affiliated. Petitioners contend that YUSCO and Yieh Mau perpetuated these inaccuracies at verification. Consequently, petitioners argue that YUSCO and Yieh Mau compromised the Department's ability to conduct the arm's-length test since the computer program can no longer accurately identify sales to affiliated parties. Finally, petitioners contend that YUSCO selectively submitted downstream sales made through certain affiliated parties and withheld downstream sales of subject merchandise made by certain other affiliated customers.

YUSCO contends that it identified, in its original section A response, all the affiliates to whom it sold subject merchandise, and all the affiliates of affiliates to whom it sold subject merchandise. YUSCO further contends that it fully disclosed the nature of these affiliations in the original section A response. YUSCO explains that it did not code sales to the affiliates of affiliates, as sales to affiliated parties in its sales listing because of the tenuous nature of the affiliation. However, YUSCO contends, the Department probed these sales to the affiliates of its affiliates, and YUSCO provided all information requested by the Department. YUSCO claims that the Department never requested a listing of the downstream sales made by the affiliates of its affiliates, and argues, therefore, that it has properly responded to the Department's inquiries regarding subject merchandise sold to its affiliates, and the affiliates of its affiliates.

Department's Position: We disagree with petitioners that YUSCO failed to appropriately classify its sales to affiliated and unaffiliated parties, with one exception, where we reclassified the sales to one customer as affiliated-party sales. See YUSCO Final Analysis Memorandum. Further, we have found no other errors with respect to the universe of sales reported in YUSCO's home market computer sales listing with respect to these affiliated parties. See YUSCO Final Analysis Memorandum. We disagree that YUSCO and Yieh Mau compromised the Department's ability to conduct the arm's-length test since we disagree with petitioners' contention that these home market sales were inappropriately classified as affiliated or unaffiliated sales. See YUSCO Final Analysis Memorandum. We further disagree that YUSCO withheld affiliated parties' downstream sales for certain customers. See YUSCO Final Analysis Memorandum. Finally, we disagree that one of YUSCO's affiliated parties should have reported downstream sales that it made, but that were fully returned during the

POR. See Comment 6 below. Therefore, for the final results of review, we have reclassified the sales to one customer as affiliated-party sales and made no other changes to the calculations as a result of this issue. For a proprietary discussion of this issue on a company-specific basis, please see YUSCO Final Analysis Memorandum.

Comment 6: Returned Sales

Petitioners contend, as noted in the YUSCO Verification Report at 40, that YUSCO inappropriately reported fully returned sales to the Department as home market sales, contrary to the instructions in the Department's questionnaire. Furthermore, petitioners contend, as noted in the YUSCO Verification Report at 40, that YUSCO inappropriately reported the value of the returned merchandise as a warranty expense. Therefore, petitioners contend that the Department should determine that YUSCO's home market data bases are unreliable for the purposes of calculating the antidumping duty margin.

YUSCO contends that its home market sales data bases are reliable and complete. YUSCO contends that because it has reported all returned sales in a separate data base, the net quantity of YUSCO's home market sales is easily identifiable by the Department. YUSCO argues that this contention is supported by the Department's verification report at 40, where the Department notes which reported sales were returned.

Department's Position: We agree with petitioners that YUSCO inappropriately reported returned sales to the Department as home market sales. Page B-18 of the Department's September 4, 2002 questionnaire provides the reporting requirements for sales quantity as follows: "Report the sale quantity for this transaction. In general, this quantity will be the quantity of the specific shipment or invoice line, net of returns where possible. . . ." Page 40 of the YUSCO Verification Report documents the instances in which YUSCO reported returned sales. However, we disagree with petitioners that this error makes the whole database unreliable, since the number of observations reported in error is both limited and clearly identifiable in the computer database. Furthermore, we disagree that an adverse inference is warranted pursuant to section 776(b) of the Act, because YUSCO's reported information is, at most, a misreading of the request for information. Therefore, for the final results of review, we have corrected YUSCO's database and deleted the returned sales from the computer sales listing before we conducted our margin analysis. See YUSCO Final Analysis Memorandum.

Comment 7: Affiliation and Collapsing with a Certain Downstream Further Manufacturer

Petitioners argue that the Department should find YUSCO affiliated with a certain downstream further manufacturer. Petitioners argue that in the first administrative review, the Department found that YUSCO and this certain downstream further manufacturer were affiliated parties, satisfying the first prerequisite for the collapsing of affiliated parties.

Petitioners contend that the Department found that YUSCO and this certain downstream further manufacturer were affiliated in accord with section 771(33)(E) of the Act because Mr. I.S. Lin, chairman of YUSCO, directly or indirectly holds a certain percentage of stock in the downstream further manufacturer. See Decision Memorandum: Whether to Collapse Yieh United Steel Corporation ("YUSCO") and Yieh Mau Corporation ("Yieh Mau") and **[]** Into a Single Entity, dated Feb. 4, 2002, at 3 ("Collapsing Memorandum"). Petitioners argue that these facts have not changed since the first administrative review, and, therefore, the Department should affirm YUSCO's affiliation with the downstream further manufacturer in the final results of the current review. In addition, petitioners argue that these two companies should also be collapsed, even though the Department decided against collapsing them in the first review, which is an issue currently before the court in Chia Far.

Citing the Collapsing Memorandum, petitioners argue that the record demonstrates that YUSCO and the downstream further manufacturer satisfy all of the criteria for collapsing: (1) YUSCO and the downstream further manufacturer share a level of common ownership; (2) YUSCO and the downstream further manufacturer share a common board director, Mr. I.S. Lin, and his involvement as head of the Lin family in the management and oversight of YUSCO and the downstream further manufacturer constitutes "evidence of control;" (3) YUSCO and the downstream further manufacturer have overlapping production capabilities to produce similar products by virtue of the fact that both parties convert stainless steel black coils into subject merchandise; and (4) the operations of YUSCO and the downstream further manufacturer are intertwined and lend themselves to a significant potential for manipulation of price or production, given the Lin family's overall control of both companies and YUSCO's sale of coiled sheet and strip and stainless steel black products to the downstream further manufacturer. See Collapsing Memorandum at 5.

However, petitioners note that in deciding whether to collapse companies that are affiliated, the Department stated in the Collapsing Memorandum that none of the foregoing factors is determinative and that the determination whether to collapse is based on the totality of the circumstances. Consequently, petitioners note that in the first administrative review, the Department determined that it was not appropriate to collapse these two companies given the ownership situation and lack of shared production capacity. See Collapsing Memorandum at 5. Consequently, petitioners note that the Department concluded that YUSCO did not possess the ability to effect future manipulation of production and pricing decisions regarding its downstream further manufacturer.

Petitioners argue that the Department should reconsider this issue in the current review. Petitioners argue that in the first administrative review, the Department found Mr. I.S. Lin and the Lin family directly or indirectly held positions on the board of directors of YUSCO and the downstream further manufacturer, served as officers in the management of both companies (the highest level of control and oversight of a company), and owned a percentage of the stock of both companies. See Collapsing Memorandum at 4 and 6. Petitioners contend that these factors allow the principals of YUSCO and the downstream further manufacturer to influence pricing and production decisions. Given the interest

of Mr. Lin and the Lin family in both companies, petitioners argue that it is incomprehensible that Mr. Lin and the Lin family could not direct production and pricing decisions with regard to the downstream further manufacturer.

Petitioners contend that in deciding not to collapse YUSCO and the downstream further manufacturer in the first review, the Department determined that the production facilities of YUSCO and the certain downstream manufacturer would require "substantial retooling" under section 351.401(f) of the Department's regulations in order to restructure manufacturing priorities to make similar merchandise. See Collapsing Memorandum at 6. Rather, petitioners argue that the Department's regulations do not require two affiliated companies to have mirror production facilities in order to be collapsed. Petitioners contend that the regulations address whether the affiliated companies have ". . . production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities. . ." in accord with section 401(f)(1) of the Department's regulations. According to petitioners, both YUSCO and the downstream manufacturer produce the subject merchandise: YUSCO melts steel, casts slabs, converts slabs into stainless steel black coils, and processes those coils into subject merchandise as reported in exhibit 38 of the October 23, 2002 section BC&D questionnaire response ("section BC&D response"). Petitioners contend that the downstream further manufacturer produces the same merchandise. Petitioners therefore contend that the downstream further manufacturer does not require a cold-rolling facility to produce subject merchandise – it simply needs to do the processing required to produce hot-rolled stainless steel sheet and strip in coils. Thus, petitioners argue YUSCO and the downstream further manufacturer have the ability to shift the production and pricing of subject merchandise.

Therefore, petitioners contend that significant potential for YUSCO and the downstream further manufacturer to manipulate prices and/or production of the subject merchandise exists. Petitioners therefore request the Department to collapse YUSCO and the downstream further manufacturer and calculate a combined, weighted-average dumping margin for both companies.

YUSCO argues that there is no basis to collapse the two companies because they do not meet the Department's collapsing criteria, which requires them to have shared production capacity. YUSCO further argues that it does not have the ability to manipulate pricing or production decisions with regard to the downstream further manufacturer. YUSCO also notes that the Department addressed this issue in the first administrative review, and found no basis to collapse YUSCO and the further downstream manufacturer. YUSCO contends that there has been no factual change to the record that would justify the Department changing this previous determination.

Department's Position: We disagree with petitioners that we should collapse YUSCO and the downstream further manufacturer. There is no evidence on the record that indicates that YUSCO sold the subject merchandise to the downstream manufacturer, or that the downstream further manufacturer produced or sold the subject merchandise during the POR. See YUSCO's January 9, 2003

supplemental A-C response at 6, and, YUSCO's March 19, 2003 second supplemental A-C response at 5.

Further, the Department analyzed this issue in the first administrative review, and determined that YUSCO and the certain downstream further manufacturer should not be collapsed. See SSSS-1 and accompanying Issues and Decision Memorandum at Comment 16 and Collapsing Memorandum. Additionally, we have determined that there have been no factual or legal changes to justify changing this determination. Section 351.401(f) of the Department's regulations states that "the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production." In identifying a significant potential for the manipulation of price or production, the factors the Department may consider are: (1) the level of common ownership; (2) whether managerial employees or board members of one company sit on the board(s) of directors of the other related part(ies); (3) the existence of production facilities for similar or identical products that would not require retooling either plant's facilities to implement a decision to restructure either company's manufacturing priorities; and (4) whether the operations of the companies are intertwined (e.g., sharing of sales information; involvement in production and pricing decisions, sharing of facilities or employees; transactions between the companies).

Although the Department considers all four factors, no one factor is determinative. Rather the determination whether to collapse is based on the totality of the circumstances. See Nihon Cement Co., Ltd. v. United States, Slip Op. 93-80 at 51. In this instance, the certain downstream further manufacturer would have to undertake "substantial retooling" in order to produce subject merchandise. This downstream manufacturer does not have the ability to produce subject merchandise because it only performs annealing and pickling, plate shearing, shearing, solution heat-treatment, shot blasting and leveling functions and does not perform the operations that would convert the merchandise that YUSCO's sells to the downstream further manufacturer into subject merchandise. See YUSCO Final Analysis Memorandum.

Additionally, we have determined that there is no significant potential for the manipulation of price or production. While YUSCO holds a 14.1 percent stock interest in the certain downstream manufacturer, and there is some sharing of board members between YUSCO and the certain downstream further manufacturer, we have determined that the operations of the companies are not intertwined, since there is no existence of production facilities for similar or identical products that would not require substantial retooling of either plant's facilities to implement a decision to restructure either company's manufacturing priorities. See YUSCO's March 19,2003 supplemental section A-C response at 5 and Collapsing Memorandum.

Therefore, we have determined, given the current ownership structure and lack of shared production capacity, that YUSCO does not possess the ability to affect future manipulation of production and

pricing decisions with regard to the certain downstream manufacturer. Based on the totality of these circumstances, we have determined that YUSCO and the certain downstream further manufacturer should not be collapsed, and we have made no changes to our calculations for the final results of review.

Comment 8: Freight Expense Reported by Affiliated Parties in the Home Market

Petitioners contend that YUSCO reported that it was affiliated with its trucking company in the home market on page 30 of its section BC&D response. Petitioners contend that the Department may accept the affiliated party's expenses, but only if the respondent demonstrates that the affiliated party's expenses are based on arm's-length pricing. See the Dumping Manual at Chapter 8.

Petitioners contend that Chapter 8 of the Dumping Manual requires YUSCO to demonstrate that the price charged by its affiliated party was not in excess of arm's-length prices before the Department can consider deducting affiliated-party expenses from the home market price in the determination of normal value. Furthermore, petitioners argue that Chapter 8 of the Dumping Manual explains if the Department cannot test the affiliated-party's expenses for arm's-length prices, it will not adjust the gross unit price downward for the claimed affiliated-party expense, so as not to skew the margin.

In this review, petitioners contend that YUSCO initially provided freight schedules for both affiliated and unaffiliated trucking companies in exhibit 25 of its section BC&D response. However, petitioners claim that in its March 19, 2003 supplemental questionnaire response, YUSCO stated that, contrary to initial comments, it relied only on its affiliated party, for its domestic trucking services. Therefore, petitioners contend that under these circumstances, the Department cannot determine whether the freight rates charged by YUSCO's affiliated trucking company are made at or above arm's-length prices. Therefore, petitioners argue, for the final results of review, the Department should not adjust YUSCO's home market prices downward for movement expenses in the determination of normal value.

YUSCO contends that the Department should reject petitioner's argument that the Department should not accept YUSCO's reported HM freight expenses because YUSCO's freight services were supplied by an affiliated company. YUSCO contends that the Department has already examined this issue in the first administrative review, and concluded that an arm's length analysis was not warranted, and that there was no basis to conclude that the transactions were not made at arm's length. See SSSS-2 and accompanying Issues and Decision Memorandum at Comment 7. YUSCO contends that it reported early in this proceeding that it used an affiliated freight company, and clarified in its March 16, 2003 supplemental questionnaire response that YUSCO used this company exclusively. Finally, YUSCO contends that, contrary to petitioners' contention, the Department can determine whether these transactions were made at arm's length, because YUSCO provided a freight rate schedule of schedule of an unaffiliated freight company.

Department's Position: We disagree with petitioners and agree with YUSCO, in part. In accordance with section 771(33) of the Act, the Department considers the following persons or parties to be affiliated:

> (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;
> (B) Any officer or director of an organization and such organization;
> (C) Partners;
> (D) Employer and employee;
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization;
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;
> (G) Any person who controls any other person and such other person.
>
> For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents. We find that none of the above criteria is applicable to YUSCO and the certain trucking company. The sole connection between YUSCO and the certain trucking company is that Mr. Lin is the common chairman of YUSCO and Yieh Mau, and Yieh Mau has a stock ownership in the certain trucking company and a stock ownership in YUSCO. However, there are no board members in common between YUSCO and the certain trucking company, nor any direct stock ownership between these two companies. Furthermore, there is no additional evidence on the record which would lead us to believe that YUSCO and the trucking company are directly or indirectly controlled by any person or group.

Furthermore, we have examined this issue in the previous review, and we continue to determine that an arm's length analysis is not warranted. See SSSS-2 and accompanying Issues and Decision Memorandum at Comment 7. Because we find that YUSCO and the certain trucking company are not affiliated, we have no basis to conclude that these freight transactions were not made at arm's length. Therefore, we are making no changes to our calculations for the final results of review

Comment 9: Cost Reconciliation

Petitioners contend that YUSCO understated the per-unit cost of production reported to the Department in its questionnaire responses as demonstrated in exhibit 11 of YUSCO's March 12, 2003 section D supplemental questionnaire response. Specifically, petitioners contend that YUSCO's

submitted total company-wide cost of production is lower than the cost of production reported in its normal accounting books and records. Therefore, for the final results of review, petitioners argue that the Department should: (1) increase YUSCO's cost of manufacture to account for the understatement of costs; (2) recalculate the G&A expenses based on the newly adjusted total cost of manufacture; and (3) recalculate the interest expenses based on the newly adjusted total cost of manufacture.

Petitioners note that in the original investigation, YUSCO asked the Department not to adjust its reported costs by the difference between total reported cost of manufacture and the total cost of manufacture in its accounting system. See Final Determination at 30607. Petitioners contend that in that determination, YUSCO argued that the unreconciled differences related to raw material input costs for affiliated transactions, the usage of processing time instead of production quantity as the allocation factor for production costs after the hot-rolling stage, and the recalculation of YUSCO's average material cost based on cost of goods used during the POI instead of only inputs purchased during the year. See Final Determination at 30607. Petitioners contend that YUSCO further argued in the original investigation that the Department's practice is not to adjust reported costs for explained differences between the amount in the accounting system and reported costs. See Final Determination at 30607. Petitioners contend that pages 7-8 of YUSCO's April 7, 2003 supplemental section D questionnaire response offered similar explanations of the unreconciled differences during this review.

Additionally, petitioners contend that the Department rejected YUSCO's arguments in the original investigation and stated that the reported cost of manufacture should be adjusted upward for the unreconciled difference in the final determination in the original investigation since the Department explained in that notice that it must ensure that the aggregate amount of costs incurred to produce the subject merchandise is properly reflected in the reported costs. See Final Determination at 30607. Furthermore, petitioners note that even though YUSCO offered a number of reasons for the unreconciled cost difference, the Department rejected its arguments explaining that YUSCO did not quantify the value of each of those reasons. See Final Determination at 30607. Finally, petitioners explain, that the Department stated in its Final Determination that it would have adjusted the submitted total cost of manufacturing for COP and CV upward by the amount of the unreconciled cost difference, except that, it had already determined that YUSCO had not cooperated to the best of its ability in another matter and had assigned total AFA for that unrelated reason. See Final Determination at 30607. As a result, petitioners argue that, for the final results of review, the Department should: (1) increase YUSCO's cost of manufacturing to account for the understatement of costs; (2) recalculate the G&A expenses based on the newly adjusted total cost of manufacture; and (3) recalculate the interest expenses based on the newly adjusted total cost of manufacture.

YUSCO did not address this issue in its rebuttal brief.

Department's Position: We disagree with petitioners that any unreconciled understatement of YUSCO's reported costs should be added to the cost of manufacturing for COP and CV purposes. Exhibit 11 of YUSCO's March 12, 2003 section D supplemental questionnaire response demonstrates

that the total value of manufacturing expenses recorded in YUSCO's audited financial statements is greater than the total value of the COP reported in its section D response. However, our March 13, 2003 second supplemental section D questionnaire requested YUSCO to explain the difference. YUSCO provided its response in on pages 7 through 9 of its April 7, 2003 second supplemental section D questionnaire response, and we have determined that YUSCO's explanation of this apparent discrepancy is reasonable. We did not conduct verification of YUSCO's cost responses during the instant review. Therefore, we have no reason to believe or suspect that the information reported to us is inaccurate, and we are accepting YUSCO's cost of production as reported. As a result, we made no changes for the final results of review.

Comment 10: Exchange Rate Gains and Losses for COP and CV

Petitioners contend that the Department revised its policy regarding the treatment of exchange rate gains and losses in Certain Preserved Mushrooms from Indonesia: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order in Part 68 FR 11051, 11054 (March 7, 2003) ("Mushrooms from Indonesia"). Petitioners contend that the methodology implemented in Mushrooms from Indonesia requires respondents to include in the calculation of COP and CV, all foreign exchange gains and losses reported on the income statement, in contrast to its former practice which includes in the calculation of COP and CV only those foreign exchange gains and losses attributable to payables that are recorded on the unconsolidated income statement.

Petitioners contend that YUSCO failed to comply with either the Department's old or new practice with respect to foreign exchange gains or losses, and inappropriately excluded certain expenses. In addition, petitioners argue that the Department should reject certain of YUSCO's claimed offsets for foreign exchange gains and losses in the calculation of its financial expense ratio. Therefore, for the final results of review, petitioners argue that the Department should correct YUSCO's financial expense ratio to include all of the appropriate expenses.

YUSCO contends that it is inappropriate and inconsistent for the Department to apply a new methodology for calculating the financial expense ratio in the instant review, based on an unrelated administrative review such as Mushrooms from Indonesia, which was published after the data in the instant review was reported. YUSCO argues that this contention is supported by the fact that the Department is applying its former arm's length test methodology in the instant review, because the instant review was initiated before the Department adopted its new arm's length test methodology.

YUSCO further contends that because petitioners raised this issue so late in this review, the parties in the instant review, unlike the parties in Mushrooms from Indonesia, have not had an opportunity to fully comment on the proposed revised methodology. YUSCO argues that Mushrooms from Indonesia addressed a situation where respondents calculated expenses using both consolidated and unconsolidated financial statements, whereas in the instant YUSCO uses only one financial statement. YUSCO argues that, therefore, Mushrooms from Indonesia is not relevant to the instant review.

YUSCO contends that because its reported financial expense methodology is in compliance with the Department's long-established practice, and has been repeatedly confirmed by the Department in previous administrative reviews, petitioners' claim that YUSCO failed to comply with both the Department's old and new methodology for foreign exchange gains and losses in the calculation of financial expense is baseless. YUSCO requests that, if the Department does revise its financial rate calculation to incorporate the total exchange gains and losses incurred in 2001, the Department should exclude any exchange rate gains and losses adjustments that YUSCO made in its financial expense calculation.

Finally, YUSCO claims that in preparing the questionnaire response, it adjusted its G&A expense by the amount of exchange loss incurred from accounts payable in 2001. Therefore, YUSCO argues, that should the Department adjust YUSCO's financial expense ratio to comply with the practice established in Mushrooms from Indonesia, it should correspondingly adjust YUSCO's G&A expenses by the amount of exchange loss incurred from accounts payable, in order to avoid double counting expenses.

Department's Position: We agree with petitioners. In Mushrooms from Indonesia, the Department implemented a change in practice regarding the treatment of foreign exchange gains and losses. We stated that our previous practice required respondents "to identify the source of all foreign exchange gains and losses (e.g., debt, accounts receivable, accounts payable, cash deposits) at both a consolidated and unconsolidated corporate level. At the consolidated level, the portion of foreign exchange gains and losses generated by debt or cash deposits was included in the financial expense rate computation. At the unconsolidated producer level, foreign exchange gains and losses on accounts payable were either included in the G&A rate computation, or under certain circumstances, in the cost of manufacturing. Gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded from the COP and CV calculations." See Mushrooms from Indonesia at 11054. However, in that notice we also explained that "[i]nstead of splitting apart the foreign exchange gains and losses as reported in an entity's financial statements, we will normally include in the financial expense computation all foreign exchange gains and losses. In doing so, we will no longer include a portion of foreign exchange gains and losses from two different financial statements (i.e., consolidated and unconsolidated producer). Instead, we will only include the foreign exchange gains and losses reported in the financial statement of the same entity used to compute each respondent's net financial expense rate. This approach recognizes that the key measure is not necessarily what generated the exchange gain or loss, but rather how well the entity as a whole was able to manage its foreign currency exposure in any one currency." See Mushrooms from Indonesia at 11054. Accordingly, for the final results of review, we included all foreign exchange gains and losses in the calculation of the total value of financial expenses, and excluded those foreign exchange gains or losses reported in the G&A so as not to double count these amounts. See YUSCO Final Analysis Memorandum.

Comment 11: Total AFA for YUSCO

Petitioners argue that he Department should determine that the record of this review is so severely deficient that it is rendered useless for the purposes of conducting a margin analysis in the final results of review. Petitioners contend that not even one section of YUSCO's submitted data can be used for the margin analysis: YUSCO's sales data bases include misclassified and misreported sales; YUSCO improperly characterized sales to affiliated parties as sales to unaffiliated parties; affiliations between YUSCO and other companies have not been timely or fully disclosed to the Department; YUSCO reported merchandise that was fully returned by the customer as home market sales; YUSCO's cost data were not properly collapsed with its affiliated parties; YUSCO overstated home market freight for its home market sales; YUSCO's costs are unreconciled; and YUSCO understated its COP/CV interest expenses. Petitioners contend that the Department provided YUSCO numerous opportunities to amend, correct and disclose information to the Department, but that YUSCO decided to hinder the Department's review at every turn.

Petitioners further contend that YUSCO tried to prevent the Department from fully comprehending that YUSCO, Yieh Loong, CSC and its affiliates are affiliated parties as defined by the statute. Petitioners contend that throughout the review, YUSCO, through Mr. Lin, has had access to, and should have reported to the Department, information explaining YUSCO's affiliation with CSC, including information on Mr. Lin's ten investment holding companies. Petitioners contend that the Department's seventh supplemental questionnaire made it clear that the Department was seeking the identities of Mr. Lin's ten investment firms and the related information indicated. Petitioners argue that instead of responding in a full and accurate manner, YUSCO persisted in withholding these identities and information on these ten investment companies, all of which is readily at hand from YUSCO (via Mr. Lin).

Moreover, petitioners contend that YUSCO's responses during the course of the review were rendered untrue and inaccurate by the information provided in YUSCO'S September 22, 2003 letter, which was the day that the Department commenced the verification of YUSCO. Petitioners argue that even though YUSCO provided a new and dramatically different explanation for its affiliation in its September 22, 2003 letter, as compared to the entire record developed prior to this date, YUSCO offered no supporting documentation with its September 22, 2003 letter, such as contracts, source documents, etc. In addition, petitioners contend that the documents provided by YUSCO at verification have little relationship to the contemporaneous accounts of the events between YUSCO, Yieh Loong and CSC, as reported by top executives of both CSC and Yieh Loong.

With regard to its reporting of sales, petitioners argue that YUSCO misclassified and misreported home market sales as third-country sales, third-country sales as home market sales, and U.S. sales as home market sales based on actual, rather than actual and imputed, knowledge. According to petitioners, YUSCO's classification of home market sales based on actual knowledge is so inaccurate that

Department cannot rectify these shortcomings on the record and should not rely on its databases for the calculation of the antidumping duty margin.

Additionally, petitioners contend that YUSCO misrepresented its relationship with numerous affiliated parties. Petitioners argue that YUSCO informed the Department in its sales listing, and at verification, that numerous companies were unaffiliated parties when, in fact, those parties are affiliated with YUSCO. Also, petitioners contend that YUSCO reported certain home market sales that were fully returned to YUSCO, which is in direct conflict with the requirements of the Department's questionnaire and statements made in YUSCO's questionnaire responses. Further, petitioners argue that YUSCO overstated affiliated-party freight expenses in the home market in order to artificially minimize any dumping found by the Department.

Petitioners also argue that the cost response is also unusable for the purpose of calculating an antidumping duty margin. Petitioners argue that YUSCO failed to collapse its reported costs with a downstream further manufacturer which petitioners contend is affiliated, thereby, submitting a partial cost response. Also, petitioners note that YUSCO's submitted costs cannot be reconciled to YUSCO's financial costs. Finally, petitioners claim that YUSCO omitted certain expenses from the interest expenses in the COP/CV data.

Petitioners contend that the CAFC ruled that Department may resort to AFA when the respondent has not cooperated to the best of its ability to comply with the Department's request for information in Nippon Steel Corporation v. United States, 337 F. 3d 1373, 1382 (Fed. Cir. Aug. 8, 2003) ("Nippon Steel"). Petitioners contend that the CAFC upheld the Department's recourse to AFA when the respondent, Nippon Steel Corporation, failed to cooperate to the best of its ability by not providing timely data on actual weight. Petitioners argue that the CAFC interpreted the provision of section 776(b) of the Act that calls upon the Department to resort to AFA when information that has been sought by the Department has not been properly supplied in the record and the respondent ". . . has failed to cooperate by not acting to the best of its ability to comply with the request for information . . . ." as follows:

> To conclude that an importer has not cooperated to the best of its ability and to draw an adverse inference under section 1677(b), Commerce need only make two showings. First, it must make an objective showing 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. See Ta Chen, 298 F.3d at 1336 (holding that Commerce reasonably expected importer to preserve records of accused antidumping activity). Second, Commerce 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.

Nippon Steel, at 1382

Lastly, petitioners contend that in antidumping proceedings, the question of a respondent's affiliations and the accurate classification and reporting of sales are of seminal and critical importance to the proper calculation of dumping margins. Petitioners argue that as a result, a cooperative respondent under Nippon Steel will: (a) take reasonable steps to keep and maintain full records documenting information on this issue; (b) be familiar with all of those records; and (c) promptly, carefully, and comprehensively investigate all relevant records that refer or relate to the issue of affiliation to the full extent of the respondent's ability to do so. See id.

Therefore, petitioners argue that as a result of the deficiencies noted above and in other parts of these comments, the Department must resort to total AFA for YUSCO in the final results of review.

YUSCO contends that the application of total AFA to YUSCO is not appropriate because YUSCO has fully cooperated in all aspects of this review.

Department's Position: We disagree with petitioners. For the reasons set forth in Comments 3 through 10 above, we have found no reason to base YUSCO's margin on total AFA based on section 776(b) of the Act. In its provision of certain information, the Department did determine that YUSCO did not act to the best of its ability. See Comment 4. With respect to this finding, however, limited, partial adverse facts available was all that was necessary to fill in the "gap" in information. Record evidence reveals that, in accord with section 782(e) of the Act, the information was submitted by the deadline established for its submission, the information could be verified, except with respect to a very limited amount of missing data, the information was not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, and YUSCO demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and the information could be used without undue difficulties. Consequently, since the vast amount of information submitted was verified to be accurate and timely filed, the application of total AFA would be unwarranted and unnecessary in this case. Therefore, we will not apply total adverse facts available to YUSCO for this review.

C. ISSUES WITH RESPECT TO CHIA FAR

Comment 12: Chia Far's Home Market Affiliated Parties

Petitioners contend that Chia Far is controlled by a number of families, and companies associated with these families. Petitioners further state that Chia Far is affiliated with other home market customers and should have coded these customers as affiliated in the home market database. Petitioners argue that the Department should determine these customers to be affiliated, make the corresponding changes to the home market database and subject the sales to these affiliated parties to the arm's-length test for the final results of review.

Chia Far argues that the above-mentioned companies are not affiliated with Chia Far but merely have similar sounding names. Therefore, Chia Far argues that the Department should not determine these customers to be affiliated for the final results of review.

Department's position: We agree with Chia Far. Page 2 of Chia Far's March 3, 2003 supplemental section A-C questionnaire response ("March 3, 2003 SQR") states that none of the members of the above-mentioned families serve as officers or directors of any affiliated or unaffiliated companies that produce the subject merchandise. Furthermore, Chia Far submitted a list of all of the companies in which the above-mentioned families hold shares, and we confirmed that none of these companies match the names of the customers in the home market database. See Exhibit A-23 and Exhibit B-21 of March 3, 2003 SQR. Therefore, since we have no record evidence that these companies are affiliated within the meaning of section 771(33) of the Act, and since petitioners have not provided any record evidence to support their allegation, we have made no changes to our calculations for these final results of review.

Comment 13: Home Market Date of Sale

Petitioners contend that Chia Far erroneously reported the date of order confirmation as the date of sale for its U.S. sales while it reported the date of the government uniform invoice ("GUI") as the date of sale for its home market sales. Petitioners claim that Chia Far has not demonstrated that the invoice date reflects the most appropriate date of sale for home market sales. Petitioners further contend that Chia Far has easy access to its order confirmation database and can easily report its date of order confirmation to the Department. Therefore, petitioners contend that the Department should determine that Chia Far's chosen date of sale for its home market sales is wrong and conclude that Chia Far has failed to comply to the best of its ability with the Department's request for information. For the final results of review, petitioners argue that the Department should find that the home market data base is unusable and cannot serve as a basis for the Department's dumping analysis.

Chia Far claims that page 16 of its October 18, 2002 section B questionnaire response ("October 18, 2002 BQR") reiterates that it uses invoice date as the date of sale for home market sales. Chia Far claims that it makes changes in price and quantity between the order date and invoice date fifty percent of the time. In addition, Chia Far claims that it does not maintain the actual order confirmation date in its normal business records and that the invoice date is close to order date in most cases. Chia Far also points out that, for home market sales, the order confirmation is made by telephone and no purchase

order is generated by the customer. Therefore, Chia Far argues that invoice date is the appropriate date of sale for its home market sales.

Department's position: We agree with Chia Far. Section 351.401(i) of the Department's regulations states that the Department will normally use date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which material terms of sale are established. In addition, the Department's criteria for the date of sale, as explained in Appendix I of the questionnaire dated September 4, 2002 state, "[g]enerally, the date of sale is the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business, provided that: 1) the exporter does not use long-term contracts to sell its merchandise; and, 2) there is not an exceptionally long time period between the date of invoice and the date of shipment." Further, Exhibit A-9 of Chia Far's October 18, 2002 section A questionnaire response ("October 18, 2002 AQR") indicates that the essential terms of sale in the GUI were the same as in the other sample sales documents. Furthermore, we have previously determined the default date of sale to be the date of invoice by stating that, "[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale." See Certain Hot-Rolled Carbon Steel Flat Products from India; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 68 FR 74211, (December 23, 2003), and 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 40639 (July 8, 2003). Therefore, since the essential terms of Chia Far's sales changed frequently after the date of order confirmation, we have determined that the GUI reflects the actual date of home market sales for the purposes of this administrative duty review. Therefore, we have made no changes to our calculations for the final results of review.

Comment 14: Incompleteness of Home Market Database

Petitioners contend that Chia Far failed to report the appropriate universe of home market sales. Petitioners claim that Chia Far reported certain sales of subject merchandise, then went on to perform post sale processing on these sales before shipping them to the customer. Petitioners contend that Chia Far not only failed to report the cost of the post-sale processing in its questionnaire response, but it also failed to report home market sales that had post-sale processing. Furthermore, petitioners argue, as a result of the post-sale processing, some merchandise may have been converted to non-subject merchandise and should have not been reported to the Department. Since Chia Far failed to report the appropriate universe of sale, petitioners argue that the Department should find Chia Far's home market database unusable.

Chia Far states that it fully complied with all the requirements set by the Department in its supplemental responses, including acknowledgment of post-sale processing costs for home market sales and subsequent revision of its database to reflect the Department's requirements.

Department's position: We agree with Chia Far. In its original database, Chia Far reported all sales of subject merchandise regardless of whether these sales were converted into non-subject merchandise as a result of post-sale processing. See October 18, 2002 BQR at Exhibit 27. We then instructed Chia Far to delete sales of the subject merchandise that were converted into non-subject merchandise as a result of post-sale processing from its database. See the Department's May 2, 2003 supplemental questionnaire. Further, Chia Far listed all the observations of subject merchandise that contained post-sale processing and provided a list of all observations that were deleted because they were converted into non-subject merchandise as a result of post-sale processing in its July 21, 2003 supplemental questionnaire response at Exhibit B-30. Therefore, the sales referenced by petitioners were the sales the Department instructed Chia Far to delete from its home market sales database. Consequently, we disagree that Chia Far failed to report the appropriate universe of home market sales. As a result, we do not find Chia Far's home market database unusable for the final results of review and have made no changes to our calculations for the final results of review.

Comment 15: Classification of Non-Prime Merchandise

Petitioners argue that Chia Far did not conform with the Department's reporting requirements concerning the definition of prime and non-prime merchandise. Since Chia Far coded its merchandise as prime or non-prime based on its internal quality control system and the supplier's description of the raw materials, petitioners contend that the supplier's classification of merchandise as prime or non-prime is not authoritative. As a result, petitioners contend, Chia Far's merchandise may not be accurately classified. Petitioners further contend that the Department's only criterion for distinguishing prime from non-prime merchandise is the customer specifications, and petitioners argue that it is unclear whether Chia Far's finished merchandise met the customer's specifications. Consequently, petitioners recommend that the Department set all home market sales as sales of prime merchandise in the final results of review.

Chia Far states that the Department found no reason to question its methodology, especially in light of the fact that classification of prime and non-prime merchandise was fully verified in the two previous reviews and the reporting methodology did not change in the instant review.

Department's position: We agree with Chia Far. Page 6 of Chia Far's October 18, 2002 BQR states that Chia Far classifies merchandise as non-prime: 1) whenever the coils have been re-rolled; and 2) when the merchandise product was marked as non-prime by the supplier. Chia Far also stated that it changes the suppliers's classification of prime or non-prime after re-rolling if the finished condition does not meet prime specifications. This re-classification confirms that the ultimate condition of the product determines its classification. Therefore, we made no changes to the prime or non-prime denotation of the home market sales for the final results of review.

Comment 16: Calculation of Early Payment Discounts for Home Market

Petitioners contend that Chia Far's method of calculating early payment discounts in the home market is in error. First, petitioners contend that Chia Far included in the database for the current review early payment discounts that were related to pre-POR invoices. Second, petitioners argue that Chia Far allocated the sum of early payment discounts to invoices that were not granted an early payment discount. According to petitioners, both of these steps inflate the value of discounts granted to home market customers. Further, petitioners argue that the documentation that Chia Far submitted as a sample early-payment-discount invoice represents only one single sale, but that the calculation problem extends to all home market sales with early payment discounts. Petitioners conclude that Chia Far's failure to provide the information necessary to make early payment discount calculations should result in the Department's denial of the deduction of any early payment discount for home market sales.

Chia Far states that the Department found no reason to question Chia Far's methodology, especially in light of the fact that the method of calculation of early payment discounts was fully verified in the two previous reviews and the reporting methodology did not change in the instant review.

Department's position: We agree with Chia Far. Page 22 of Chia Far's October 18, 2002 BQR states that Chia Far does not have a specific early-payment-discount program. Instead it explains that Chia Far uses the sales allowances for "cash payment," "weight shortage" and "price difference." See Chia Far's October 18, 2002 BQR at 22. Chia Far explains that the early payment discount is not granted at the time of sale, but rather later, when Chia Far asks for or receives payment. Usually the early payment discount is granted on the entire amount of all outstanding sales in any given month. Thus, a customer-specific allocation methodology is a closer reflection of how Chia Far records its early payment discount. The methodology used is the following: Chia Far divides total early payment discounts granted during the POR by the total sales to a customer during POR, then applies this ratio to the gross unit price of the specific invoice and product code. See October 18, 2002 BQR at 23. Furthermore, In the most recent review, the Department accepted Chia Far's methodology of reporting early payment discount on a customer-specific basis. See Chia Far's January 3, 2002 sections A, B, and C supplemental questionnaire in the second administrative review.

We did not conduct a verification of Chia Far's sales and cost questionnaires during this POR. Therefore, since we have no reason to believe or suspect that Chia Far has provided inaccurate information to the Department, or that it has used an inappropriate methodology to calculate its adjustment, we are accepting its information as reported in its questionnaire responses. Therefore, since Chia Far used an appropriate methodology to report its early payment discounts on a customer-specific basis, we disagree with petitioners' contention that early payment discounts applicable to pre-POR invoices overstate the adjustment. In this instance, all of these early payment discounts were made during the POR, and applied to all sales during the POR.

Finally, we have determined in past cases that, when a respondent has acted to the best of its ability, and cannot provide information about adjustments on a basis more narrow than customer-specific allocations, such an allocation may be reasonable. See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination to Revoke in Part, 64 FR 2185 (January 13, 1999). Therefore, for the final results of review, we have accepted Chia Far's methodology of reporting early payment discounts on a customer-specific basis and we made no changes to our calculations.

Comment 17: Foreign Inland Freight in Taiwan for U.S. Sales

Petitioners claim that the sample documentation for foreign inland freight indicates that merchandise was shipped from the port of departure to another port free of charge, and that Chia Far stated that this type of shipment was an internal policy of the freight company. Petitioners note that as proof of this free shipment, Chia Far submitted freight company documents showing receipt of the merchandise in the container yard of one port. However, petitioners still question how the merchandise was moved from a container yard near the port of departure to another port. Petitioners state that since Chia Far did not produce any information to indicate how the merchandise was shipped from the port of departure to another port, the Department should use the highest per unit international freight expense reported for all U.S. sales in the final results.

Chia Far claims that it reported the total amount of its foreign inland freight expense. Chia Far argues that the fact that the ocean carrier had to re-position one shipment from one port to another for some unknown internal reason, should not lead to petitioners' conclusion that Chia Far is hiding expenses. Chia Far states that this issue has been raised in the previous review and has been fully verified by the Department as not being billed to Chia Far.

Department's position: We agree with Chia Far, in part. Chia Far presented two separate packing lists in its documentation for export sales showing that the merchandise was shipped from the port of departure to Los Angeles. See Chia Far's October 18, 2002 section C questionnaire response ("October 18, 2002 CQR") at Exhibit C-2, note 2, and Chia Far's March 28, 2003 supplemental questionnaire response ("March 28, 2003 SQR") at Exhibit A-35. Each of these documents records the same vessel name and number, the container number and the number of coils and weight of Chia Far's U.S. sale.

However, Chia Far also provided the invoice from the freight forwarder in the United States to Lucky Medsup, Chia Far's affiliated U.S. customer, which references the other port as the port of departure, rather than the port of departure itself. See Chia Far's October 18, 2002 CQR at Exhibit C-4. The vessel name, number, quantity and dates recorded on this invoice match the details provided on the two above-referenced packing lists. Chia Far explained that the freight company charged Lucky Medsup for shipment from the container yard to Los Angeles. See Chia Far's March 28, 2003 SQR at 3.

The Department did not conduct verification of Chia Far's reported information in the instant review. However, as Chia Far noted above, we examined this issue in detail during the previous administrative review. See SSSS-2 and accompanying Issues and Decision Memorandum at Comment 6. In that notice, we described our findings with respect to the apparent discrepancies with respect to the port of departure for Chia Far's merchandise as follows: "Furthermore, petitioners contend that for additional invoices, Chia Far's shipments have departed from a different port, as discussed in the Lucky Medsup Verification Report at pages 6-7. The Department examined all movement expenses for the sales in question from the date of shipment from the plant to the terms of delivery for the customer and noted no discrepancies. See Lucky Medsup Verification Report at pages 6-7. Also, see Verification of Sales and Cost for Chia Far Industrial Factory Co., Ltd. in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan, at page 15-16 (July 1, 2002) ("Chia Far Verification Report")" and SSSS-2 and accompanying Issues and Decision Memorandum at Comment 6. Therefore, since we have no reason to believe or suspect that Chia Far's response is inaccurate, or that the fact pattern of this sale differs from those verified during the previous review, we are accepting the information provided by Chia Far as reported and we have made no changes for these final results of review.

Comment 18: Inventory Carrying Costs Incurred in Taiwan for U.S. Sales

Petitioners argue that Chia Far erroneously calculated ICC by multiplying the number of days between the date of production and the date of arrival in the United States by the control number's cost of manufacturing and Chia Far's NTD short-term interest rate. Petitioners contend that the Department should recalculate the ICC to properly value the time in which the U.S. merchandise is held in inventory.

Petitioners state that in calculating its U.S. ICC, Chia Far assumes that it holds title to the goods from the date of production to arrival at the U.S. port, as evidenced by the fact that the formula of this calculation uses the home market short-term interest rate. Petitioners claim that since Lucky Medsup holds the title from FOB Keelung, this calculation is erroneous. Petitioners state that since the title changes in Keelung, the calculation should reflect both the home market and U.S short-term interest rates to account for Chia Far's ownership of the merchandise in Taiwan and Lucky Medsup's ownership of merchandise from FOB Keelung. Petitioners contend that the formula should have two components: (1) the number of days between the date of production and the date of shipment from Keelung with application of home market short-term interest rate; and, (2) the number of days between the date of shipment from Keelung and the date of arrival in the U.S. with application of the U.S. short-term interest rate. However, petitioners note that Chia Far only reported the home market component of ICC for U.S. sales and did not report the U.S. portion of the ICC. Petitioners argue that the Department should recalculate the U.S. ICC expense applying both the first and second component of the calculation.

Chia Far contends that it used the standard methodology provided by the Department and there is no record evidence to support petitioners' contention that it did not fully report ICC for its U.S. sales.

Department's position: We agree with Chia Far. Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan; Final Results of Antidumping Duty Administrative Review, 65 FR 81827 (December 27, 2000) ("SSBWPF from Taiwan") and accompanying Issues and Decision Memorandum at Comment 3 explains that time-on-the-water is an in-transit cost that should not be included in the reported ICC of the affiliated reseller in the United States. Further, we noted in 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, that in-transit ICC 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. Therefore, in accordance with section 351.402(b) of the Department's regulations and the Department's practice, we determine that modification of Chia Far's ICC calculation is unwarranted, and we have made no changes to our calculations for the final results of review.

Comment 19: Export Losses for U.S. Sales

Petitioners contend that Chia Far reported a number of export losses related to U.S. sales. Petitioners claim that these items should have been reported as warranty expense in the U.S. sales database, but that the most recent U.S. database shows that no warranty expenses were reported for any U.S. observations. To account for this error, petitioners argue that the Department should allocate the value of the export losses over the total value of U.S. sales to calculate U.S. warranty expenses for each specific U.S. sale.

Chia Far argues that the export losses apply to U.S. and third-country exports. Chia Far claims that it reported warranty expenses for eight observations in the U.S. sales database, which represents the total value of warranty expense incurred during the POR. Therefore, Chia Far argues that it appropriately reported the warranty expenses for its U.S. sales.

Department's position: We agree with petitioners that some of the expenses Chia Far reported as export loss constitute warranty expenses, and should be treated as a deduction from CEP. However, we disagree that all of the expenses that Chia Far reported as export loss constitute warranty expenses, since an examination of the information on the record indicates that some of these expenses apply to sales returns.

Chia Far initially reported its export losses as indirect selling expenses incurred in the home market. See October 18, 2002 BQR at Exhibit B-14. It then reclassified these export losses in the home market as direct selling expenses and separately provided documentation for warranty expenses incurred in the United States, showing an overlap between certain of these expenses. See March 3, 2003 SQR at B-25 and C-23. Chia Far then explained that export losses include compensation granted to the customers or expenses incurred for returns of merchandise due to quality claims incurred in the home market and attributed to U.S. and third-country export markets. See March 28, 2003 SQR at 8. On April 24, 2003, Chia Far revised its warranty expense downward,

claiming that a large portion of the expenses reported in previous responses were for cancelled sales. See exhibit C-31 of the April 24, 2003 supplemental questionnaire response ("April, 24, 2003 SQR").

We examined all of the documentation provided in exhibits C-23 and C-31 of Chia Far's March 3, 2003 and April 24, 2003 SQRs and determined that certain expenses included in export losses, besides those for cancelled sales, constitute warranty expenses. Therefore, we have recalculated U.S. warranty expense to include all of the appropriate warranty expense recorded in exhibits C-23 and C-31 of March 3, 2003 and April 24, 2003 SQRs, and have revised our calculations accordingly. See Chia Far Final Analysis Memorandum.

Comment 20: Treatment of Shut-Down Costs

According to petitioners, Chia Far shut down its flat-forming and angle-forming production lines in August 2001, which is one month after the beginning of the POR, and excluded the shutdown cost of these lines from its reported cost data. Petitioners state that Chia Far should have reported all of its shutdown costs in its G&A expenses and should have allocated the total G&A expenses over total cost of goods sold including the cost of idled equipment, because the cost of idled equipment is a cost to the company as a whole. Petitioners contend that since these costs are unknown to the Department, the Department should find that reported COP/CV databases cannot be used as a basis for the Department's dumping analysis.

Chia Far argues that the shut down took place in 2001, whereas Chia Far reported its G&A expenses based on fiscal year 2002. Subsequently, Chia Far contends that petitioners' claims are not applicable to this review.

Department's position: We agree with Chia Far. Chia Far reported its G&A expenses based on its fiscal year 2002 audited financial statements. See April 24, 2003 SQR at Exhibit D-33. As a result, the shutdown costs incurred in August 2001 will not effect the G&A calculation reported to and used by the Department. Furthermore, "angle forming" and "flat forming" departments are not involved in the production of subject merchandise. Consequently, we would not require a company to include the direct manufacturing expenses applicable to these lines in the cost of production of subject merchandise. In addition, Chia Far confirmed that no labor or manufacturing overhead expenses were allocated to these departments after their shutdown, thus clarifying that no indirect expenses were shifted from the productive lines to the idle lines. See April 24, 2003 SQR at page 4. The Department did not conduct verification of Chia Far's reported information in the instant review. Therefore, since we are basing our calculation of G&A expenses on Chia Far's 2002 audited financial statements, and since we have no reason to believe or suspect that the costs reported by Chia Far are inaccurate, we have not made any changes for the final results of review.

Comment 21: Calculation of Fully Yielded Cost

Petitioners state that in order to properly report a fully absorbed cost of manufacturing that considers the additional costs incurred due to material lost during each phase of the production process, Chia Far should have calculated the cost of each production phase by considering the yielded cost of the production stage and the yield loss incurred during the current production stage. However, petitioners argue that Chia Far's costs, which were reported as the consumption cost of its mother coil plus conversion costs allocated monthly by processing lines through which it passes, do not represent a fully yielded cost. Petitioners contend that Chia Far should have instead calculated the cost of each production phase by considering the yielded cost of the current production phase as well as the yield loss incurred during the production stage on material and conversion costs for every previous production stage. As a result, petitioners contend that the Department should find that it cannot rely on Chia Far's submitted COP/CV database for the final results of review.

Chia Far maintains that Exhibit D-17 of the section D reconciliation submitted on November 1, 2002 demonstrates that it calculated its cost of production using fully-yielded costs.

Department's position: We agree with Chia Far. The cost reconciliation provided in its November 1, 2002 submission ties the total value of Chia Far's cost of production to its audited financial statements. Attachments 1 through 18 of Chia Far's reconciliation package provide summaries of Chia Far's calculation methodology. However, these summaries do not provide either the documentation or the underlying detail required to understand all aspects of the calculation of the cost of production, such as one would find at verification. However, the cost reconciliation did provide certain "production weights." In the last administrative review, the Department explained that Chia Far took "into account yield losses by recording the net production weight from each section and applying the percentage difference to the production weight. The production weights are used to calculate the costs of production." See the public version of the Verification of Sales and Cost for Chia Far Industrial Factory Co., Ltd. in the 2nd Antidumping Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan, July 1, 2002 at page 29. We did not conduct verification of Chia Far's questionnaire responses during the instant review. Therefore, since we have no reason to believe or suspect that the information reported to us is inaccurate, we are accepting Chia Far's cost of production as reported. Therefore, we have made no changes to our calculations for the final results of review.

Comment 22: Treatment of Certain Expenses Under the GAAP in Taiwan

Petitioners contend that the GAAP in Taiwan allows companies to treat certain expenses in such a way that the Department has found them to be distortive. Additionally, petitioners contend that Chia Far follows the GAAP in Taiwan with respect to this expense, and thus distorts the margin. Thus, petitioners conclude that the Department should revise its calculation of the dumping margin to take this error into account in its final results of review.

Chia Far states that the Department has consistently accepted Chia Far's audited financial statements that are based on the GAAP in Taiwan in this and previous reviews and should continue to do so.

Department's position: We agree with petitioners. Chia Far calculated certain expenses which are in accord with the GAAP in Taiwan but which the Department has found to be distortive. Therefore, for the final results of review, we took this error into account and recalculated the margin in accord with the Department's practice. See the proprietary version of the Chia Far Final Analysis Memorandum for further explanation of this issue.

Comment 23: Calculation of Per-Unit G&A Expense Ratio

Petitioners contend that Chia Far erroneously determined its G&A ratio by dividing its G&A expenses by the cost of goods sold ("COGS"). However, petitioners note that the COGS does not include packing expenses and further processing expenses which is included in Chia Far's cost of manufacturing. According to petitioners, this understates per-unit G&A expenses. To account for this discrepancy, petitioners maintain that the Department should correct this error by multiplying the G&A ratio by the sum of Chia Far's submitted cost of manufacturing, further processing costs and packing expenses.

Chia Far argues that it followed the methodology for determining G&A expenses required by the Department not only in the instant review, but in the previous review as well regarding G&A expenses.

Department's position: We agree with petitioners. COGS and the total cost of manufacturing should reflect the same costs to be consistent, and to treat them differently would, indeed, understate per-unit G&A expenses. However, in our preliminary results of review, we increased the per-unit cost of manufacturing by the amount of further processing costs incurred by each product. See the model match and the margin program. As a result, the further processing costs are now accounted for both in the cost of manufacturing and the cost of goods sold. Therefore, we made no further adjustment to our calculations for the cost of further-processing. However, in order to account for the packing costs, which are excluded from the cost of manufacturing but included in COGS, we have decreased COGS by the total value of packing expenses reported during the POR. See Chia Far's Analysis Memorandum.

Comment 24: Understatement of Financial Expenses in the COP/CV Response

Petitioners state that Chia Far failed to include certain expenses in its reported financial expenses, and appeared to divert a portion of these financial expenses to its G&A ratio. Petitioners contend that Chia Far's reporting methodology is not in accord with the Department's stated policy. Specifically, petitioners argue that the Department now requires that all foreign exchange gains and losses should be included in the financial expense calculation. See Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 68 FR 11045, 11048, 11049 (March

7, 2003) ("Mushrooms from India"). As a result, petitioners argue, the Department should require Chia Far to include the full amount of foreign exchange losses in its financial expense ratio.

Additionally, petitioners contend that Chia Far also understated its financial expense ratio as it did with G&A: it divided total financial expenses by the total value of COGS in the denominator, which includes packing expenses, unlike the rest of the cost of manufacturing. To correct this error, petitioners contend that the Department should multiply Chia Far's reported financial expense ratio by the sum of total cost of manufacturing and add further processing costs and packing expenses in the home market and the U.S. markets to obtain the appropriate value of the financial expense ratio.

Chia Far argues that it followed the methodology required by the Department not only in the instant review, but in the previous review as well regarding G&A and financial expenses.

Department's position: We agree with petitioners. In Mushrooms from India, the Department implemented a change in practice regarding the treatment of foreign exchange gains and losses by including all foreign exchange gains and losses in the interest expense calculation. Therefore, we included Chia Far's foreign exchange losses in the financial expense ratio. See Chia Far's Analysis Memorandum. Additionally, as we explained in Comment 23 above, we revised the amount of COGS used as the denominator in the financial expense ratio to exclude packing as explained in Comment 23 above. See Chia Far Analysis Memorandum.

Comment 25: Total AFA for Chia Far

Petitioners argue that due to Chia Far's failure to cooperate to the best of its ability and thus, the Department cannot use Chia Far's home market sales and COP/CV databases. Petitioners argue that Chia Far has failed to provide information concerning certain sales of subject merchandise that were sold during the POR, failed to identify certain home market customers as affiliated to Chia Far, improperly reclassified prime merchandise as non-prime merchandise, overstated and misreported home market discounts, failed to report all freight expenses for U.S. sales, and finally, failed to properly report U.S. ICC expense. Furthermore, petitioners claim that Chia Far omitted certain sales of subject merchandise the were sold during the POR, inventoried by Chia Far and the further processed by Chia Far, free-of-charge, into non-subject merchandise. As a result, petitioners contend that the Department does not have usable sales databases for the calculation of the dumping margin. Petitioners contend that Chia Far further understated the value of idled equipment and yield losses in such a way that it is impossible to correct the incomplete record compiled by Chia Far. Therefore, petitioners argue, the Department does not have usable COP/CV databases for the purposes of calculating the margin. Petitioners therefore argue that the Department should assign Chia Far the highest dumping margin from the final determination of the original investigation of 34.95 percent ad valorem, as total adverse facts available.

Chia Far states that it has fully and accurately complied with all information requests issued by the Department. Also, Chia Far has responded in the same manner as in the last two

administrative review and using the same methodology. Chia Far argues that the Department cannot accept petitioners arguments without first conducting a verification of its sales and cost information.

Department's position: We agree with Chia Far. The Department has useable data on the record of this proceeding for the U.S. sales at issue and has incorporated this data into its analysis for the Preliminary Results and will continue to use this data for the final results. For the final results, the Department will use the data on the record of this proceeding for the issues discussed supra, subject to minor corrections previously noted in the Preliminary Results, and elsewhere in this Decision Memorandum and the final results. The Department finds that the discrepancies noted by petitioners are minor and have already been amended in the Preliminary Results or will be amended for the final results. Therefore, we have determined that the aforementioned errors do not constitute a basis for application of AFA to Chia Far.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final rescission of the review and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____

James J. Jochum
Assistant Secretary
for Import Administration

_____

Date