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Investigation
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MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Investigation of Narrow Woven Ribbon With Woven Selvedge from Taiwan

Summary

We have analyzed the comments of the interested parties in the antidumping duty investigation of narrow woven ribbon with woven selvedge (NWR) from Taiwan. As a result of this analysis and/or based on our findings at verification, we have made changes to the margin calculations for the three respondents in this case, Dear Year Brothers Mfg. Co., Ltd. (Dear Year), Roung Shu Industry Corporation (Roung Shu), and the Shienq Huong Group (i.e., Hsien Chan Enterprise Co., Ltd. (Hsien Chan), Novelty Handicrafts Co., Ltd. (Novelty), and Shienq Huong Enterprise Co., Ltd. (collectively "Shienq Huong")). 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 investigation on which we received comments from parties.

General Issues

1. Targeted Dumping
2. The Appropriate Unit of Measure On Which to Base Sales and Cost Data
3. How to Define the Product Characteristic "Color"
4. Display Unit Costs

Company-Specific Issues

5. Date of Shipment for Dear Year
6. Dear Year's Sales of Traded Goods
7. The Treatment of a Relabeling Billing Adjustment for Dear Year
8. The Treatment of Dear Year's "Combination" Ribbons
9. Clerical Error in Dear Year's Preliminary Dumping Margin
10. Dear Year's Sample Sales
11. Reallocation of Variable Overhead (VOH) for Dear Year
12. Variables Names in Dear Year's Cost Database
13. The Treatment of the Product Characteristic "Width" for Roung Shu

14. Warranty Expenses for Roung Shu
15. Roung Shu's Reporting of the Costs Associated with Different Colors of NWR
16. Financial Expenses for Roung Shu
17. Financial Expenses for Shienq Huong
18. Depreciation Expense for Shienq Huong

Issues Related to Unaffiliated Suppliers

19. Dear Year's Unaffiliated Suppliers' Cost of Production (COP)
20. Shienq Huong's Unaffiliated Suppliers' COP
21. Assigning Combination Rates to Dear Year and Shienq Huong

Background

On February 18, 2010, the Department of Commerce (the Department) published the preliminary determination in the less-than-fair-value (LTFV) investigation of NWR from Taiwan. See Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 7236 (Feb. 18, 2010) (Preliminary Determination). The petitioner,[1] Dear Year, and Shienq Huong requested a hearing, which was held at the Department on June 11, 2010. The period of investigation (POI) is July 1, 2008, through June 30, 2009.

We invited parties to comment on the preliminary determination. We received comments from the petitioner and the three respondents. Based on our analysis of the comments received, as well as our findings at verification, we have changed the weighted-average margins from those presented in the preliminary determination.

Margin Calculations

We calculated export price (EP) and normal value (NV) using the same methodology stated in the preliminary determination, except as follows:

- We revised our margin calculations for each respondent to take into account our findings from the sales and cost verifications.

- We accepted Dear Year's reported display unit costs for all sales for purposes of the final determination, based on our finding at verification that these costs were properly reported.

- We revised Dear Year's date of shipment in both markets to be either the date that the merchandise left the factory (where the actual date is known) or an estimated date of shipment from the factory using data obtained at verification (where the actual date is unknown). See Comment 5.

[1] The petitioner in this investigation is Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc.

- We disallowed a relabeling fee on a U.S. sale reported by Dear Year because Dear Year did not recognize this fee as income in its accounting system. See Comment 7.

- We corrected a clerical error related to packing expenses in the calculation of Dear Year's dumping margin. See Comment 9.

- We reallocated Dear Year's VOH costs based on our findings at verification. See Comment 11.

- We disallowed one claim for third country warranty expenses and one discount reported by Roung Shu, based on our finding at verification that these amounts had not been paid (or otherwise remitted) to the customer as of the last day of verification. See Comment 14.

Discussion of the Issues

I. General Issues

Comment 1: *Targeted Dumping*

The deadline for filing a targeted dumping allegation in this case was January 8, 2010. Although the petitioner did not make an allegation by this deadline, in its case brief, the petitioner requested an additional opportunity to make such an allegation. The petitioner based this request on the facts that: 1) the respondents provided revised sales data after January 8, 2010; 2) the Department revised the respondents' reported data in the Preliminary Determination; and 3) the data will also be revised as a result of the findings at the sales and cost verifications. Because these data revisions could potentially affect a targeted dumping determination, the petitioner requests that the Department accept as timely a targeted dumping allegation once the respondents' sales data is finalized. Alternatively, the petitioner suggests that, because the Department has standard targeted dumping language within its margin calculation program, the Department itself could perform the targeted dumping analysis as part of its final determination without any undue administrative burden.

Roung Shu notes that the petitioner does not provide any information required in a targeted dumping allegation, such as whether price variations relate to comparisons of time, region, or purchaser, as well as which prices "differ significantly" from the norm. Furthermore, Roung Shu states that the petitioner requests an examination of all respondents, leading Roung Shu to believe that the petitioner is not genuinely interested in redressing targeted dumping, but rather is using this allegation as a tactic to increase the respondents' margins. Roung Shu cites Borden, Inc., v. United States, 23 CIT 372, 379 (CIT 1999) (Borden), in which the Court found that the Department cannot conduct a targeted dumping analysis without the petitioner first identifying the "targets" which the petitioner believes created the targeted dumping. Roung Shu also cites Am. Silicon Technologies, Inc. v. Unites States, 261 F.3d. 1371, 1378 (Fed. Cir. 2001), citing United States v. Mead Corp., 150 L. Ed. 2d 292, 121 S. Ct. 2164, 2172 (2001), to support its assertion that

the Court would not find the Department's actions reasonable if it were to grant the petitioner's request at this stage, especially given the untimeliness of the allegation and its lack of specificity.

Roung Shu points out that the deadline for submitting a targeted dumping allegation is not specified in the Department's regulations. According to Roung Shu, 19 CFR 351.301(d)(5) had required that targeted dumping allegation be filed 30 days prior to the date of the preliminary determination before that regulation was ultimately withdrawn in favor of granting "reasonable" discretion to the Department. See United States Steel Corporation v. United States, 637 F. Supp. 2d 1199, 1216 (CIT 2009). See also, 19 CFR 351.305(d)(5) as reserved by Withdrawal of the Regulatory Provision Governing Targeted Dumping in Antidumping Investigations, 73 FR 74930 (Dec. 10, 2008). According to Roung Shu, the Department is flexible with the targeted dumping deadline where good cause is shown. See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27336 (May 19, 1977) (Preamble). Roung Shu notes that: 1) the Department already demonstrated such flexibility in this investigation by granting the petitioner an extension of the deadline for submitting a targeted dumping allegation; and 2) despite being granted an extension, the petitioner affirmatively decided not to submit an allegation. Thus, Roung Shu maintains that it would be an unreasonable application of the law for the Department to grant the petitioner's request at this point.

Shienq Huong contends that the Department should also reject the petitioner's suggestion that the Department perform its own targeted dumping analysis as part of the final determination in this case. Shienq Huong notes that the petitioner cites nothing in the Tariff Act of 1930, as amended (the Act), the regulations, or the Department's practice to support its argument that the Department could undertake its own targeted dumping analysis in the absence of a formal written allegation from the petitioner. Shienq Huong maintains that petitioner's suggestion that the Department perform its own targeted dumping allegation analysis, without affording parties any opportunity to comment on the analysis, is entirely unsupportable and therefore must be rejected.

Finally, Shienq Huong notes that, in antidumping proceedings, respondents face the application of facts available if they fail to comply with the deadlines established by the Department. Shienq Huong states that it is unclear why the petitioner believes it should not be held to the same standard, especially when the Department has previously informed the petitioner that the targeted dumping deadline was firm.

Department's Position:

In its notice of initiation, the Department set a deadline for interested parties wishing to make a targeted dumping allegation of no later than 45 days before the scheduled date of the country-specific preliminary determination. See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 74 FR 39291, 39296 (Aug. 6, 2009) (Initiation Notice). On December 31, 2009, the Department extended the deadline for the submission of a targeted dumping allegation until January 8, 2010, pursuant to a request from the petitioner.

On January 8, 2010, the petitioner submitted a letter in which it stated that it: 1) declined to file a targeted dumping allegation at that time; and 2) reserved the right to make an allegation after the publication of the preliminary determination.

We are not affording the petitioner another opportunity to submit a targeted dumping allegation in this proceeding. We explicitly addressed this issue in a letter to the petitioner on January 28, 2010, in which we stated:

> "The Department does not accept your assertion that targeted dumping allegations may be submitted after the Department's preliminary determination. The applicable deadline for targeted dumping allegations was January 8, 2010. Under the Department's regulations, the submission of specific information or allegations, such as targeted dumping allegations, is not a right that can be preserved throughout the duration of the administrative proceeding. Instead, because the Department's investigation process is governed by firm statutory deadlines the Department establishes, and requires parties to follow, deadlines for the submission of information. See e.g., 19 CFR 351.302(d) (procedures for the return of untimely filed submissions).
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> In the Initiation Notice, the Department stated that if any interested party wished to make a targeted dumping allegation in the narrow woven ribbons investigations pursuant to section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the "Act"), such allegations were due no later than 45 days before the scheduled date of the country-specific preliminary determination. See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 74 FR 39291, 39296 (August 6, 2009) ("Initiation Notice"). Accordingly, the original due date to provide the Department with a targeted dumping allegation was December 21, 2009. In response to your request, the Department granted an extension of time to submit a targeted dumping allegation until January 8, 2010. The Department stated in its grant of an extension that this deadline was firm with no possibility of a further extension. See Memorandum to the File from Elizabeth Eastwood, Senior Analyst, AD/CVD Operations, Office 2, through Shawn Thompson, Program Manager, AD/CVD Operations, Office 2, "Deadline for the Submission of Targeted Dumping Allegations in the Antidumping Duty Investigations of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China (PRC) and Taiwan" (December 30, 2009).
>
> As stated above, the Department provided you an extension for submitting a targeted dumping allegation, but you did not submit a targeted dumping allegation within the required timeframe. The Department expressly stated that it could not again extend the deadline for a targeted dumping allegation. Thus, any targeted dumping allegation submitted after January 8, 2010, will be untimely."

See the January 28, 2010, letter from James P. Maeder, Jr., Office Director, to Gregory Dorris, counsel to the petitioner, entitled, "Narrow Woven Ribbons with Woven Selvedge from Taiwan: Targeted Dumping Allegation"(Targeted Dumping Letter).

Given that we clearly informed the petitioner that any targeted dumping allegation submitted after January 8, 2010, would be untimely, we decline to now to accept such an allegation. We disagree with the petitioner's contention that changes to the respondents' data in the preliminary determination, as well as at verification, impeded the petitioner's ability to submit a targeted dumping allegation. The changes to the databases in this proceeding did not rise to the level of a wholesale revision to the responses, nor does the petitioner allege that they were so. Instead, these changes were of a type which happens in most investigations. The fact that minor database changes may occur is not a factor that the Department considers when establishing the deadline for a targeted dumping allegation because: 1) changes are commonplace; and 2) the deadline is necessary in order to permit the Department sufficient time to analyze the allegation, make a determination with respect to it, and permit parties to comment on the results.

Comment 2: *The Appropriate Unit of Measure On Which to Base Sales and Cost Data*

On September 23, 2009, after considering comments from interested parties, the Department required all respondents to report the price and quantity, as well as all associated expenses, for each U.S. and third country sales transaction on a per-spool basis. While each of the respondents complied with this request, two of them (i.e., Dear Year and Roung Shu) also reported their sales and cost data per square yard. In the preliminary determination, we based our margin calculations for all respondents on prices, expenses, and costs stated on a per-spool basis.

Dear Year requests that the Department use its reported square-yard prices, expenses, and costs in its margin calculations for the final determination. Dear Year claims that using square-yard prices and costs results in more accurate margin calculations and better model matches than calculations performed on a per-spool basis. According to Dear Year, using its square-yard prices and costs for margin calculation purposes is consistent with the Department's practice of using a uniform unit of measure when making price-to-price comparisons with subject merchandise sold in varying lengths, weights, or widths.[2] Moreover, Dear Year maintains that the courts have upheld this practice. As support for this assertion, Dear Year cities Viraj Forgings, Ltd. v. United States, 350 F. Supp. 2d 1316, 1330 (CIT 2004) (Viraj 2004), where the Court upheld the Department's practice of using a uniform unit of measure for its price-to-price comparisons (i.e., converting prices to a per-kilogram basis when calculating the dumping margin instead of comparing products on a per-piece basis).

[2] See Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate from Canada: Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not to Revoke in Part, 66 FR 3543 (Jan. 16, 2001) (Plate from Canada), and accompanying Issues and Decision Memorandum at Comment 1; Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China, 68 FR 61395 (Oct 28, 2003) (Iron Pipe from the PRC), and accompanying Issues and Decision Memorandum at Comment 13; and Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines: Antidumping Duty Orders, 66 FR 11257 (Feb. 23, 2001) (Butt-Weld Pipe Orders).

Similar to steel products, where weight is the primary basis for determining prices and costs, Dear Year states that the cost and price of subject merchandise is largely dependent on the width and length (i.e., the quantity in square yards) of the NWR. Dear Year contends that, under the Department's current methodology, NWR with a length of one linear yard produced from the same production run as another NWR with a length of three linear yards would not be matched in a price-to-price comparison. Dear Year argues that such a result distorts the dumping margin and is absurd when the only difference in the two products is their length. See Viraj 2004, 350 F. Supp. 2d at 1329. Dear Year claims that, if the Department were to make its comparisons on a square-yard basis, this distortion would be eliminated because the sales prices for both NWRs would be adjusted to the same unit of measure, resulting in an apples-to-apples comparison. Further, Dear Year alleges that four of the first five matching criteria in this case (i.e., width of narrow woven ribbon, number of ends in the warp, number of weft picks per linear inch, and number of yards held by the spool/other packaging type) directly relate to size or a quantity that are attributable to a square unit measure and therefore eliminates any of these distortions. According to Dear Year, if the Department uses a standard unit of measure for product comparisons in this case, any meaningful differences between the physical characteristics of the compared products would be accounted for and eliminated by the difference-in-merchandise test.

According to Dear Year, the Department selected "width" as the first product characteristic because the wider the ribbon, the more yarn is used to produce it, and thus, the higher the cost of the ribbon. Dear Year contends that, because the Department recognized the importance of "width" as a product characteristic, it understood the importance of square-unit measurements. Similarly, Dear Year alleges that the Department's decision to rank the product characteristics "wends" and "picks" high in the model matching hierarchy demonstrates that the size of a ribbon is important. Therefore, Dear Year claims that, in accordance with its practice, the Department should base its final margin calculations for Dear Year on its reported square-yard prices, expenses, and costs. According to Dear Year, this methodology would eliminate the distortion of having the most "similar" ribbons not matching because they have a different length or width.

The petitioner disagrees with Dear Year, maintaining that the Department should continue to perform its margin calculations using per-spool data. The petitioner notes that Dear Year has failed to point to any specific distortions in the dumping margin caused by making comparisons on a per-spool basis, relying instead on allegations of theoretical distortions. The petitioner asserts that Dear Year's failure to point out any specific distortions indicates either that: 1) such distortions do not exist; or 2) Dear Year's proposed change is results-oriented.

The petitioner notes that Dear Year relies exclusively on cases involving steel products to support its arguments. The petitioner asserts that steel products and ribbons are not comparable, a fact which severely limits the value of the cases cited by Dear Year. According to the petitioner, steel products of the same grade have the same density, and thus the weight of steel products is an appropriate unit of measure; however, the petitioner notes that two ribbons of the same type may not have the same density, depending on the construction of the NWR or the specific characteristics of the yarn used. Therefore, the petitioner maintains that square yardage is not a standard unit of measure for ribbons in the same way that weight is for steel products.

Finally, the petitioner notes that the Department verified Dear Year's data reported on a per-spool, not per-square yard, basis. Consequently, the petitioner argues that the Department cannot use Dear Year's unverified per-square-yard data in its calculation for the final determination.

Department's Position:

For the final determination, we have continued to base our margin calculations for all respondents on prices, expenses, and costs stated on a per-spool basis.

It is the Department's general practice to require respondents to report their data in the same unit of measure in which they sell their products. In Viraj Forgings, Ltd. v. United States, 283 F.Supp.2d 1335, 1354 (CIT 2003), the Court instructed the Department to "conform itself to its prior precedent and compare plaintiff's merchandise in the manner in which it was sold." Consistent with this practice, we solicited data from the respondents in this case on a per-spool basis because this is the unit of measure used to set their prices.[3] Specifically, the invoices issued by the respondents to their respective customers demonstrate that NWR is sold on a per-spool basis, not sold by the square yard. This fact that NWR is sold on a per-spool basis was also documented during verification for each respondent in this investigation. Therefore, we have continued to use spools as the uniform unit of measure in our calculations for purposes of the final determination. See Viraj 2004, 350 F.Supp.2d at 1330.

Comment 3: *How to Define the Product Characteristic "Color"*

According to the petitioner, the Department identified numerous inaccuracies in the reporting of the color component of Dear Year's and Roung Shu's control numbers[4] during the sales verification conducted at each company. As support for this assertion, the petitioner cites selected pages from the sales verification reports. Specifically, the petitioner cites the March 31, 2010, memorandum from Holly Phelps, Analyst, to the file, entitled, "Verification of the Sales Response of Dear Year Brothers Manufacturing Co., Ltd. (Dear Year) in the Less-Than-Fair-Value Investigation on Narrow Woven Ribbon With Woven Selvedge from Taiwan" (Dear Year sales verification report) at 9-10 and the March 31, 2010, memorandum from Holly Phelps, Analyst, to the file, entitled, "Verification of the Sales Response of Roung Shu Industry Corporation (Roung Shu) in the Less-Than-Fair-Value Investigation on Narrow Woven Ribbon With Woven Selvedge from Taiwan" (Roung Shu sales verification report) at 2 and 11-13.

The petitioner maintains that the Department should correct these inaccuracies and regenerate the CONNUM for each affected transaction. The petitioner contends that, after revising the color codes and CONNUMs for each company, the Department should consider whether the reported

[3] We note that occasionally the respondents sell NWR in units other than spools (e.g., strips, skeins, etc). However, in those instances the respondents do not price these products per-square yards. Because the vast majority of the respondents' sales is of merchandise on spools, we find that it is appropriate to use this unit of measure in our analysis for all products.

[4] Control numbers (also known as "CONNUMs") are identifiers assigned to unique products.

cost data is rendered meaningless as a result of the changes. The petitioner notes that, because the costs for a particular CONNUM may have a particular mixture of correct and incorrect products rolled into them, it may not be possible for the Department to undo the inaccuracies in the cost data. However, if the Department finds the cost data useable in a general sense, the petitioner notes it may nonetheless find that any "new" CONNUMs created as a result of a color change may have missing cost data. In such a situation, the petitioner contends that the Department should assign margins to U.S. transactions with missing cost data based on adverse facts available (AFA). The petitioner does not suggest a source for AFA.

Dear Year claims that there is no basis for modifying the reported color of its ribbons. According to Dear Year, the petitioner provides no supporting arguments that should convince the Department that the company did anything other than accurately report its product characteristics as requested by the questionnaire. Rather, Dear Year contends that the only issue is whether Dear Year should have reported the dyed color of the product based on how the final ribbon appeared, rather than on the colors of the yarns used in the production of the base ribbon. Nonetheless, Dear Year contends that, if the Department determines the final appearance more accurately reflects the base color for the yarn, then it should reclassify these ribbons as having a color of "other."

Roung Shu did not comment on this issue.

Department's Position:

After reviewing the data on the record, we disagree with the petitioner that there are numerous inaccuracies in the color codes reported by Dear Year and Roung Shu. At verification, we reviewed the colors reported by each respondent and found that the majority of the codes were reported correctly. While we noted two areas where Roung Shu's reporting methodology merited further consideration, we disagree that the methodology was clearly wrong in either. With respect to Dear Year, we identified a single error for one product and noted no methodological concerns. Thus, we find that AFA is unwarranted in this situation.

As to the specifics of the issues raised for Roung Shu, we questioned whether it would be appropriate to adjust the company's data in the following situations: 1) where the base ribbon was dyed but the ribbon was ironed in the dyeing machine and thus brightened (Roung Shu reported these products as piece-dyed and off-white); and 2) where the warp yarn was yarn-dyed but the weft was piece-dyed (Roung Shu reported these products as either a single color or white). See the Roung Shu sales verification report at 2-3.

The petitioner provided no arguments as to the appropriate treatment of color in either of these situations but rather merely requested that the Department "correct" the data. Because: 1) no party has offered any basis for rejecting the data nor any suggestions on how to adjust it; and 2) there is no indication that the data itself is clearly inaccurate, we have accepted it for purposes of the final determination. Nonetheless, we believe that both methodologies continue to merit further consideration. Thus, in the event that the Department issues an antidumping duty order in this proceeding, we will solicit comments on the appropriate treatment of color in these situations in the context of the first administrative review.

We noted no similar issues during the verification conducted for Dear Year. However, in its rebuttal arguments, Dear Year referenced a portion of the sales verification report in which the Department discussed another aspect of color, which was equally applicable to Roung Shu. Specifically, at verification, we observed that both companies sold various products which appeared to be of a single color but which they reported as multicolored. Our verification reports state the following:

> Regarding color, we noted that Dear Year reported sales of products which appeared to be a single non-white or non-black color as multi-colored. Company officials stated that these products were produced from different color yarns and thus they believed that their reporting methodology was consistent with the instructions provided in the questionnaire. We reviewed the yarn color cards for each "multi-colored" item and confirmed that the warp and weft yarn colors were indeed different.
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> . . .
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> With the exception of {one product}, which was woven from white/off-white yarn (and thus should have had a color code of "02"), we noted that each of the reviewed products was woven from yarns of different colors. Labeling certain of these ribbons as multicolored is a technicality because the end products appeared to be of a single color.

See the Dear Year sales verification report at 9-10.

> We noted that the color of product code AY867-0250-C010-050-13 appeared to be gold, although Roung Shu reported that this ribbon was multi-colored. According to company officials, Roung Shu understood that the Department instructed respondents in a supplemental questionnaire to report the color of all yarn-dyed products as multi-colored and thus they believed that color should be assigned to only piece-dyed products.

See the Roung Shu sales verification report at 11.

Because the questionnaire instructed respondents to classify NWR as multicolored where the base ribbon was made of multicolored yarn (see the September 23, 2009, letters from Shawn Thompson, Program Manager, Office 2, to Dear Year and Roung Shu), we did not raise this as an issue for either company. Moreover, because the respondents followed these questionnaire instructions, we disagree with the petitioner that their data was misreported. Thus, we have accepted it for purposes of the final determination.

Comment 4: *Display Unit Costs*

During the POI, each of the respondents sold NWR both in individual spools and packaged in display cases. In the preliminary determination, we treated the cost of these display cases as direct selling expenses, and we made circumstance-of-sale adjustments to account for these costs in our preliminary margin calculations. See Preliminary Determination, 75 FR at 7243.

Roung Shu disagreed that the Department treated the cost of display cases as direct selling expenses, alleging that the Department instead treated them as indirect selling expenses. According to Roung Shu, these expenses are more appropriately classified as packing expenses because: 1) the subject merchandise could have easily been sold in the United States without the case; 2) nothing on the case itself held it out as a marketing instrument; and 3) the case did not appear to be specially designed to sell the subject merchandise as much as it was designed to protect the good while in transit. While Roung Shu acknowledges that reclassifying these expenses as packing would have no effect on the margin, it requests that the Department reclassify them as such as a point of principle.

Department's Position:

We disagree that we treated these expenses as indirect selling expenses in the margin calculations performed for the preliminary determination. As our Federal Register notice clearly explains, these expenses were treated as circumstance-of-sale adjustments (which are made for direct, not indirect, selling expenses). See Preliminary Determination, 75 FR at 7243.

Further, all of Roung Shu's U.S. sales during the POI were EP transactions. Under section 773(a)(6), the adjustment in the margin calculation for both categories of expenses is identical (i.e., third country packing and direct selling expenses are deducted from NV and U.S. packing and direct expenses are added). Therefore, this issue is moot, and we have declined to address it further here.

Company-Specific Issues

Comment 5: *Date of Shipment for Dear Year*

At verification, we noted that Dear Year based its reported shipment dates on the dates reflected on the bills of lading, rather than the dates that the merchandise left the company's factory. In light of this fact pattern, the Department's verification report stated that "it may be appropriate to adjust the dates of shipment, and the dates of sale for purposes of the final determination." See the Dear Year sales verification report at 2.

Dear Year argues that the Department should continue to use its reported dates of shipment for purposes of the final determination. According to Dear Year, the company fully explained the basis for its reported dates of shipment (i.e., bill of lading) in its submissions to the Department. See the October 21, 2009, response at B-25 and C-24. Dear Year points out that the petitioner never commented on the company's reported dates of shipment and that the

Department never requested that Dear Year report a different shipment date. Dear Year also states that it reported all movement expenses in accordance with 19 CFR 351.401(e) and sections 772(c)(2)(A) and 773(a)(6)(B)(ii) of the Act, and that the Department found no discrepancies in Dear Year's reporting of these expenses at verification.

Dear Year notes that the Department's practice is to base the date of sale on the earlier of invoice or shipment date. Dear Year argues that it would be inappropriate to use the factory shipment date instead of the bill of lading date as the date of sale in this case because the material terms of sale were not established on the factory shipment date, given that they were subject to change until the invoice was issued or the merchandise was shipped from the port. See the Dear Year sales verification report at 6. Dear Year notes that, while the Department normally uses the date of invoice as recorded in the producer's records as the date of sale, pursuant to 19 CFR 351.401(i), the Department may use a different date if that date better reflects when the material terms of sale are established.

Finally, Dear Year argues that, because the company is not obligated to sell the merchandise to the customer until the invoice is issued or the merchandise is shipped from a foreign port, the bill of lading date more accurately reflects the establishment of the material terms of sale. In support of its assertion, Dear Year cites Mittal Steel Point Lisas Ltd. v. United States, 548 F.3d 1375, 1385 (Fed. Cir. 2008) (Mittal) (citing Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 67 FR 15531 (Apr. 2, 2002) (Silicomanganese from India), and accompanying Issues and Decision Memorandum at Comment 19) (where the Court determined that, "{f}or most companies, irrespective of the date of sale, once goods have been shipped from a foreign port, the material terms of sale have been set, as the seller may not then sell those goods to another customer"). Therefore, if the Department uses a different date of sale, Dear Year argues that it should use the earlier of the invoice date and the bill of lading date as the date of sale for purposes of the final determination.

The petitioner did not comment on this issue.

Department's Position:

We disagree with Dear Year that the bill of lading date is the most appropriate date to use as the date of shipment for Dear Year's sales. It is the Department's practice to use the date of shipment from the factory as the date of shipment. See, e.g., Silicomanganese from India at Comment 19; Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (Mar. 14, 2000), and accompanying Issues and Decision Memorandum at Comment 1; Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil, 63 FR 6899, 6908 (Feb. 11, 1998); and Silicon Metal From Brazil, Amended Final Results of Antidumping Duty Administrative Review, 62 FR 54094, 54095 (Oct. 17, 1997).

The date of shipment is used in the Department's analysis as the starting point in the calculation of imputed credit expenses. Our policy regarding EP sales is to impute expenses starting from the time that the merchandise leaves the production line until it is paid for by the

customer. See Silicomanganese from India at Comment 19. We break these imputed expenses up into imputed inventory carrying costs (ICC) (indirect) and imputed credit (direct), depending on whether the goods are in the producer's inventory or not. Once the merchandise is shipped to the customer, it is no longer in the company's inventory and therefore the inventory carrying period is over--and the credit period begins. In addition, at this point, the company has identified a specific customer and, therefore, the goods are no longer available for general sale. Because the company has shipped the goods to a specific customer, the expenses after shipment from the factory are directly associated with a given sale (and thus are part of credit expense which is direct, rather than ICC which is indirect).

In the instant case, we intended to follow our practice and ensure that all respondents base their dates of shipment on the dates the merchandise left the factory. While we did this for Roung Shu (which also initially reported bill of lading dates), we failed to make a similar request of Dear Year. Therefore, for purposes of the final determination, we have estimated Dear Year's factory shipment dates based on the documentation observed at verification. Specifically, we examined the documentation for multiple sales to both the third country and U.S. markets. For the sales we examined, we have used the actual date of shipment from the factory. For the remainder of the sales, we have adjusted the reported dates of shipment by a market-specific average of the examined sales. See the Dear Year sales verification report at 20 and 21. We then used the revised shipment dates to recalculate imputed credit expense.

Finally, as Dear Year correctly notes, the Department's practice is to base the date of sale on the earlier of invoice or shipment date. We disagree with Dear Year that the record demonstrates that the company is not obligated to sell the subject merchandise to a specific customer until the bill of lading date. We examined the documentation for multiple sales at verification, and, in each case, the terms of sale were unchanged following the date on which the merchandise left the factory. See the Dear Year sales verification report at 19 through 22. Moreover, we note that Dear Year has not shown that it has ever changed the terms of sale after the subject merchandise left the factory. Therefore, in accordance with the Department's practice, where the revised shipment date precedes the invoice date, we have used the shipment date as the date of sale. See, e.g., Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 18074, 18079-18080 (Apr. 10, 2006), unchanged in Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (Jan. 31, 2007); and Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination Not to Revoke in Part, 72 FR 62630 (Nov. 6, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

Comment 6: *Dear Year's Sales of Traded Goods*

At verification, we noted that Dear Year had not reported certain POI sales of ribbon that were recorded in the company's "Traded Goods" account. The company stated that items in this account were not sales, *per se*, by Dear Year, but rather were transactions between Dear Year's supplier and Dear Year's customer for which Dear Year served as a freight consolidator. See the

Dear Year sales verification report at 14 and 15. The petitioner disagrees that these sales should have been excluded from Dear Year's U.S. sales listing and thus it argues that the Department determine a margin for these sales using AFA.

The petitioner contends that there is no record evidence to support Dear Year's assertion that merchandise in the "Traded Goods" account was sold directly from Dear Year's suppliers to Dear Year's customer. Rather, the petitioner claims that the documentation obtained by the Department at verification: 1) demonstrates that Dear Year purchased the ribbons before reselling them; and 2) indicates that the ribbons were owned by Dear Year and sold on its own account. See the Dear Year sales verification report at Exhibit 19. Thus, the petitioner claims that the title and ownership of the goods passed from Dear Year's suppliers to Dear Year. Moreover, the petitioner maintains that the record evidence fails to substantiate Dear Year's claim that payment for the goods was made directly by the customer to the suppliers. The petitioner implies that, while the accounting records and bank statements demonstrate how Dear Year accounted for the payment from its customer, this documentation may be incomplete (for reasons which are business proprietary in nature).

According to the petitioner, the Department's treatment of these sales depends on whether Dear Year's suppliers had knowledge at the time of their sale to Dear Year that the merchandise was bound for the United States. The petitioner acknowledges that, if the suppliers had knowledge, they would be the exporters of the traded goods; if, however, they were unaware of the destination of the ribbons, Dear Year would be the exporter. The petitioner implies that, since the suppliers' invoices to Dear Year include sales tax that would not be collected on an export sale, it is likely the suppliers lacked knowledge of the ribbons' destination. Consequently, the petitioner alleges that the sales examined by the Department at verification and, by association, all of the sales in the "Traded Goods" account, are unreported U.S. sales of subject merchandise. Because Dear Year failed to report sales of subject merchandise to the Department, the petitioner argues that the Department should assign a margin for these sales based on AFA.

Dear Year argues that the petitioner's allegation is without merit and has no basis in law or fact. According to Dear Year, the petitioner factually misinterprets the "traded goods" transactions as unreported U.S. sales of woven ribbon, even though Dear Year has consistently held that these are freight consolidation transactions. Dear Year asserts that it has cooperated with the Department regarding these transactions in its responses to the Department's initial and supplemental questionnaires and at verification.[5] According to Dear Year, the company uses the value listed on the unaffiliated supplier's invoice as the price invoiced to the U.S. customer, and it records the same value for purposes of Dear Year's own internal record keeping. Because the company has no knowledge of the details of these transactions and was involved merely to combine freight containers, Dear Year maintains that it was appropriate to not report these transactions as sales made by Dear Year.

[5] In support of its assertions, Dear Year cites to its submissions to the Department on October 21, 2009, January 6, 2010, and February 4, 2010.

Dear Year asserts that the petitioner's allegation regarding the incompleteness of the documentation reviewed at verification is wholly without merit. Dear Year argues that it cooperated fully with the Department's sales and cost teams during verification and provided all requested information regarding these transactions. Dear Year notes that: 1) the record evidence clearly demonstrates that the supplier sold the merchandise directly to a U.S. customer (thus showing that it knew that merchandise was bound for the United States); and 2) both teams thoroughly reviewed these transactions and found no discrepancies. Regarding this latter point, Dear Year claims that the Department confirmed that Dear Year merely shipped the items in question under its own invoices for freight consolidation purposes.

Finally, Dear Year contends that the petitioner failed not only to provide any legal basis for applying AFA to Dear Year's sales, but also to explain why facts otherwise available would be warranted pursuant to sections 776(a)(1) and (2) of the Act. Dear Year further argues that the petitioner provides no evidence that Dear Year, pursuant to section 776(b) of the Act, failed to cooperate by not acting to the best of its ability. Dear Year asserts that it cooperated fully with the Department's requests for information both during the investigation and at verification, and it did nothing to impede the proceeding. As a result, Dear Year maintains that there is no reason for the Department to make any inference, adverse or otherwise, pursuant to section 776 of the Act.

Department's Position:

After examining the facts on the record, we find that the transactions in question were properly not reported by Dear Year as sales subject to this investigation. We examined these sales at verification and observed the following:

> We noted that {the account} related to sales of ribbons which were purchased and then resold without further manufacturing. These ribbons are labeled as "consolidated ornamental ribbon" on the accounting voucher. Company officials stated that these ribbons could have been a mixture of subject and non-subject products, but Dear Year did not report the subject ribbons because these ribbons were not part of a "true" sale by the company. Rather, company officials stated that they were sold by Dear Year's supplier directly to Dear Year's customer and merely shipped under the same invoice for freight consolidation purposes. In order to demonstrate this, Dear Year provided: 1) the accounting voucher showing that Dear Year recorded the purchase as a debit to the purchased goods account and credits to the accounts for each supplier; and 2) the bank statement showing payment by the customer for only the Dear Year products, which was recorded in the accounting system as debits to cash, bank fees, and the suppliers' accounts payables and a credit to accounts receivables. See verification exhibit 19. Company officials stated that payment for the suppliers' goods was made directly by the customer to the suppliers. We noted no discrepancies.

See the Dear Year sales verification report at 14 and 15.

We disagree with the petitioner that the record evidence shows that Dear Year purchased the ribbons and then resold them on its own account. At verification, we thoroughly examined all

documents relating to these transactions, and we confirmed that Dear Year merely acted as a consolidator (rather than as a reseller). Id. Because Dear Year acted as a freight consolidator and did not control the relevant sale to the United States, Dear Year was not the first unaffiliated party with knowledge that the merchandise was destined for the United States. Therefore, these sales should not have been reported in Dear Year's U.S. sales listing, and there is consequently no basis to include these sales in our analysis for purposes of the final determination.

Comment 7: *Treatment of Billing Adjustment for Relabeling Charges for Dear Year*

Dear Year reported that it charged a "relabeling" fee on one sale to the United States during the POI. In the preliminary determination, we treated this fee as a billing adjustment and added it to U.S. price. The petitioner argues that the Department should disallow this adjustment in the final determination because Dear Year failed to substantiate it.

According to the petitioner, the Department found at verification that Dear Year did not record the relabeling charge as revenue in its accounting system, either at the time of sale or by the date of the verification. See the Dear Year sales verification report at 2 and 24. Therefore, the petitioner argues that, because Dear Year did not record the charge as revenue like it does other billing adjustments, the Department should deny the adjustment for purposes of the final determination.

By contrast, Dear Year argues that the Department should continue to accept the relabeling adjustment pursuant to 19 CFR 351.401(b). Dear Year explains that it charged an additional fee after a customer requested that cartons on a particular invoice be relabeled due to a change in destination for the merchandise. According to Dear Year, the Department reviewed the specific transaction related to the relabeling charge at verification and found no discrepancies with either the fee itself or the customer's payment of it. While the company acknowledges that the adjustment was not booked as income in its records, Dear Year argues that there is no legal precedent for, nor is there any logic in, requiring such recordkeeping. Further, Dear Year contends that the petitioner presented no legal basis for the Department to deny the adjustment. Consequently, Dear Year maintains that the Department should continue to add the relabeling charge to U.S. price in the final determination.

Department's Position:

We have examined the facts on record, and we disagree with Dear Year that it would be appropriate to make an upward adjustment to U.S. price related to this relabeling charge for purposes of the final determination. We discussed the facts surrounding this charge with Dear Year officials during the sales verification at that company, and we also reviewed how this transaction was recorded in the company's accounting system. Our sales verification states the following:

> In one instance during the period of investigation (POI), Dear Year charged a customer a fee to defray the cost of relabeling certain shipping cartons. We found that Dear Year did not book this fee into its sales account (via the net sales value), as it had the other billing adjustments. Company officials stated that Dear Year

> did not recognize the revenue associated with the charge at the time the invoice was issued, nor had it yet recognized the revenue. Because Dear Year has not treated this fee as income in its accounting system, it may not be appropriate to consider it as revenue associated with this sale.

See the Dear Year sales verification report at 2.

Typically, a company will record billing adjustment income at the time the adjustment is made by debiting the receivables account and crediting the income account. However, for this relabeling charge, we found at verification that Dear Year did not record the fee at issue in this manner, but instead it reported both the debit and the credit associated with this relabeling charge in balance sheet accounts.[6] Because Dear Year did not recognize this fee as income for the current year in its accounting system and otherwise failed to support its claim for a price adjustment, we find no basis to include the relabeling charge as an adjustment to U.S. price and, thus, we have disallowed it for purposes of the final determination.

Comment 8: *The Treatment of Dear Year's "Combination" Ribbons*

In the preliminary determination, the Department reclassified all NWR that Dear Year reported as "combination"-type ribbons as a single type. For example, where Dear Year reported ribbons as having a type of "taffeta + single face satin" or "sheer + single face satin," we reclassified these ribbons as "taffeta" and "sheer," respectively. See the February 3, 2010, memorandum from Holly Phelps, Analyst, to the file, entitled, "Calculations Performed for Dear Year Brothers Mfg. Co., Ltd. for the Preliminary Results in the 08-09 Antidumping Duty Investigation of Narrow Woven Ribbon with Woven Selvedge from Taiwan." Further, at verification, the Department visually inspected ribbons that were reported as having a combination-type and determined which ribbon type was predominant for each ribbon combination. See the Dear Year sales verification report at 10 and 11.

Dear Year claims that it properly reported the ribbons in question as a combination because the ribbons include two types of ribbon. According to Dear Year, because the Department is required to calculate antidumping duty margins as accurately as possible (see, e.g., Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990)), it would be inappropriate to rely on a subjective judgment call with respect to ribbon type. Thus, Dear Year asserts that its classification of combination ribbons objectively and accurately describes the ribbons and should be used in the Department's calculations.

Furthermore, Dear Year contends that the Department's decision to classify the ribbon based on which type predominates ignores the reality that these ribbons are distinct products from ribbons

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[6] Because of Dear Year's claim of proprietary treatment for the specifics of how it recorded this transaction in its accounting system, we are unable to discuss them further here. See the Dear Year sales verification report for further discussion of this issue, as well as the July 12, 2010, memorandum from Holly Phelps, Analyst, to the file, entitled, "Calculations Performed for Dear Year Brothers Mfg. Co., Ltd. for the Final Determination in the Antidumping Duty Investigation of Narrow Woven Ribbon with Woven Selvedge from Taiwan" (DY Final Calc Memo).

with only one type. Dear Year points out that the Department's questionnaire specifically provides for respondents to report types other than those listed (i.e., XX = Other Types (specify)). Because the ribbons in question did not fit cleanly into the types explicitly provided, Dear Year argues that it reasonably classified these ribbons as a distinct type. Dear Year also contends that there is no dispute with respect to the ribbons having two distinct types. According to Dear Year, the Department observed at verification that the company classified these ribbons consistently in each market throughout the POI. Finally, Dear Year notes that the petitioner is familiar with these types of ribbons and submitted no comments regarding Dear Year's classification, despite having multiple opportunities to do so.

Therefore, Dear Year argues that its reported ribbon types represent the most accurate description and result in the most accurate margin as required by law. As a result, the Department should use Dear Year's reported ribbon types for purposes of the final determination. Alternatively, if the Department chooses not to use Dear Year's reported ribbon types, Dear Year maintains that the Department's reclassifications in the preliminary determination are acceptable and should continue to be used in the final determination.

The petitioner did not comment on this issue.

Department's Position:

We disagree with Dear Year that differentiating between ribbon types beyond the classifications identified in the questionnaire is appropriate here. In accordance with our practice, we attempt to identify product variations that create significant commercial differences among products in our matching hierarchy, rather than capture every physical difference (e.g., our questionnaire identified the colors black, white, and other solid colors, but did not specify these other colors). See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110 (Oct. 30, 2002) (Rebar from Turkey 00-01), and accompanying Issues and Decision Memorandum at Comment 1 (where we altered the existing model matching hierarchy to better reflect the commercial differences between various models); and Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not To Revoke in Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate From Canada, 66 FR 3543 (Jan. 16, 2001), and accompanying Issues and Decision Memorandum at Comment 1 (where we stated that we retain the existing model matching hierarchy "unless a respondent can establish that there are meaningful commercial differences not captured by the hierarchy").

Here, Dear Year provided no support for its assertion that using a more precise type identifier improves the accuracy of the margin calculations in this case. For example, Dear Year did not provide evidence that there are significant differences in costs of production to warrant a more precise identifier. Nor did Dear Year provide a pricing analysis showing that it prices ribbon with a combination type differently than ribbon with a single type. Therefore, because Dear Year did not provide a compelling reason for the Department to modify its decision from the preliminary determination, we have continued to reclassify Dear Year's reported combination-type ribbons as single-type ribbons for purposes of the final determination.

Comment 9: *Clerical Error in Dear Year's Margin Calculations*

The petitioner argues that the Department made a clerical error in the calculation of Dear Year's preliminary dumping margin when it subtracted U.S. packing expenses from the foreign unit price in dollars (FUPDOL), instead of adding them. The petitioner notes that the Department's practice is to add U.S. packing expenses to the comparison market net price, as the U.S. net price to which it is compared includes similar packing expenses. Therefore, the petitioner states that the Department should correct its programming language to add U.S. packing expenses to FUPDOL for purposes of the final determination.

Dear Year did not comment on this issue.

Department's Position:

We have examined our calculations and agree that we incorrectly subtracted U.S. packing expenses from the comparison market net price. Therefore, we have corrected this error for purposes of the final determination.

Comment 10: *Dear Year's Sample Sales*

Dear Year reported various U.S. sales during the POI of merchandise that it classified as "samples." In the preliminary determination, we included these sales in our analysis and calculated a dumping margin for them. Dear Year argues that the Department should exclude these sales from the margin calculations for purposes of the final determination.

According to Dear Year, the Department's practice is to exclude sample sales that are zero-priced or where no consideration was given. See, e.g., NTN Bearing Corporation of America v. United States, 248 F.Supp.2d 1256, 1284 (CIT 2003). While Dear Year acknowledges that the company charged customers a nominal fee for these samples, it asserts that the fees were so negligible as to not represent consideration or bargained-for exchange as defined by the Court of Appeals for the Federal Circuit (CAFC). See, e.g., NSK Ltd. v. United States, 115 F.3d 965, 975 (Fed. Cir. 1997) (NSK). Although Dear Year argues that the Department should exclude all sample sales from the final margin calculation, it particularly contends that, at a minimum, the Department should exclude a subset of those transactions. Dear Year defines this subset based on the fee charged and the size of the ribbon (the specifics of which are business proprietary in nature) and contends that these transactions are not sales in the ordinary course of trade because they are the equivalent of zero-priced sales.

The petitioner disagrees with Dear Year that the sample sales should be excluded from the Department's calculations. According to the petitioner, the Department's practice is to include all transactions with consideration as sales in the margin analysis. See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (Mar. 17, 2010) (Fish Fillets from Vietnam), and accompanying Issues and Decision Memorandum at Comment 5. The

petitioner points out that Dear Year acknowledges that customers were charged a nominal fee for the samples. According to the petitioner, Dear Year's argument that the fees were minimal is not a basis for the exclusion of these transactions from the Department's final margin calculations.

Department's Position:

We disagree with Dear Year that it is appropriate to exclude the company's sample sales from our analysis. While the Department is not required to examine all sales transactions in the United States during the LTFV segment of a proceeding, we generally do not exclude sales unless a party provides a compelling reason and those sales represent a small percentage of the respondent's total sales. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (Apr. 16, 2004), and accompanying Issues and Decision Memorandum at Comment 27; Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation, 66 FR 49347 (Sept. 27, 2001), and accompanying Issues and Decision Memorandum at Comment 10; and Notice of Preliminary Determination of Sales at Less Than Fair Value Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan, 64 FR 8291, 8295 (Feb. 19, 1999). Nonetheless, we are not required, either by the regulations or by our practice, to disregard any sales, even if made in small quantities. Id. Furthermore, the Court of International Trade (CIT) has stated that the Department is not required by statute or regulation to exclude de minimis sales from its analysis. See, e.g., FAG U.K. Ltd. v. United States, 20 CIT 1277, 1281 (1996) (FAG U.K.).

We also disagree with Dear Year that any or all of the company's sample sales are equivalent to zero-priced sales or lack consideration. In NSK, the CAFC concluded that the term "sold" as used in sections 731 and 772(c) of the Act, required "both a transfer of ownership to an unrelated party and consideration." See, e.g., NSK, 1115 F.3d at 975. As a result, the Department only excludes zero-priced transactions if they are properly considered not to be "sales." See e.g., Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 71509 (Dec. 11, 2006), and accompanying Issues and Decision Memorandum at Comment 4; and Fish Fillets from Vietnam at Comment 5.

We find that Dear Year's samples were in fact "sales," given that they involved a transfer of ownership and had consideration. As an initial matter, we note that each of the sample sales reported in Dear Year's U.S. sales database includes the terms of delivery which specify the means by which ownership is transferred to the customer; thus, Dear Year clearly transferred ownership. Since Dear Year has not claimed that it retained ownership of the merchandise at issue, the only issue is whether these transactions lacked consideration, which can take monetary and non-monetary forms. See, e.g., NTN Bearing Corp. of America v. United States, 25 CIT 664, 687 (2001). Dear Year acknowledges that the company charged its customers a fee for each of the sample sales; the existence of the fee, rather than its size, is the relevant factor here. Thus, we continue to find that all of Dear Year's reported sample sales have consideration. Because these transactions meet the requirements of a "sale" as outlined in NSK, we find no basis for excluding them from our analysis. See, e.g., Fish Fillets from Vietnam at Comment 5.

Finally, Dear Year's assertion that its sample sales should be excluded because they are not made in the ordinary course of trade is immaterial. Unlike the definition of normal value, the definition of export price and constructed export price contain no requirement that subject merchandise be sold "in the ordinary course of trade."[7]

Therefore, consistent with the Department's established practice and court precedent, we have continued to include Dear Year's sample sales in our analysis for purposes of the final determination.

Comment 11: *Reallocation of VOH for Dear Year*

Dear Year challenges the Department's cost verification finding with regard to VOH costs. At verification the Department found that VOH costs were allocated to all products based on square yards regardless of whether the products received any in-house processing. See the March 31, 2010, memorandum from Heidi K. Schriefer, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Verification of the Cost Response of Dear Year Brothers Mfg. Co., Ltd. in the Antidumping Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan," (Dear Year cost verification report) at 2. In addition to producing NWR, Dear Year also purchased piece-dyed and heat-transferred NWR during the POI. While the piece-dyed NWR was processed in the printing department, the heat transferred NWR received no in-house processing. Consequently, the Department questioned whether it was appropriate to allocate variable manufacturing overhead costs to products that were not manufactured in the company's facilities.

Dear Year argues that, although heat-transferred NWR was not woven in the factory, the general operations of the factory were critical to the production of the final product. Specifically, Dear Year contends that the purchased NWR was received at the factory, shipped to and from the spooling subcontractors at the factory, stored at the factory, packed at the factory, and finally, shipped from the factory to the customer. Because these functions relate to general operations of the factory, Dear Year maintains that the factory-wide VOH costs should continue to be allocated to all NWR, whether such NWR were produced or purchased by Dear Year.

The petitioner maintains that Dear Year's VOH allocation methodology neither accounts for whether products were processed in-house or by subcontractors, nor does it account for the particular processing performed on the specific product groups. The petitioner points out that at verification the Department collected information that would allow it to segregate VOH accounts between costs related to products manufactured at Dear Year and costs related to all products

[7] See, e.g., FAG U.K. at 1281; Floral Trade Council of Davis, Cal. v. United States, 15 CIT 497, 775 F.Supp. 1492, 1503 n.18 (1991) (where the Court stated that regular exclusion of sales not in the ordinary course of trade only occurs on the home-market side of the price comparison); and IPSCO v. United States, 12 CIT 384, 687 F.Supp. 633, 641 (1988) (where the Court stated, "{I}f Congress intended to require the administering authority to exclude all sales made outside the 'ordinary course of trade' from its determination of United States price it could have provided for such an exclusion in the definition of United States price, as it has in the definition of foreign market value. It has not done so.")

whether purchased or self-produced. Therefore, the petitioner argues that VOH costs can and should be reallocated in a manner that accounts for the differences in processing performed by Dear Year.

Furthermore, the petitioner notes that the Department's calculation of two VOH cost allocation pools (i.e., VOH costs specifically related to products processed in the factory and VOH costs related to all products whether purchased or processed) has addressed Dear Year's concern that the purchased products that did not undergo any manufacturing at Dear Year should absorb a portion of VOH costs related to warehousing and movement between Dear Year and its spooling subcontractors. Moreover, the petitioner argues that, to the extent Dear Year is not satisfied with the cost categories defined by the Department at verification, the company had ample opportunity to provide more meaningful breakouts and allocations throughout the course of this investigation. Therefore, the petitioner requests that the Department reallocate Dear Year's VOH costs for the final determination.

Department's Position:

We agree with the petitioner and have reallocated VOH costs for the final determination. At verification, we found that Dear Year used finished square yards to allocate the total pool of VOH costs to all products regardless of whether the products received any in-house processing. See the Dear Year cost verification report at 18. During the POI, Dear Year's finished products included the following in-scope merchandise: 1) NWR that was self-produced from yarn; 2) NWR that was purchased, processed in the company's printing department, and then spooled by outside subcontractors; and 3) NWR that was purchased and then spooled by outside subcontractors. See the Dear Year cost verification report at 7. Dear Year's allocation methodology distorted the reported costs because NWR to which Dear Year added no value (i.e., products that did not enter Dear Year's production lines) were assigned the same per-square yard VOH cost as NWR that Dear Year wove from yarn on its weaving line or purchased NWR that Dear Year finished on its printing line.

As a result of this discovery, the Department requested at verification that Dear Year identify those VOH accounts more closely related to the production lines within the factory (e.g., weaving, printing, etc.). Dear Year complied and the residual VOH cost accounts were considered to be related to general factory activities that were associated with all products. See the Dear Year cost verification report at 18. Because certain purchased NWR received no in-house processing and because information is available on the record that allows for a more accurate allocation of VOH costs, the Department has reallocated Dear Year's VOH costs for the final determination. Specifically, we have allocated production-related VOH costs to all products that were processed on Dear Year's production lines, while general factory VOH costs were allocated to all finished products. Finally, we also agree with the petitioner that the segregation of VOH costs into two pools – costs related to production lines and costs related to general factory activities – addresses Dear Year's concern that purchased NWR not processed on factory production lines still required factory resources and consequently should absorb a measure of factory overhead costs.

Comment 12: *Variable Names in Dear Year's Cost Database*

Dear Year concurs with the Department's observation that the direct material fields "DIRMAT1C" and DIRMAT2Y" were transposed in the reported cost file. Therefore, the company urges the Department to ensure that the proper direct material amounts are included in the calculation of costs for the final determination.

The petitioner did not comment on this issue.

Department's Position:

We agree with Dear Year and will ensure that the appropriate direct material field is incorporated in the cost calculations for the final determination.

Comment 13: *The Treatment of the Product Characteristic "Width" for Roung Shu*

The Department's questionnaire required respondents to report 18 unique product characteristics for NWR, ordered in relative importance to the product comparison hierarchy. The first of these characteristics is the width of the ribbon. At the sales verification conducted at each respondent, we examined the accuracy of the reported product characteristics. For Roung Shu, we found that the observed widths for six of the nine products examined differed from the widths reported in that company's sales databases.

The petitioner contends that the Department should base the final dumping margin for Roung Shu on total AFA because the differences in the reported and actual widths observed at verification are significant. Specifically, the petitioner notes that the differences range from -16.7 percent to 16.7 percent of the reported value, which exceed the accepted size variation in the textile industry of plus or minus three percent. According to the petitioner, because two thirds of the sample examined at verification contained errors, the Department should infer that the widths reported by Roung Shu for all unexamined products are similarly inaccurate.

The petitioner contends that the errors in question are particularly troubling because width is the most important product characteristic. The petitioner points out that meaningful margin calculations are dependent upon the correct definition of products for model matching purposes, and thus these errors call into question the accuracy of the Department's calculations. Similarly, the petitioner notes that Roung Shu based many of its cost allocations on the square yardage of the ribbons sold, which was determined by multiplying the width of the ribbon by its length. Therefore, the petitioner also maintains that these errors call into question the accuracy of Roung Shu's product-specific costs. For these reasons, the petitioner argues that the Department should: 1) find Roung Shu's sales and cost data to be unverified; and 2) use AFA for Roung Shu for purposes of the final determination. The petitioner does not suggest a source for AFA, however.

Roung Shu disagrees that AFA is appropriate for the final determination, contending that the petitioner cites neither to the precise statutory failures which form the predicate for its argument nor to any cases interpreting the statute. Rather, Roung Shu maintains that it is the clear intention

of Congress that the Department use AFA sparingly, as a remedial, not a punitive, measure. As support for this assertion, Roung Shu cites Atlantic Sugar Refining Ltd. v. United States, 744 F.2d 1556, 1560 (Fed. Cir. 1984) and Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1340 (Fed. Cir. 2002).

Roung Shu maintains that section 776(a) of the Act permits the Department to use facts available only in instances where data is withheld, late, obstructive, or unverifiable and section 776(b) of the Act allows AFA only where a respondent has failed to cooperate to the best of its ability. Roung Shu asserts that the language of section 776(a) of the Act is further subject to the restrictions set forth in section 782(e), which directs the Department to accept information on the record to the extent that it can.

According to Roung Shu, in this case the conditions for facts available have not been met because: 1) the differences observed at verification were not significant; and 2) the company reported its data in a manner consistent with its own books and records. Regarding the former point, Roung Shu noted that the Department conducted its tests on products pulled from the showroom using a ruler of the kind purchased at Staples, an office supplies store. Roung Shu asserts that, notwithstanding the lack of sophistication of the measuring instrument, the inexactitude of the measuring methodologies, the variables of heat and humidity in which these goods were kept, and the age of the samples, the ribbons measured in some cases exactly and in others the measurements were only "mildly off."

As to the latter point, Roung Shu asserts that it reported its width data using the product codes maintained by the company in the ordinary course of business. For example, Roung Shu states that it maintains product codes for ribbons of 1.5 and two inches, with no gradations in between these sizes. Thus, Roung Shu asserts that it not only reported all ribbons having this product code with a width of 1.5 inches (irrespective of whether the actual measurement was an eighth of an inch larger), it also sold these ribbons as 1.5 inch product. Roung Shu notes that the Department did not ask, nor does the law require, it to create codes for this case that it did not use in the ordinary course of business.

According to Roung Shu, the company did not fail to report its data correctly here, but instead reported the data consistent with its own books and records. Roung Shu asserts that: 1) this issue arises simply due to a circumstance in which the records of the company did not register an article in the measured dimension; and 2) the law is clear that a respondent is not obligated to deliver data which is does not have. As support for this latter point, Roung Shu cites Olympic Adhesive, Inc. v. United States, 899 F.2d 1565, 1572 (Fed. Cir. 1990) (Olympic Adhesive) and Goldlink Indust. Co. v. United States, 431 F. Supp. 2d 1323 (2006). Thus, Roung Shu contends that the Department should accept its width data as reported.

Department's Position:

We have examined the data on the record with respect to this issue, and we agree with Roung Shu that the company reported its widths in a manner which is consistent with its books and records.

Therefore, we have accepted the information without adjustment for purposes of the final determination.

As the petitioner correctly notes, the Department selected nine sales transactions at verification and examined the product characteristics reported for each of the associated products. In order to determine whether Roung Shu accurately reported the width of these products, we tied the reported widths to the product codes shown on the relevant invoices issued to the customer. In each of the nine cases, we found that the reported width matched the width stated on the invoice and accompanying source documentation. See the Roung Shu sales verification report at 10.

As an additional test at verification, we also measured the width of each of the nine products using a ruler provided by the company. We found that the measured width was identical to the reported width in three cases, higher than the reported figure in five cases, and lower than the reported number in one case. Id. at 11. In the majority of the instances where the measured width differed, we note that Roung Shu classified these products using the closest preceding size recognized in its product coding system. For example, Roung Shu's product coding system contains codes for ribbons in sizes of 1.5" and 1.75"; where the measured size was 1 5/8", Roung Shu reported this as ribbon as having a size of 1.5", which is the closest smaller size.[8]

At issue here is whether it is appropriate to base the width of the subject ribbons on their actual measurements or their stated size as reflected in the company's product coding system. After considering the information on the record, we determine that Roung Shu's reporting methodology is appropriate, given that the company reported its product characteristic data at the level of specificity used in the ordinary course of business. Therefore, we disagree with the petitioner that the reported data is unusable. Moreover, because Roung Shu used the same methodology to report widths in both its U.S. and comparison markets, we find that Roung Shu's reporting methodology yields apples-to-apples comparisons and as a result it is not distortive, either in terms of model matching or when used in expense allocations.

Under these circumstances, we disagree with the petitioner that the use of facts available is necessary or appropriate here. Therefore, we have continued to accept Roung Shu's width data as reported for purposes of the final determination.

Comment 14: *Warranty Expenses for Roung Shu*

Roung Shu reported warranty expenses related to sales to a single customer in its third country and U.S. markets. In our preliminary determination, we accepted the company's U.S. claim but disallowed the third country one because we found that it was inadequately supported. See Preliminary Determination, 75 FR at 7243. Nonetheless, we indicated that we would request

[8] The only instance where this "rule" does not hold true is for one product with a picot edge (but only in the instance where the measurement is taken at the narrowest point; if the measurement for this product is taken at the widest point, the rule is met).

additional information with respect to third country warranty expenses and consider Roung Shu's claim for purposes of the final determination.[9] Id.

At verification, we reviewed Roung Shu's third country warranty expenses and found that the company accrued two amounts during the POR, one of which it paid in October 2009 and another which it had not paid as of the end of verification. Regarding the unpaid amount, Roung Shu provided a document from the customer indicating that the customer intended to deduct the accrued amount from an upcoming payment, along with a discount granted to the customer which remained similarly unpaid. See the Roung Shu sales verification report at 2.

Roung Shu argues that the Department should accept its third country warranty claims as reported for purposes of the final determination because they are legitimate expenses which the company adequately supported at verification. As an initial matter, Roung Shu disputes the Department's characterization of the expenses in question as "payments" to its customer. According to Roung Shu, the company does not remit any funds to the customer itself. Rather, the customer deducts the warranty amounts from its sales payments, and thus it is the customer, not Roung Shu, which controls the timing and method of payment of this expense. Roung Shu maintains that this fact pattern is significant because: 1) the timing of the payment for March 2010 was consistent with the timing of the delivery of the POI merchandise and payment terms; and 2) this timing raised the issue of an adverse outcome to Roung Shu (and thus it provides evidence that Roung Shu had no control over the matter). With regards to the timing of the payment, Roung Shu contends that it is "entirely consistent with the facts" that the invoice against which the 2009 warranty costs would be adjusted would be approximately March 2010, given that seasonal warranties are deducted from the next season's payments.

In any event, Roung Shu argues that the timing of the warranty deduction/payment is irrelevant in determining whether the expense itself is legitimate. According to Roung Shu, in determining the validity of "warranty payments," the Department begins with sales, and warranty claims, during the POI. As support for this assertion, Roung Shu cites NSK Ltd. v. United States, 190 F.3d 1321, 1330-31 (CAFC 1999) (describing a respondent's warranty factor as the ratio of total claims to total sales). Roung Shu maintains that the Department does not adjust these claims to take into account actual payment against those claims. Thus, Roung Shu asserts that, because it reported its warranties in accordance with this policy, the Department should make no adjustment to its claims here.

Roung Shu contends that the fundamental principle underlying warranties is whether the payments reported are representative of the actual costs likely to be paid for sales during the period of review. Roung Shu asserts that, if the reported warranty charge is not likely to reflect the true costs, irrespective of the amount actually incurred during the period, then the Department may disregard these costs in favor of historical amounts. However, Roung Shu asserts that, here, there

[9] Because the Federal government experienced weather-related closures around the time of the preliminary determination, we were unable to solicit this information prior to the commencement of verification. Therefore, we examined Roung Shu's claim at verification.

is no reason to believe that the amount of the warranty charge is aberrational, and in any event the Department never asked for historical costs to establish a warranty alternative.

Roung Shu maintains that there is no reason to believe that the parties charged or accrued warranties so as to manipulate the outcome of the Department's analysis. Thus, Roung Shu argues that the Department should accept the company's reported warranty costs for purposes of the final determination.

In contrast, the petitioner contends that the Department should continue to reject Roung Shu's third country warranty expenses because: 1) there is no evidence on the record that these expenses relate to actual defects in the merchandise; and 2) the information collected at verification does not support Roung Shu's claim. As to the first point, the petitioner notes that Roung Shu does not require proof of damage or defect from its customer with which it has a warranty agreement, and the company did not receive any warranty claims from other customers. Thus, the petitioner concludes that it was possible that there were no sales of defective merchandise to Mexico during the POI. Given that the Mexico warranty claim (as a percentage of price) is higher than the U.S. claim percentage, the petitioner contends that it would not be appropriate for the Department to make a circumstance-of-sale adjustment for an item that is so dramatically different in both markets absent supporting evidence. The petitioner maintains that the respondent has a duty to support and document its reported sales adjustments, particularly in instances where, like here, the disparity of the adjustments would lead to a favorable margin impact for the respondent.

As to the second point, the petitioner asserts that the Department should be concerned with the timeline surrounding the documentation of the reported warranty claims. The petitioner notes that the amount of the warranty expense was known at the time of shipment to both Roung Shu and its customer because it was based on a predetermined allowance. The petitioner further notes that, despite this fact, there is no evidence that either party recognized the warranty allowance at the time of shipment. Indeed, the petitioner points out that Roung Shu's customer did not prepare any claim paperwork until after Roung Shu submitted both its third country sales and first supplemental sales response, nor it did accrue an allowance in its own records until several months later (after the Department's preliminary determination); moreover, the petitioner notes that the customer notified Roung Shu that it did not intend to deduct the warranty claim from a future payment until late March 2010, after the completion of both the sales and cost verifications.

The petitioner maintains that it is standard business (and accounting) practice to accrue revenue/expense amounts at the time such amounts become known, rather than waiting until there is an inflow or outflow of funds. Because Roung Shu reported that its financial reporting practices conform to Taiwan generally accepted accounting principles (GAAP), the petitioner implies that the Department should question whether these expenses are legitimate. The petitioner concludes that they are not, and thus the Department should continue to disallow them for purposes of the final determination.

Department's Position:

Roung Shu reported warranty expenses related to sales to a single customer in both its third country and U.S. markets. Roung Shu stated that the agreement with this customer differs by market; in the U.S. market, Roung Shu pays actual warranty claims made by the customer, whereas in Mexico Roung Shu determines the amount of the expense based on the sales value. In both cases, the customer deducts the warranty claims from its payment. See the Roung Shu sales verification report at 28.

We disallowed Roung Shu's third country warranty claims in the preliminary determination because we found that they were inadequately supported. See Preliminary Determination, 75 FR at 7243. After examining the claims further at verification, we find that the documentation continues to be inadequate with respect to one claim and is sufficient with respect to another. Our verification report describes our findings as follows:

> During the period of investigation (POI), Roung Shu granted one discount on its sales to [ ] in Mexico, and it also approved two warranty claims on sales to the same customer. When reviewing these transactions at verification, we found that Roung Shu did not pay the expenses at the time that they were incurred, but rather it recorded them as accruals in its general accounts payables account. While Roung Shu ultimately paid one of the two warranty claims in October 2009, this payment came eleven months after the expense was accrued (and well after the initiation of the antidumping duty investigation). Regarding the second warranty claim and the sole discount, we found that Roung Shu had not paid either item as of the end of verification; instead, company officials provided a document from the customer indicating that it intended to deduct the accrued amount from a payment scheduled to be made in March 2010. For further discussion, see the "Customer-Requested Discount (OTHDISTPT/U)" section of this report, below.

See the public version of the Roung Shu sales verification report at 2. After careful consideration, we have accepted Roung Shu's claim related to the 2008 Christmas season because it was recorded in the company's books and records in the ordinary course of business and paid to the customer (in the form of an offset to a payment for a subsequent sale) after it was granted. With respect to the 2009 spring season warranties, however, we have continued to disallow this claim because it was not paid as of the end of verification. While Roung Shu did provide a document from its customer, we find that this document constitutes insufficient proof of payment of the expense at issue, especially considering that it was not recorded in the company's books and records.[10] Because a similar fact pattern exists with a discount claimed for the third country market, we have also disallowed this discount for purposes of the final determination.

We disagree with Roung Shu that the timing of the payment is irrelevant here or that the Department blindly accepts all expenses recorded during the POI regardless of when (or whether)

[10] While Roung Shu claims that seasonal warranties are deducted from the next season's payments, there is no evidence on the record to support this assertion.

they are paid. It is the Department's routine practice to require respondents to demonstrate at verification that they not only incurred all reported expenses, as evidenced in their books and records, but that they also paid the amount(s) reported. This requirement should come as no surprise to Roung Shu, despite its assertions to the contrary, as the verification agenda issued to the company notified it that payment documentation was necessary for all claimed expenses. See the March 2, 2010, letter from Shawn Thompson, Program Manager, Office 2, to Roung Shu at 2 (where we listed, as part of the required documents "{p}urchase agreements and records of payment made for costs, charges, and expenses, such as canceled checks, bank statements, notifications of payment, reconciliations, payment vouchers, and invoices") and at 8 (where we stated "{e}xamples of supporting documents required include: (1) appropriate invoices; (2) accounts payable ledger; (3) cash disbursements journal; and (4) canceled checks and bank statements). Considering that Roung Shu did not place the 2009 warranty expense in its records, as it did with previous warranty claims, and this expense was not paid by the end of verification, nor substantiated with any proof (beyond a document from the customer stating its intention to deduct the accrued amount from a future payment), we have disallowed certain of Roung Shu's claimed warranty and discount expenses for purposes of the final determination.

Comment 15: *Roung Shu's Reporting of the Costs Associated with Different Colors of NWR*

The petitioner asserts that, although the Department's questionnaire instructed the respondents to factor the dyed color of ribbon into its product-specific cost calculations, Roung Shu simply averaged the cost of dyes and dyeing agents across all ribbons. Citing the April 1, 2010, Memorandum from Kristin Case, Accountant, to Neal Halper, Director, Office of Accounting, entitled, "Verification of the Cost Response of Roung Shu Industry Corporation in the Antidumping Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan," dated April 1, 2010, (Roung Shu cost verification report) at 16-17, the petitioner asserts that the per-unit costs for various dyes and dyeing agents vary widely. Accordingly, the petitioner argues that the Department should address Roung Shu's failure to differentiate its reported costs based on dye color. Specifically, the petitioner contends that the Department should apply the highest per-unit dye cost as AFA.

Roung Shu argues that the petitioner has failed to cite any prior judicial or administrative decisions for an analogous situation. In contrast to the petitioner, Roung Shu argues that the Department observed at verification that there was an overall similarity between the various per-unit dye costs and that it often combined dyes and dyeing agents to achieve desired shades. See the Roung Shu cost verification report at 16. Roung Shu argues that, in situations where dyes and dyeing agents are combined, it is entirely appropriate to average such costs. Roung Shu argues that, even though the Department has concerns with averaging in cost-of-production calculations, averaging production costs is an acceptable method of reporting production costs. As support for its position, Roung Shu cites Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment, 73 FR 26364 (May 9, 2008) (Request for Comments) and Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (Dec. 11, 2008) (Belgium Steel Plate), and accompanying Issues and Decision Memorandum at Comment 4.

Department's Position:

The Department has determined that Roung Shu's reporting of dye and dyeing agent costs do not distort cost differences associated the Department's defined dye-color categories: greige, white, black, multi (i.e., ribbons woven from different colored yarns), and other. The "dye color" cost component associated with ribbons made from different colored yarns is captured in the yarn costs for yarn-dyed products, while the "dye color" cost component associated with dyed ribbons is captured in Roung Shu's dye costs. Additionally, Roung Shu explained that, because even undyed ribbons are leveled by running through the dyeing machines, they should receive the associated processing costs. Concerning the dye-color cost associated with black ribbons, Roung Shu demonstrated that various shades of black dye had different per-unit costs and explained that it often combined shades to reach the desired tone. See the Roung Shu cost verification report at 16-17. The CONNUM characteristics do not break-out the different shades of black and white. Further, all other colors are grouped in one category. Concerning greige and white ribbons, Roung Shu explained that while greige ribbons often appeared off white, the process involved in producing white ribbons was better characterized as brightening rather than dyeing. Moreover, record evidence indicates that any cost differences associated with white versus off white ribbons is relatively small. Id. Finally, concerning dyed ribbons of other colors, record evidence indicates that the dye costs associated with other colors does vary considerably in some instances but many colors are similar in cost to the cost of black and white. We also note that the range of costs for colors includes the costs of whitening agents and various shades of black. Id. Accordingly, the Department has determined that, because the cost differences are generally minor and are averaged into only three broad categories, it is not necessary to adjust Roung Shu's reported costs.[11]

Comment 16: *Financial Expenses for Roung Shu*

Roung Shu notes that, during the cost verification, the Department found that Roung Shu had not included foreign exchange gains and losses in its financial expense ratio calculation. Citing Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold Rolled Carbon Steel Flat Products From Turkey, 67 FR 62126 (Oct. 3, 2002), and accompanying Issues and Decision Memorandum at Comment 2, Roung Shu argues that the Department has accepted information discovered at verification which requires the alteration of submitted data. Accordingly, Roung Shu asserts that the Department should use information concerning Roung Shu's foreign exchange gains and losses for the final determination.

The petitioner did not comment on this issue.

[11] We note that in Request for Comments and Belgium Steel Plate, the Department addressed issues relating to its quarterly-cost methodology. Accordingly, because Roung Shu's reporting of the costs associated with various dye colors is not related to our quarterly-cost methodology, Roung Shu's reliance on these cases is misplaced.

Department's Position:

The Department's practice is to include the entire amount of the net foreign exchange gain or loss in the financial expense ratio calculation. See Honey From Argentina: Final Results of Antidumping Duty Administrative Review, 69 FR 30283 (May 27, 2004), and accompanying Issues and Decision Memorandum at Comment 6. Accordingly, the Department has included Roung Shu's verified foreign exchange gains and losses in the financial expense ratio for the final determination.

Comment 17: *Financial Expenses for Shienq Huong*

The petitioner recognizes that Shienq Huong does not prepare consolidated financial statements in the normal course of business. Nonetheless, the petitioner contends that it is the Department's practice to use combined financial data from collapsed entities to calculate a group's financial expenses.[12] As a result, the petitioner asserts that the Department should recalculate the reported financial expense based on the combined financial data of Shienq Huong, Hsien Chan, and Novelty for the final determination.

Shienq Huong argues that the Department should continue to calculate the financial expense ratio based on the audited unconsolidated financial statements of Hsien Chan, the group's producer of NWR. Shienq Huong asserts that the Department's longstanding practice is to calculate interest expense based on the highest level of consolidated financial statements prepared in the normal course of business for a group of companies,[13] and the Department has repeatedly rejected the use of "combined" financial statement data for calculating financial expenses.[14] Shienq Huong argues that, contrary to the petitioner's claim, the Department affirmed its long standing practice of calculating interest expense based on the highest level of consolidated financial statements for the collapsed entities in Orange Juice from Brazil, where it stated that its practice of using the highest level of audited consolidated financial statements extends to collapsed entities by calculating company-specific, rather than combined, financial expense rates. Accordingly, Shienq Huong argues that in the instant case Hsien Chan is the only producer of merchandise

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[12] See Frozen Concentrated Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 65 FR 60406 (Oct. 11, 2000) (Orange Juice from Brazil), and accompanying Issues and Decision Memorandum at Comment 2.

[13] See Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055 (Sept. 12, 2007) (Shrimp from India), and accompanying Issues and Decision Memorandum at Comment 7; Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (Aug. 30, 2002) (Wire Rod from Mexico), and accompanying Issues and Decision Memorandum at Comment 8; and Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 65 FR 78472 (Dec. 15, 2000) (Fresh Atlantic Salmon from Chile), and accompanying Issues and Decision Memorandum at Comment 7.

[14] See Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea 56 FR 16305 (Apr. 22, 1991) (PET Film from Korea), and accompanying Issues and Decision Memorandum at Comment 16; E.I. Dupont de Nemours & Company v. United States, 22 CIT 19 (1998) (Dupont v. United States); and Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value; 73 FR 33985 (June 16, 2008) (Nails from the UAE), and accompanying Issues and Decision Memorandum at Comment 11.

under consideration, and, thus, no changes to the reported financial expense are necessary because the weighted-average costs consist solely of data derived from Hsien Chan's records. As a result, Shienq Huong maintains that its reported financial expense should remain unchanged for the final determination.

Department's Position:

We agree with Shienq Huong and continue to calculate the financial expense ratio based on Hsien Chan's company-specific audited unconsolidated financial statements. The issue here touches on two areas where the Department has developed a standard practice. See, e.g., Shrimp from India at Comment 7; Wire Rod from Mexico at Comment 8; and Fresh Atlantic Salmon from Chile at Comment 7. These areas include both the calculation of the company-specific costs in a collapsing situation, and the calculation of a consolidated financial expense ratio based on the highest level of audited consolidated financial statements (i.e., the rejection of self-consolidated or combined financial data for the purpose of reporting to the Department). See, e.g., PET Film from Korea at Comment 16; Dupont v. United States; and Nails from the UAE at Comment 11.

The Department's normal practice when calculating costs for collapsed entities is to first compute company-specific COP, then weight-average the company-specific COPs to obtain the collapsed entity's COPs for use in the cost test and margin programs. These company-specific COPs include each producer's own weighted-average CONNUM-specific costs of manufacture (COMs) plus amounts for each producer's general and administrative (G&A) and financial expenses from the highest level of consolidated financial statements. If consolidated financial statements are not prepared in the normal course of business, the producer's financial expenses are added to the company-specific COM. Thus, in the latter case, both the G&A and financial expense ratios are separately calculated based on each producing company's own information[15] and are then applied to each producing company's per-unit COMs. See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand, 63 FR 76918 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 8, and Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 65 FR 5554 (Feb. 4, 2000), and accompanying Issues and Decision Memorandum at Comment 25. This approach both enables the Department to reconcile each company's reported costs to its respective audited financial statements (ensuring that all costs have been captured) and allows the Department to calculate and apply company-specific adjustments should such adjustments become necessary.

In addition, the Department has a well-established practice of calculating the financial expense ratio based on the highest level of audited consolidated financial statements that include the producer-respondent. See Fresh Atlantic Salmon from Chile. The Department has expressly

[15] While G&A expenses are calculated based on the producer's own company-wide audited financial statements, financial expenses are calculated based on the highest level of consolidated financial statements. See Shrimp from India at Comment 9 and Fresh Atlantic Salmon from Chile at Comment 7. Because financial expenses are calculated at the highest level of consolidation, the calculation may or may not include the financial operations of all of the collapsed companies.

denied respondents' attempts to provide self-consolidated or combined financial expense ratio calculations that are not based on audited consolidated financial statements. See Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada, 69 FR 75921 (Dec. 20, 2004) (Softwood Lumber from Canada), and accompanying Issues and Decision Memorandum at Comment 17 (where the Department rejected a respondent's request that a consolidated financial expense ratio be calculated for the collapsed entity because the collapsed entity did not prepare audited consolidated financial statements). Accordingly, in cases where the highest level of audited consolidated financial statements for a company group (i.e., collapsed entities) was not available, the Department has used the producer-respondent's own financial statements to calculate the financial expense ratio. See Nails from the UAE at Comment 11 and Shrimp from India at Comment 9.

In the instant case of the collapsed entities, there is only one producer, Hsien Chan, and thus it was not necessary to obtain a cost database from Shienq Huong and Novelty. Therefore, in accordance with our well established practice, because Shienq Huong does not prepare consolidated financial statements in the normal course of business, we have continued to calculate the financial expense ratio based on Hsien Chan's company-specific financial statements, and we have added that resulting amount to Hsien Chan's COM and G&A expense.

Comment 18: *Depreciation Expense for Shienq Huong*

The petitioner argues that the Department should recalculate the reported depreciation expense for production equipment and machinery based on the estimated useful lives of these assets under U.S. GAAP. According to the petitioner, while the useful lives used by Shienq Huong are consistent with Taiwan GAAP, the same type of fixed assets would be depreciated over longer periods under U.S. GAAP. As a consequence, the petitioner asserts that the reported depreciation expense is distortive, and, therefore, the Department should adjust it for the final determination. As support for this argument, the petitioner cites the Department's determinations in cases with allegedly similar facts. See Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 71 FR 65082 (Nov. 7, 2006) (Rebar from Turkey 04-05), and accompanying Issues and Decision Memorandum at Comment 4, and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 13170 (Mar. 18, 1998) (Carbon Flat Products from Korea), and accompanying Issues and Decision Memorandum at Comment 22.

Shienq Huong argues that the Department should not make an adjustment to its reported depreciation expense because the reported expense is determined in accordance with Taiwan GAAP and there is no evidence that the reported cost is distortive. Shienq Huong contends that, pursuant to section 773(f)(1)(A) of the Act, the Department normally calculates production costs based on the records of the respondent, if those records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. According to Shienq Huong, the Department only adjusts respondent's costs

when there is record evidence that reliance on the respondent's normal costs would be distortive.[16] Shienq Huong asserts that petitioner's reliance on Rebar from Turkey 04-05 and Carbon Flat Products from Korea is misplaced because the facts in these two cases are not analogous to those in the present case. Specifically, Shienq Huong points out that, unlike here, the respondents in Rebar from Turkey 04-05 and Carbon Flat Products changed their depreciation methods during or prior to the cost reporting period. Shienq Huong also contends that, while the petitioner claims that the same type of equipment, if used in the United States, would have a longer estimated useful life, it did not support these claims with record evidence or analysis. Shienq Huong concludes that the Department verified its depreciation expense and confirmed that the reported depreciation expense was accordance with Taiwan GAAP. Accordingly, Shienq Huong maintains that the Department should not make any adjustments to the reported depreciation expense for the final determination.

Department's Position:

We disagree with petitioner that the reported depreciation expense should be recalculated based on the estimated useful lives set forth under U.S. GAAP. Depreciation expense is defined as "the accounting process of allocating the cost of tangible assets to expense in a systematic and rational manner to those periods expected to benefit from the use of the asset." See Intermediate Accounting: Ninth Edition, Donald E. Kieso and Jerry J. Weygandt: John Wiley & Sons, Inc. (1998) at 546. Additionally, according to Wiley GAAP 2005: Interpretation and Application of Generally Accepted Accounting Principles 2005, Barry J. Epstein, Ervin L. Black, Ralph Nach, and Patrick R. Delaney: John Wiley & Sons, Inc. (2004) at 330, "the method of depreciation chosen is that which results in a systematic and rational allocation of the cost of the asset (less its residual or salvage value) over the asset's expected useful life."

Under section 773(f)(1)(A) of the Act, the Department is directed to calculate costs "based upon the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country…. and reasonably reflect the costs associated with the production and sale of the merchandise." Therefore, unless a company's normal books and records kept in accordance with home country GAAP result in a distortion of the costs, the Department will rely on the assurances of the company's independent accountants and auditors as the basis for calculating costs. See Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 68 FR 6878 (Feb. 11, 2003), and accompanying Issues and Decision Memorandum at Comment 13.

[16] See Granular Polytetrafluoroethylene Resin from Italy: Final Results of Antidumping Duty Administrative Review, 74 FR 14519 (March 31, 2009), and accompanying Issues and Decision Memorandum at Comment 1; Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52061 (Sept. 12, 2007) (Shrimp from Brazil), and accompanying Issues and Decision Memorandum at Comment 5; and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927 (Mar. 16, 1999), and accompanying Issues and Decision Memorandum at Comment 12.

In the instant case, in the normal course of business, Shienq Huong calculates depreciation expenses based on the straight line method (i.e., the cost of the assets less its salvage value is divided by estimated useful life of each asset). Thus, Shienq Huong's deprecation method systematically allocates the costs of the asset based on the company's estimated useful lives of the assets. The useful lives used in the calculation are established by the Taiwan Tax Bureau's "fixed assets durable life table" which is in accordance with Taiwan GAAP. See the April 1, 2010, memorandum from Ji Young Oh, Senior Accountant to Neal Halper, Office Director, entitled, "Verification of the Cost Response of Shienq Huong Enterprise Co., Ltd. and its Affiliates in the Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from Taiwan." Further, contrary to cases cited by the petitioner, Rebar from Turkey 04-05 and Carbon Flat Products from Korea, where the respondents changed their depreciation method, Shienq Huong consistently used the same depreciation methodology during and prior to the POI. Moreover, other than the fact that depreciation expense may be higher under U.S. GAAP, the petitioner has provided no reason to believe that the depreciation expense based on Shienq Huong's normal books and records, which is in accordance with the Taiwan GAAP, does not reasonably reflect the costs associated with the production of merchandise under consideration. Therefore, for the final determination, we have accepted Shienq Huong's reported depreciation expense as reported.

Comment 19: *Dear Year's Unaffiliated Suppliers' COP*

In the Preliminary Determination, the Department found that the weavers of the NWR under investigation were the producers of this merchandise. As a result, we solicited COP information from several of the unaffiliated companies which supplied Dear Year and Shienq Huong with woven ribbon during the POI. See Preliminary Determination, 75 FR at 7242.

Dear Year challenges the Department's factual and legal basis for requesting its unaffiliated supplier cost information. First, Dear Year alleges that the Department failed to follow its normal practice when it solicited this information without first determining that: 1) the merchandise from the unaffiliated supplier accounted for a substantial portion of the respondent's sales; and 2) not having the information would have a significant impact on the margin calculation. According to Dear Year, this practice was outlined by the Department in Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part, 72 FR 58053 (Oct. 12, 2007) (AFBs 05-06), and accompanying Issues and Decision Memorandum at Main Comment 6. Furthermore, because such a finding was not discussed in either the preliminary determination or in a post-preliminary analysis, Dear Year infers that the Department may be contemplating a change in its standard with regard to unaffiliated suppliers of merchandise under consideration. Should this be true, Dear Year maintains that the parties must be given notice and an ample opportunity to comment on any change in policy.

Dear Year also believes that an additional requirement for requesting unaffiliated supplier data is imposed by section 771(28) of the Act which states that "the term 'exporter or producer' includes both the exporter of the subject merchandise and the producer of the same subject merchandise." Dear Year interprets this language to imply that the CONNUM of the purchased NWR must be identical to the CONNUM of the NWR that is eventually sold by Dear Year. However, according

to Dear Year, the evidence on the record demonstrates that the NWR it purchases from its unaffiliated supplier was not identical to the NWR that it eventually sold. Because the purchased NWR is, at a minimum, subsequently cut and spooled, both of which change the product characteristics (i.e., spooled length and packaging unit), Dear Year contends that the purchased NWR will have both a different CONNUM and different physical characteristics than the NWR ultimately sold. Thus, Dear Year argues that, while the purchased NWR is merchandise under consideration, it differs substantially from the sold NWR, and, therefore, it is not the same merchandise as required under section 771(28) of the Act. As an aside, Dear Year notes that, because the CONNUMs change as the purchased NWR is further processed, accurately matching the suppliers' costs to the NWR finally sold by Dear Year, even with a linking code, would prove extremely problematic and would potentially distort the margin.

Dear Year also asserts that the petitioner failed to provide any record evidence that the unaffiliated supplier's COP information is "necessary to accurately calculate the total amount incurred and realized for costs, expense, and profits in connection with production and sale of that merchandise" as specified in section 771(28) of the Act. While the petitioner points to the sales found below cost in the Preliminary Determination as proof that supplier costs are necessary to calculate an accurate margin (see below), Dear Year believes that the distribution of sales below cost contradicts this conclusion and instead shows that the unaffiliated supplier cost information would not affect the above-cost sales. Furthermore, Dear Year believes that the petitioner has failed to provide record evidence showing that Dear Year's costs do not account for the total production costs or that the reported costs which incorporate acquisition costs are otherwise inaccurate or unreliable. Dear Year surmises that it is unlikely that the acquisition costs understate the total production cost because the average acquisition costs of the purchased NWR are higher than Dear Year's own self-woven NWR average direct material costs. Moreover, Dear Year claims that constructed value (CV) is calculated using Dear Year's self-produced merchandise and, therefore, the purchased NWR cost information is irrelevant.

Dear Year claims that the only statutory basis for requesting company-specific COP information falls under section 773(b)(1) of the Act, which states that the Department must have "reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product." However, Dear Year argues that the petitioner's November 9, 2009, and January 26, 2010, sales-below-cost allegations fail as a matter of law since they either were untimely filed, were not specific to the unaffiliated supplier, or did not provide reasonable grounds to believe or suspect that below-cost sales were occurring.

Specifically, Dear Year points out that 19 CFR 351.301(d)(2)(i)(B) sets a deadline for company-specific below-cost allegations of 20 days after the respondent's filing of the relevant section of the questionnaire, unless the questionnaire is deemed deficient, in which case the Department will determine the time limit. Under this guideline, Dear Year calculates that the deadline for a company-specific cost allegation was November 9, 2009. While the petitioner filed a cost allegation on this date, and the Department found that it provided a reasonable basis to initiate a COP investigation, Dear Year contends that it was specific only to Dear Year and not to the unaffiliated supplier. According to Dear Year, the petitioner's request for unaffiliated

supplier costs was not filed until January 26, 2010 (i.e., two and a-half months past the regulatory deadline). Because the Department did not extend the company-specific cost allegation deadline, Dear Year contends that the petitioner's January 26, 2010, filing was untimely and the Department should have terminated the unaffiliated supplier cost investigation. Furthermore, Dear Year argues that, while specific to the unaffiliated supplier, the petitioner's January 26, 2010, filing did not provide reasonable grounds to believe or suspect that the unaffiliated supplier's sales were made at less than the COP. Nevertheless, Dear Year maintains that the Department requested information from the wrong unaffiliated supplier, thus rendering the information obtained both irrelevant and unusable.[17] Based on the above, Dear Year concludes that the Department and the petitioner failed to meet the statutory requirements of providing reasonable grounds to believe or suspect that the unaffiliated supplier's sales were being made at prices below cost. Therefore, Dear Year claims that the Department lacked any legal authority on which to request the unaffiliated supplier's COP information.

Dear Year notes that, despite the fact that the Department's request for unaffiliated supplier cost information was more than four months after Dear Year disclosed its third-party suppliers, almost three months after the sales-below-cost allegation, and nearly two months after the initiation of the sales-below-cost investigation, Dear Year has acted to the best of its ability to aid the Department in obtaining information from its unaffiliated supplier. While the petitioner contends that Dear Year may have already possessed the information requested by the Department (see below), Dear Year maintains that this was exactly the kind of proprietary information that would not make economic sense for a supplier to tell a customer. Additionally, Dear Year notes that its counsel submitted the information obtained from its supplier a full week prior to the deadline, affording the Department ample time after that point to request additional information had it wished to do so. Therefore, Dear Year contends that it has been fully cooperative in this investigation. Regarding this latter point, Dear Year stresses that it has fully cooperated with the Department by providing complete and timely responses that were verified by the Department and by assisting the Department in obtaining information from its unaffiliated supplier. Consequently, Dear Year concludes that there is no factual basis to establish either that: 1) Dear Year's cost information is unreliable; or 2) its supplier cost information is necessary for calculating an accurate antidumping margin. According to Dear Year, the Department has no legal or factual basis to use any information other than Dear Year's own reported costs and sales.

The petitioner disputes that there is any statute, regulation, or Departmental practice mandating a formal determination in advance of a request for supplier cost information. Rather, the petitioner interprets AFBs 05-06 to signify that the Department will request supplier cost data when the record evidence supports the need for such information (i.e., when the supplier's merchandise accounts for a significant portion of the respondent's sales and the lack of the supplier's information would have a significant impact on the margin calculation). Drawing on information from the respondents' submitted sales databases, the petitioner argues that the record evidence

[17] Dear Year points out that the information obtained from the unaffiliated supplier confirms that the company is not the producer sought by the Department. Furthermore, Dear Year questions whether any of its reported unaffiliated NWR suppliers would have been the appropriate respondent for the Department's supplier cost questionnaire.

here clearly demonstrates that a substantial portion of the respondents' sales to the U.S. and third country markets was produced from purchased NWR. Further, because the Department's Preliminary Determination disclosed that sales in the third country were below the COP which necessitated the use of CV, the petitioner contends that not having the supplier's cost information would have a significant impact on the margin calculation. For these reasons, the petitioner asserts that the record evidence clearly supports the Department's request for supplier cost information.

Regarding Dear Year's complaint that a post-preliminary analysis should have been released, the petitioner notes that no cost data whatsoever exists on the record from Dear Year's suppliers, and thus it was not possible for the Department to perform a such an analysis. Furthermore, because the Department is not changing its standards with regard to unaffiliated suppliers, the petitioner contends that Dear Year had ample opportunity in its case brief to comment on this issue.

The petitioner maintains that, in an effort to garner support for its position, Dear Year misinterpreted the word "same" in section 771(28) of the Act as requiring the purchased and resold NWR to have identical physical characteristics. The petitioner reasons, however, that, had Congress intended the word "identical" here, it would have used it, especially since such wording was used by Congress elsewhere in the Act. Instead, the petitioner believes that the word "same" here refers to the physical units of merchandise that are a precursor to the further processed subject merchandise.

Further, the petitioner claims that Dear Year and its unaffiliated supplier have exhibited an obvious lack of cooperation. Specifically, the petitioner argues that Dear Year and its supplier waited until the last possible moment (i.e., six weeks after the initial request for the unaffiliated supplier's information) to clarify that the selected supplier was not the producer sought by the Department. The petitioner contends that this information was likely known to Dear Year at an earlier date and the effect of its untimely submission was to preclude the Department from contacting the intended producer of the purchased NWR or selecting a different supplier. According to the petitioner, Dear Year was certainly aware of the information by February 27, 2010 (when it received the supplier documentation ultimately filed with the Department). Despite this, the petitioner asserts that Dear Year waited for more than three weeks to forward the information to the Department and for yet another week to clarify that the supplier was not the producer the Department sought (and then it did so only in response to the Department's explicit questions). Moreover, the petitioner finds it curious that Dear Year certified the first of these filings, but not the second one forwarded to the Department on behalf of the supplier.

The petitioner is surprised that Dear Year questions whether any of its suppliers would be the producer sought by the Department. The petitioner contends that such remarks by Dear Year, the party most likely to already possess or be able to obtain such knowledge regarding its suppliers' production, potentially signal that the company has either withheld information from the Department or not acted with due diligence.

Regardless, the petitioner maintains that the unaffiliated supplier was still obligated to fully respond to the Department's cost questionnaire. The petitioner notes that, despite the

Department's repeated offers of assistance and multiple requests for information, the unaffiliated supplier failed to contact the Department. Further, the supplier's eventual response forwarded with the assistance of Dear Year's counsel provided little more than a few selected documents that failed to substantively address the Department's cost questionnaire. Had Dear Year's supplier provided a complete questionnaire response, the petitioner argues that the supplier's cost data would have been available for use as facts available. According to the petitioner, Dear Year's claim of the impossibility of matching the purchased NWR with the finished NWR is an attempt to further confuse the issue. While uncertain that such difficulties exist, the petitioner notes that such an argument is hypothetical at best since no unaffiliated supplier data was provided with regard to Dear Year.

Finally, the petitioner asserts that the Department should dismiss Dear Year's attempt to conflate the requirements of a sales-below-cost allegation with the Department's request for supplier cost information. The petitioner maintains that once a cost investigation has been properly initiated, as was done in this case, the only issue before the Department is determining the appropriate measure of cost to consider. The petitioner asserts that Dear Year mischaracterized the petitioner's January 26, 2010, letter as a cost allegation, when it was merely a discussion of the need for unaffiliated supplier cost information.

Based on the foregoing arguments, the petitioner concludes that the Department acted appropriately when it requested supplier cost information. Furthermore, the petitioner holds that neither Dear Year nor its unaffiliated supplier have acted to the best of their ability. Consequently, the petitioner believes that relying on the acquisition costs of the purchased NWR for the final determination would reward Dear Year for its failure to cooperate. Pointing to SKF USA Inc. v. United States, 675 F.Supp.2d at 1278 (CIT 2009) (SKF USA), the petitioner maintains that the Court held that the Department cannot draw inferences adverse to a respondent solely because of the failure of an unaffiliated supplier to act to the best of its ability; nonetheless, it may do so should the respondent also fail to cooperate. The petitioner insists that, because both Dear Year and its affiliated supplier have attempted to impede the collection of affiliated supplier cost information, the application of AFA to Dear Year is warranted. Therefore, for the final determination the petitioner advocates that the Department assign separate rates for: 1) Dear Year's sales of self-produced NWR, based on a calculation; and 2) Dear Year's sales of NWR produced by the unaffiliated suppliers, based on AFA. See Comment 21 for further discussion.

Department's Position:

We disagree with Dear Year that the Department's request for unaffiliated supplier cost information had no factual or legal basis. As an initial matter, we disagree with Dear Year's contention that AFBs 05-06 establishes the Department's policy regarding unaffiliated producers/suppliers of subject merchandise and that this policy requires the Department to release a formal determination prior to soliciting unaffiliated supplier cost information. Rather, in AFBs 05-06 the Department merely outlined the conditions that compelled it to obtain supplier cost data in that particular case. While a review of the analysis and conclusions reached in AFBs 05-06 is instructive, the Department must weigh the decision to request unaffiliated supplier cost information against the unique facts of each case. Here, similar to the approach taken in AFBs

05-06, the Department reviewed Dear Year's sales of purchased NWR and then evaluated the potential impact of these sales on the margin. The Department's examination of the record evidence (i.e., the reported sales databases that identify the manufacturer of each sale) revealed that the purchased NWR accounted for a significant volume of Dear Year's U.S. sales. Furthermore, because: 1) the Department matches products by manufacturer; and 2) Dear Year sold a limited quantity of purchased NWR in the comparison market, the Department concluded that sales of the purchased NWR would likely be matched to CV (i.e., the production costs of the purchased NWR could potentially have a significant impact on the margin). While Dear Year claims that the supplier's costs were unnecessary because they would have no impact on above-cost sales, the Department deemed the supplier's costs necessary because they could have an impact on price-to-CV comparisons. In fact, contrary to Dear Year's allegations that the purchased NWR cost information is irrelevant, the Department's findings in the Preliminary Determination confirm that U.S. sales of purchased NWR were matched to CV. Based on these facts, the Department issued section D of the questionnaire (i.e., the section covering COP and CV) to the unaffiliated suppliers of NWR.

The Department is also not persuaded by Dear Year's assertion that the supplier cost data is unnecessary since the average acquisition cost is higher than Dear Year's own self-woven direct material cost. Instead, we note that Dear Year purchased NWR because it lacked the necessary production facilities to produce the particular merchandise that was ordered. See the Dear Year cost verification report at 5, where we stated, "{b}ecause Dear Year Brothers does not have dying or heat transfer equipment, the company purchased piece-dyed and heat transfer ribbons (or "greige ribbons") when such ribbons were necessary to fulfill customer orders." Thus, considering that the purchased NWR undergoes additional or different processes than the self-produced NWR, there is no evidence to conclude that Dear Year's production costs are indicative of the production costs of the purchased NWR.

We also disagree with Dear Year's argument that the Department's decision to request unaffiliated supplier information is unsupported by law. Contrary to Dear Year's assertions, the Act directs the Department to calculate COP and CV on the basis of actual production costs. See section 773(e)(1) of the Act (CV shall be based on "the cost of materials and fabrication or other processing of any kind employed in producing the merchandise"), section 773(b)(3)(A) of the Act (the COP shall be an amount equal to the sum of "the cost of materials and of fabrication or other processing of any kind"), and section 773(f)(1) of the Act (in general "costs shall normally be calculated based on the records of the exporter or the producer of the merchandise, if such records… reasonably reflect the costs associated with the production and sale of the merchandise"). Additionally, section 771(28) of the Act, which Dear Year referenced, states that, "[f]or purposes of section 773, the term 'exporter or producer' includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise." Thus, the Department's request for unaffiliated supplier cost information was clearly within the ambit of the antidumping law. Furthermore, the request and use of unaffiliated supplier cost information has been upheld by the CIT. Specifically, the Court has found that "Commerce acted lawfully in requesting and

obtaining COP data from plaintiffs' unaffiliated supplier to calculate the constructed value of the merchandise obtained from that supplier." See SKF USA, 675 F.Supp.2d at 1268.

Furthermore, we disagree with Dear Year's contention that section 771(28) of the Act bars the Department from seeking unaffiliated supplier information in cases where the product purchased by the respondent was not "identical" to the product eventually sold by the respondent. The Statement of Administrative Action accompanying the Uruguay round Agreements Act (SAA) explains that "the purpose of section 771(28)…is to clarify that where different firms perform the production and selling functions, Commerce may include the costs, expenses, and profits of each firm in calculating cost of production and constructed value." See SAA, H.R. Doc. Nos. 103-465, vol. 1, at 835 (1994). Thus, the intent of this section was to ensure that the Department had the authority to capture all costs in situations where various companies were engaged in the production and sale of the merchandise under consideration, and not, as Dear Year proposes, to preclude the Department from obtaining cost information where the facts of the case otherwise warrant the use of such information.

We also disagree with Dear Year that the Department's request for unaffiliated supplier data was unlawful because a cost investigation was not initiated specific to the unaffiliated suppliers. As Dear Year acknowledged, the Department reviewed the petitioner's "company-specific" COP allegation against Dear Year and found that it provided a reasonable basis to initiate a COP investigation. See the December 12, 2010, memorandum to James Maeder, Director, Office 2, from the Team, entitled, "The Petitioner's Allegation of Sales Below the Cost of Production for Dear Year Brothers Mfg. Co., Ltd." The crux of Dear Year's argument is that 19 CFR 351.301(d)(2)(i)(B) requires a "company-specific" COP allegation at this stage of the proceeding. Therefore, Dear Year contends that the Department's COP initiation is only applicable to Dear Year, not its unaffiliated suppliers. However, once a sales-below-cost investigation has been initiated (i.e., the Department has found that there are reasonable grounds to suspect that the sales of the foreign like product were made at prices below the cost of production), section 773(b)(1) of the Act directs the Department to "determine whether, in fact, such sales were made at less than the cost of production" of the foreign like product. Thus, upon the initiation of a sales-below-cost investigation, section 773(b)(1) of the Act mandates the investigation of the cost of producing the foreign like product that was sold by the respondent. This language does not specify or limit the investigation to the production cost data of the respondent. Instead, it requires the investigation of the producer's costs. The Department's consistent practice has been to treat both the respondent and its unaffiliated suppliers of the foreign like product that was sold by the respondent as subject to the sales-below-cost investigation initiated on the respondent company. See, e.g., Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order in Part, 73 FR 79802, 79804 (Dec. 30, 2008) (where the Department initiated a sales-below-cost investigation for a respondent and then informed the respondent that certain of its beekeeper suppliers would be requested to respond to section D of the questionnaire). In the instant case, the Department has determined that the weaver is the producer of the foreign like product; thus, in instances where Dear Year purchased woven ribbon, the applicable starting point for production cost for the product sold is the weaver's cost. Therefore, contrary to Dear Year's assertions, it was not necessary for the petitioner to file a COP allegation specific to Dear

Year's suppliers.[18] Consequently, based on the foregoing discussion, we find that our request for unaffiliated supplier cost information was supported by the facts of the case and was within the confines of the antidumping law.

With regard to the collection of the unaffiliated supplier's cost information, we disagree with the petitioner that Dear Year failed to act to the best of its ability. We find unpersuasive the petitioner's claim that Dear Year impeded the investigation by reluctantly forwarding and even withholding information about its unaffiliated suppliers. The Department solicited the required costs of production directly from Dear Year's supplier; thus, responsibility of replying to the Department's unaffiliated supplier questionnaire rested solely with the unaffiliated supplier. However, despite this fact, Dear Year filed what information it was able to obtain from its supplier. To support the claim that Dear Year has been uncooperative and has withheld information, the petitioner suggests that Dear Year waited three weeks (from February 27, 2010, to March 22, 2010) before sharing the information obtained from its supplier with the Department. Yet the record demonstrates that Dear Year filed its response containing the document from its supplier dated February 27, 2010, on March 15, 2010, which is within the Department's deadline. See the Department's Dear Year's March 15, 2010, submission on behalf of its unaffiliated supplier. Moreover, based on these documents, we issued a supplemental questionnaire to the unaffiliated supplier which eventually uncovered on March 22, 2010, that the selected supplier was not the producer the Department sought.

Furthermore, the petitioner's assumption that Dear Year was in the best position to be aware of its supplier's production activities runs contrary to the petitioner's own statements in its February 24, 2010, submission. Specifically, the petitioner stated that the NWR suppliers "control the information requested" by the Department and "can uniquely explain why they can or cannot submit the requested information." See the petitioner's February 24, 2010, filing at 2. As a result, we find that the record evidence does not support the petitioner's contention that Dear Year failed to cooperate in fulfilling the Department's request for information with regard to the unaffiliated suppliers' costs. Additionally, none of the petitioner's assertions demonstrates that Dear Year impeded the investigation. Accordingly, having not satisfied the requirements of section 776(b) of the Act, we do not find that AFA is warranted with regard to Dear Year.

Finally, we find that Dear Year's argument regarding the feasibility of matching supplier NWR costs to the NWR finally sold is moot because as neutral facts available we are relying on the acquisition cost between Dear Year and its unaffiliated supplier.

Comment 20: *Shienq Huong's Unaffiliated Suppliers' COP*

During the POI, Shienq Huong purchased "greige" ribbon from unaffiliated suppliers, further processed it, and then sold it to U.S. and third country customers. While Shienq Huong claimed that it was the manufacturer of NWR produced from the purchased ribbon, the Department preliminary determined that the companies which weave the ribbon are the manufacturers of

[18] Additionally, we agree with the petitioner that its January 26, 2010, submission merely contained comments on the affiliated supplier cost issue and did not constitute a sales-below-cost allegation.

NWR. Accordingly, the Department solicited POI cost data from two of Shienq Huong's unaffiliated ribbon suppliers.

Shienq Huong argues that the Department should reverse its preliminary determination finding and instead determine that Shienq Huong, not the unaffiliated ribbon suppliers, is the manufacturer of NWR produced from the purchased ribbon. Shienq Huong asserts that, in accordance with section 773(f)(1)(A) of the Act, the Department should rely on Shienq Huong's reported costs from its normal accounting records as they satisfy the statutory conditions. Shienq Huong claims that greige ribbon is a term applied to an unfinished fabric strap and Shienq Huong further processes this material through different production processes (e.g., dyeing, leveling, printing, hot stamping, etc.); thus, Shienq Huong contends that the appearance of the finished product is entirely different from the greige ribbon. Shienq Huong asserts that the sole use of greige ribbon is as an input for manufacturing finished decorative ribbons and, thus, the petitioner's designation of greige ribbon as "purchased NWR" mischaracterizes the products at issue.

Shienq Huong alleges that the Department frequently considers the impact of further manufacturing in the context of determining country of origin for scope purposes by examining the degree of processing or manufacturing and whether it results in the article in question.[19] Shienq Huong believes that this analysis also applies where products subject to an investigation are subject to significant additional processing prior to importation, but still remain in the same class or kind of merchandise. According to Shienq Huong, the Department's practice is illustrated in Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 3 (Diamond Sawblades from Korea), where the scope of the investigation included finished sawblades and components thereof (i.e., diamond segments and cores). Shienq Huong notes that in Diamond Sawblades from Korea, the respondents manufactured the components in one country and joined the components to create a finished sawblade in another country. Shienq Huong points out in that case the Department determined that: 1) the country of origin should be the location where the diamond segments and cores were attached to create a finished sawblade; and 2) the controlling factor was determining where the "essential quality" of the imported product was imparted. Id. Shienq Huong stresses that it agrees with the Department's conclusion in that case that the company which imparts the final product's "essential characteristics" must also be deemed to be the manufacturer of that product.

According to Shienq Huong, if the factors considered in Diamond Sawblades from Korea are applied in the instant case, the Department will determine that Shienq Huong is the manufacturer of the merchandise subject to this investigation. Shienq Huong contends that the greige ribbon serves no purpose other than as an input into the production of finished NWR, just as the diamond segments served as an input into the production of finished sawblades. Also, Shienq Huong

[19] Shienq Huong argues that, if an item undergoes substantial transformation resulting in a new and different article, the new article becomes a product of the country in which it was substantially transformed. See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping duty Administrative Review, 69 FR 6259 (Feb. 10, 2004) (SSSSC from Mexico), and accompanying Issues and Decision Memorandum at Comment 13.

claims that the most critical "essential characteristics" of the finished NWR are the look and feel of that product, which are achieved by design and through the selection of specific manufacturing processes subsequent to weaving. Shienq Huong notes that, while it does not dispute that the greige ribbon input affects some of the finished NWR's characteristics, this in itself is not enough to conclude that the greige ribbon suppliers are the manufacturers for purposes of this investigation. Further, according to Shienq Huong, its customers do not know whether the product has been manufactured from greige ribbon or yarn. Shienq Huong states that, if there is a quality claim, Shienq Huong has to address it, because from Shienq Huong's customers' perspective, Shienq Huong is the manufacturer of the NWR it sells.

Shienq Huong also argues that the Department's practice in AFBs 05-06 at Comment 17, is distinguishable from the facts of this investigation. Shienq Huong asserts that AFBs 05-06 involved the resale of purchased bearings, not the acquisition of bearing components used to manufacture finished products. Shienq Huong states that the Department sometimes requires unaffiliated suppliers to submit their actual costs in those situations where the exporter was solely a reseller.[20] Shienq Huong claims, however, that the Department's practice with respect to exporters that manufacture the subject merchandise, including companies that use raw material inputs within the class or kind of merchandise covered by the scope, has been to accept the respondent's costs based on acquisition costs.[21] Shienq Huong maintains that the Department can rely on its reported costs (i.e., as derived from its normal accounting records using acquisition costs) in its final determination because it is the manufacturer of finished NWR and its reported costs satisfy the statutory requirements of section 773(f)(1)(A) of the Act. Nevertheless, Shienq Huong argues that if the Department continues to treat the unaffiliated greige ribbon suppliers as the manufacturers of NWR, the Department should use the unaffiliated greige ribbon suppliers' costs of production in the final determination. Shienq Huong contends that its selected greige ribbon suppliers provided the Department with the CONNUM-specific cost data it requested and all information necessary for analysis is on the record. Shienq Huong asserts that none of the criteria under sections 776(a)(1) and 776(a)(2) of the Act, facts otherwise available, have been met since each greige ribbon supplier responded to the Department's questionnaires in a timely manner and did not withhold requested information.[22]

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[20] See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from Argentina, 66 FR 24108, 24109 (May 11, 2001); and Elemental Sulphur from Canada; Preliminary Results of Antidumping Finding Administrative Review, 60 FR 37872 (July 24, 1995).

[21] See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Administrative Review, 62 FR 64559, 64561 (Dec. 8, 1997), and Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews, 61 FR 13815, 13821 (Mar. 28, 1996) (CORE from Canada). Shienq Huong also notes that in these cases the Department frequently found that substantial transformation may occur even where the producer uses subject merchandise as an input, rendering the final producer the manufacturer for the Department's purposes.

[22] Shienq Huong argues that the Department's authority to apply facts available does not extend to situations in which the information or data requested cannot be produced because the data does not exist. See Olympic Adhesive, 899 F.2d at 1572 and Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (Mar. 31, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

Shienq Huong further argues that in order to make an AFA finding under section 776(b) of the Act, the Department must show that: 1) a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained; and 2) a respondent not only failed to promptly produce the requested information, but its failure to respond was also the result of its failure to put forth maximum efforts to investigate and obtain the requested information from its records (i.e., it failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information).[23] Shienq Huong maintains that it cooperated fully with the Department throughout the course of this investigation by submitting responses to multiple supplemental questionnaires in addition to participating in verifications. In addition, Shienq Huong claims that its greige ribbon suppliers have cooperated fully and to the best of their abilities with the Department's requests by submitting multiple responses by the established deadlines. Therefore, Shienq Huong argues that the petitioner failed to show that its suppliers have met the two conditions imposed by Nippon Steel in this case (see below) because its suppliers could not have known that the requested information was required to be kept and maintained, and they provided requested information in light of their limited resources. Moreover, Shienq Huong asserts that the petitioner mischaracterized the outcome of SKF USA (see below). Shienq Huong points out that in SKF USA, the respondent contacted its suppliers repeatedly to encourage them to submit the cost data, as in this case, and thus the Court found that the respondent did not fail to act to the best of its abilities.

According to Shienq Huong, the Department has utilized neutral facts available where respondents did not possess the records necessary to report the cost data in the format required by the Department, particularly in cases involving agricultural products which often involved numerous small unaffiliated producers. [24] Shienq Huong notes that the Department has two sources of possible facts available here: 1) the reported suppliers' costs; or 2) Shienq Huong's reported greige ribbon acquisition costs from its suppliers.

Shienq Huong contends that the petitioner's suggestion of applying AFA to all NWR produced from the purchased greige ribbon (see below) is unreasonable. According to Shienq Huong, there is no record evidence that the Department selected the two specific greige ribbon suppliers to act as representatives for all of Shienq Huong's greige ribbon suppliers. Shienq Huong contends that the Department's past practice does not necessarily require a respondent's suppliers to submit

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[23] See Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003) (Nippon Steel). Shienq Huong also cites Agro Dutch Industries Limited v. United States, 31 CIT 204, 2063 (CIT 2007) and argues that mere insufficiency in a response is not sufficient to show that a party has not cooperated to the best of its ability.

[24] See Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 FR 56739, 56750 (Oct. 21, 1999) (Live Cattle from Canada), where the Department applied non-adverse facts available and adjusted the respondent's reported acquisition price to reflect an estimate of the producer's COP. See also Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741 (Sept. 5, 2003), and accompanying Issues and Decision Memorandum at Comment 20; Honey From Argentina: Final Results of Antidumping Duty Administrative Review, 69 FR 30283 (May 27, 2004), and accompanying Issues and Decision Memorandum at Comment 1; Shrimp from Brazil at Comment 7; Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran, 68 FR 353 (Jan. 3, 2003) (Pistachios from Iran), and accompanying Issues and Decision Memorandum at Comment 1; and SKF USA Inc., SKF France S.A., SKF Aerospace France S.A.S., SKF GmbH, and SKF Industrie S.p.A. v. United States; Final Results of Redetermination Pursuant to Court Remand (Mar. 11, 2010).

actual costs when those suppliers provide a small portion of the "purchased product" and the respondent had its own production.[25] Thus, if the Department were to decide to apply AFA to the NWR produced from the purchased greige ribbon, Shienq Huong asserts that it must limit its application to the suppliers from which the Department actually requested cost data since the Department did not request the cost data from other suppliers in accordance with section 782(d) of the Act.

The petitioner argues that the Department should continue to find that the greige ribbon suppliers are the manufacturers of the NWR produced from the purchased greige ribbon. The petitioner asserts that the record evidence supports the Department's request for obtaining the unaffiliated suppliers' costs because a substantial portion of Shienq Huong's sales were produced from purchased in-scope greige ribbons and not having the suppliers' costs would have a significant impact on the margin calculation.[26] According to the petitioner, the Department must have access to reliable cost of manufacturing data in order to properly evaluate the appropriateness of similar product and CV comparisons.

The petitioner asserts that the greige ribbon purchased from unaffiliated suppliers has not undergone substantial transformation and the product characteristics affected by the further processing performed on the purchased greige ribbon did not result in material changing from out-of scope to in-scope merchandise, nor did the material experience a change in its "essential characteristics."[27] The petitioner notes that Shienq Huong cites Diamond Sawblades from Korea to demonstrate that it is where the "essential characteristics" of the imported product were imparted that dictates the country of origin and also the producer of the merchandise. Nevertheless, according to the petitioner, Shienq Huong's reliance on Diamond Sawblades from Korea is misplaced because that case involved the assembly in one country of two components that had been produced in another country. The petitioner notes that, in the instant case, the purchased greige ribbon and finished NWR are produced wholly in Taiwan and NWR production does not involve the assembly of components. Rather, the petitioner maintains, the purchased greige ribbon: 1) is within the scope of the investigation; 2) already has the "essential characteristics" of the finished NWR; and 3) is simply the precursor to the finished NWR.

The petitioner maintains that the predominant product characteristics for defining NWR were established before the greige ribbons were obtained by Shienq Huong and do not change as a result of any additional processing performed by Shienq Huong. Thus, according to the petitioner, the physical characteristics that are "locked in" before Shienq Huong purchases the greige ribbon are by and large the "essential characteristics" of the NWR that provide its look and feel. The

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[25] See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73437 (Dec. 12, 2005), and accompanying Issues and Decision Memorandum at Comment 22.

[26] See AFBs 05-06 at Comment 17.

[27] The petitioner contends that the facts in SSSSC from Mexico are analogous to those in the instant case because the purchased greige ribbon, which is within the scope of the investigation, underwent further processing, yet retained its origin as at the time of purchase. Thus, according to the petitioner, Shienq Huong's reliance on SSSSC from Mexico is misplaced.

petitioner argues that, when Shienq Huong considers its manufacturing processes, it will select a greige ribbon to achieve the qualities required for the final product, and the range of manufacturing processes considered includes the manufacturing processes that occur before it receives the greige ribbon from its suppliers. Further, the petitioner points out that the specific characteristics imparted by the weaving process cannot be subsequently changed by Shienq Huong as the significant part of NWR design is the selection of purchased greige ribbon and the combination of physical characteristics that are embedded in that greige ribbon. The petitioner states that, for example, a sheer ribbon that is two inches wide cannot be used by Shienq Huong to produce NWR of any other type or width. Therefore, the petitioner maintains that the bulk of the "essential characteristics" for NWR which were produced from the purchased greige ribbon were dictated by the processes performed by Shienq Huong's suppliers.

The petitioner further argues that the purchased greige ribbons are not an input to the further processed ribbons; rather they are the same merchandise as covered by the antidumping duty investigation, just at an earlier stage of production.[28] The petitioner also contends that Shienq Huong's reliance on CORE from Canada is misplaced because the respondent in that case obtained merchandise that was outside the scope and transformed that material into subject merchandise.

Finally, the petitioner argues that the Department should not reward Shienq Huong and its suppliers for failing to provide reliable supplier cost information by either using Shienq Huong's acquisition costs for purchased greige ribbon or the limited supplier cost data that is on the record. The petitioner asserts that the cost data provided by Shienq Huong's suppliers is highly deficient and cannot be used in the margin calculation.[29] The petitioner points out that Shienq Huong's suppliers failed to reconcile the reported per-unit costs to their tax returns or any other financial accounting documents, and they failed to provide supporting documents such as invoices and delivery notes. The petitioner further asserts that Shienq Huong itself did not act to the best of its ability because it could have provided its suppliers with copies of certain supporting documentation, which it had originally received from its suppliers. For these reasons, the petitioner contends that Shienq Huong and its suppliers did not act to the best of their abilities in spite of several opportunities granted by the Department to remedy deficiencies in the supplier cost information. Accordingly, the petitioner contends that an adverse inference is warranted.

The petitioner argues that, since the Department selected certain suppliers to represent all of the unaffiliated greige ribbon suppliers for its analysis, the Department should apply AFA to all of

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[28] See also Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 73 FR 24220 (May 2, 2008), and accompanying Issues and Decision Memorandum at Comments 1 and 4; and Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part, 74 FR 32107, 32108 (July 7, 2009).

[29] The petitioner also argues that it would be inappropriate to use the limited financial data in Shienq Huong's unaffiliated suppliers' tax return to draw conclusions regarding the relative profitability of Shienq Huong's suppliers. The petitioner asserts that the supplier's tax returns do not have the information to determine customer-specific sales results and, unlike Live Cattle from Canada where the product is a relatively homogenous commodity whose price was governed largely by market forces, the prices and costs for NWR vary greatly according to the specifications of the products. The petitioner also claims that there is no certainty that the tax return captures the full costs that would be reflected in financial statements prepared for financial accounting purposes.

Shienq Huong's sales of NWR produced from purchased greige ribbon.[30] The petitioner suggests that either the highest margin cited in the initiation notice or a high, non-aberrational, margin from the range of margins found by the Department on sales of NWR produced by Shienq Huong would be appropriate AFA options for Shienq Huong's sales of NWR produced from the purchased greige ribbon. The petitioner contends that the Department subsequently should derive an overall margin for Shienq Huong by combining the margin derived from its sales of self-produced NWR with the margin based on AFA for NWR produced from the purchased greige ribbon.

Department's Position:

After fully considering all evidence and argument on the record with respect to this issue, we continue to find that the companies that weave the ribbon are the producers of the NWR at issue.

The Act directs the Department to calculate COP and CV on the basis of actual production costs. See section 773(b)(3)(A) of the Act (COP shall be an amount equal to the sum of "the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product"), section 773(e)(1) of the Act (CV shall be based on "the cost of materials and fabrication or other processing of any kind employed in producing the merchandise"), and section 773(f)(1) of the Act (in general "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records… reasonably reflect the costs associated with the production and sale of the merchandise"). Additionally, section 771(28) of the Act, states that, "[f]or purposes of section 773, the term 'exporter or producer' includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise." The SAA explains that "the purpose of section 771(28)…is to clarify that where different firms perform that production and selling function, Commerce may include the costs, expenses, and profits of each firm in calculating cost of production and constructed value." See SAA, H.R. Doc. Nos. 103-465, vol. 1, at 835 (1994). The intent of this section is to ensure that the Department has the authority to capture all costs in situations where various companies are engaged in the production and sale of the merchandise under consideration. Accordingly, the Department's determination of who is the producer directly impacts the COP and CV computations.

In determining whether the greige ribbon suppliers or Shienq Huong is the producer of the NWR in question, we looked to the extent to which the greige ribbon was further manufactured by Shienq Huong. In doing so, we analyzed whether raw materials were added, and whether processing was performed that changed the physical nature and characteristics of the product. In this case, Shienq Huong further processed the purchased greige ribbon using combinations of dyeing, leveling, printing, hot stamping, and spooling processes. As such, the NWR products ultimately sold could go through all these processing steps, or only one of these processing steps depending

[30] The petitioner argues that the CIT held that the Department cannot draw an adverse inference to a respondent solely for the failure of an unaffiliated supplier to act to the best of its ability, but could do so should the respondent also not act to the best of its ability by failing to cooperate in fulfilling the Department's request for information. See SKF USA, 675 F. Supp. 2d 1264 and SKF USA, Inc. v. United States, 659 F. Supp. 2d 1338 (CIT 2009).

on customer orders. The record shows that the additional materials used in the further processing were minimal. While the extent of the further processing performed on the purchased greige ribbon varied depending on whether the greige ribbon was dyed, leveled, printed, hot stamped, or spooled, in all cases, the further processing performed did not result in significant changes to the essential physical characteristics of the NWR.

The greige ribbon itself is in-scope merchandise and approximately ten out of sixteen of the Department's physical characteristics for NWR are created by the weaver of the greige ribbon. As a result, only six of the Department's physical characteristics for NWR change as a result of the further processing performed by Shienq Huong (i.e., dye process, dyed color, surface finish, embellishments, spool capacity, and product unit packaging). Balancing these factors, while recognizing the specific production process of the NWR at issue, we continue to determine that the companies weaving the greige ribbon are the producers. We note that this determination is based on the totality of the record evidence and the facts specific to this case.

With respect to the unaffiliated suppliers' cost, we disagree with Shienq Huong that the CONNUM-specific per-unit costs provided by its greige ribbon suppliers are useable for purposes of determining COP and CV. However, we disagree with the petitioner that the Department should use an adverse inference in determining the appropriate facts available to use for the purchased greige ribbon costs. The record shows that Shienq Huong's suppliers were unable to provide POI weighted-average product-specific costs to the Department due to their extremely limited record keeping. Specifically, the companies do not maintain the necessary information that would allow them to calculate a product-specific cost because they do not maintain production or sales quantity information by the physical characteristic "width." There is also no evidence on the record to suggest that the unaffiliated suppliers would have known that they were required to keep this type of information. Without this information, it would be impossible to calculate a POI weighted-average product-specific cost in accordance with the Department's instructions. Such product-specific costs are the only meaningful costs for use in the Department's calculations. While Shienq Huong's suppliers responded to each question in section D of the questionnaire, these suppliers had insufficient information to allow them to calculate an accurate POI product-specific per-unit greige ribbon cost. Thus, the Department finds that the suppliers' reported greige ribbon per-unit cost is unreliable and, thus, unusable for purposes of determining COP and CV. We note that: 1) in any future segments of this proceeding, we will require that the weavers of greige ribbon maintain records adequate to allow the reporting of product-specific costs; and 2) this decision constitutes public notice of this requirement.

With respect to making an adverse inference with respect to facts available, the record evidence demonstrates that both Shienq Huong and its suppliers acted to the best of their abilities in responding to the Department's requests for the greige ribbon suppliers' costs. Thus, we are not applying adverse inferences to determine the cost for the purchased greige ribbon. As noted above, although Shienq Huong's suppliers were unable to provide accurate product-specific costs, the record demonstrates that Shienq Huong and its unaffiliated suppliers made significant efforts to comply with the Department's requests and fully cooperated to the best of their ability in responding to the Department's extensive supplemental questionnaires. Consequently,

considering these factual circumstances, we find that applying an adverse inference, pursuant to section 776(b) of the Act, is not warranted.

Unlike in Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Norway, 56 FR 7661, 7672 (Feb. 25, 1991), reliable costs of production from the weavers of the greige ribbon are not available in this case. Section 776(a)(1) of the Act authorizes the Department to use facts otherwise available where the "necessary information is not available on the record." The Department finds that the application of neutral facts available is warranted in this case. As neutral facts available, we are relying on Shienq Huong's reported acquisition costs for the purchased greige ribbon. See Live Cattle from Canada, 64 FR at 56750. Shienq Huong's reported greige ribbon acquisition costs are product-specific and are available for all of the products reported in the sales databases. Consequently, for the final determination, as facts available, we have relied upon Shienq Huong's reported greige ribbon acquisition costs in lieu of actual product-specific costs of production from the weavers, as such information is not available on the record of this proceeding.

Comment 21: *Assigning Combination Rates to Dear Year and Shienq Huong*

The petitioner maintains that, if the Department determines that Dear Year and Shienq Huong acted to the best of their ability with respect to providing their unaffiliated suppliers' costs (see Comments 19 and 20, above), then the Department should assign combination rates to these companies to ensure that the unaffiliated suppliers do not benefit from their failure to provide requested cost data. The petitioner states that the Department should assign combination rates for each respondent, basing: 1) one rate on only those sales where the NWR sold was produced by either Dear Year or Shienq Huong itself; and 2) a second rate on the remaining sales (using facts available) where the NWR sold was produced by an unaffiliated supplier.

While the petitioner notes that it would not necessarily oppose the Department's assigning combination rates to each specific supplier/exporter combination, it claims that there are reasons to include all unaffiliated suppliers together in one combination rate per exporter: 1) the names of the suppliers have been treated as proprietary information throughout this proceeding (and thus the Department would not be able to include the specific supplier names in the rates published in the order unless the respondents waived their request for such treatment)[31]; 2) there is no need to list each supplier separately in the combination because the rate for each would be the same; 3) using the names of the current suppliers may cause confusion if the respondents use new unaffiliated suppliers in the future; 4) by assigning one rate to all suppliers of a particular exporter, the Department would recognize that the suppliers selected did not fully respond to repeated requests for information (and thus the suppliers cannot benefit from the likely de minimis rates for these respondents themselves); 5) future sales of NWR produced by unaffiliated suppliers, which have not been fully demonstrated to be free of dumping, will not escape from a future antidumping duty order; and 6) assigning combination rates will help avoid the circumvention of a future

[31] However, the petitioner claims that the Department could issue confidential liquidation instructions to U.S. Customs and Border Protection (CBP) if the respondents do not agree to waive their requests for proprietary treatment for the names of their unaffiliated suppliers.

antidumping order through Dear Year and Shienq Huong should their respective rates be de minimis.

The petitioner asserts that both the Department's regulations and practice support the use of combination rates in this investigation. According to the petitioner, 19 CFR 351.107(b)(1) permits the Department, where subject merchandise is exported to the United States by a company that is not the producer of the merchandise, to assign a combination cash deposit rate for each combination of the exporter and its supplying producer.[32] Further, the petitioner points out that the Department has assigned combination rates in numerous market economy cases. See, e.g., Pistachios from Iran at Comment 10; Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review, 69 FR 32984 (June 14, 2004) (Italian Bar), and accompanying Issues and Decision Memorandum at Comment 7; Certain Pasta from Italy: Preliminary Results of New Shipper Antidumping Duty Administrative Review, 63 FR 63641, 53643 (Oct. 6, 1998) (Pasta from Italy Preliminary Results); and Notice of Amended Final Determination in Accordance With Court Decision of the Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils From Taiwan, 69 FR 67311 (Nov. 17, 2004) (SSSSC from Taiwan).

The petitioner claims that the facts in Italian Bar in particular support the Department's use of combination rates here. The petitioner notes that in that case the Department excluded a company from the order, but it limited that exclusion to merchandise produced and exported by that company. The petitioner further notes that the Department declined to assign a combination rate in that case because the producer and exporter were the same entity. In contrast here, the petitioner points out that the producer and the exporter are unaffiliated entities and, thus, a combination rate is necessary.[33]

In the event that the Department instead determines that it is appropriate to calculate a single rate for each respondent, the petitioner maintains that the Department should still assign a combination rate for each company, limiting the application of each respondent's calculated rate to imports of NWR produced by the respondent itself. The petitioner argues that the unaffiliated suppliers' failure to provide usable cost data has distorted the margin calculation for each respondent, and as a result it would be unacceptable for these companies to benefit from these distorted rates in the future, especially if they are de minimis. According to the petitioner, in Pasta from Italy Preliminary Results, the Department recognized that, when a respondent is involved significantly in selling subject merchandise produced by other companies, it is necessary to clarify that the combination rate only applies to subject merchandise produced by the respondent itself. See Pasta from Italy Preliminary Results, 63 FR at 53643. The petitioner claims that the facts in the instant investigation are similar to Pasta from Italy Preliminary Results because Dear Year and

[32] The petitioner notes that the preamble to the Department's regulations makes clear that the Department determines when to assign rates based on exporter/producer combinations on a case-by-case basis. See Preamble.

[33] The petitioner bases its argument, in part, on the fact that the merchandise produced by the unaffiliated suppliers is not substantially transformed by the respondents. For further discussion, see the petitioner's May 24, 2010, case brief.

Shienq Huong export substantial volumes of NWR to the United States produced by unaffiliated suppliers.[34]

Finally, the petitioner contends that, when crafting the combination rates, the Department should use the language employed in Certain Pasta from Italy: Final Results of New Shipper Antidumping Duty Administrative Review, 62 FR 852, 853 (Jan. 6, 1999) (Pasta from Italy Final Results). Specifically, the petitioner states that the Department must clarify that for any entries of merchandise exported by either Dear Year or Shienq Huong: 1) the respondent itself must be identified as the producer in order for the cash deposit rate established for either Dear Year or Shienq Huong to apply; 2) if neither Dear Year nor Shienq Huong is the producer, the cash deposit rate would be the rate for the identified producer; and 3) if neither of these conditions is met, the "all others" rate would apply. The petitioner claims that this approach would help avoid future circumvention of the order given that Dear Year and Shienq Huong largely rely on unaffiliated suppliers to produce the ribbon that each respondent sells to the United States.[35]

Dear Year and Shienq Huong disagree with the petitioner, contending that there is no reason to assign combination rates in this investigation. Dear Year and Shienq Huong claim that the petitioner is simply attempting to create a dumping margin where none exists. Dear Year further asserts that the Department cannot assign an AFA combination rate to Dear Year's unaffiliated suppliers because they have not failed to cooperate to the best of their ability as required by section 776 of the Act. However, should the Department determine that combination rates are necessary, Dear Year states that the Department should use the cost and sales information provided by Dear Year to calculate the combination rates for each of Dear Year's unaffiliated suppliers.

Moreover, Dear Year maintains that the petitioners are attempting to make an anticircumvention claim pursuant to section 781 of the Act and 19 CFR 351.225 without addressing the statutory requirements. Therefore, Dear Year asserts that the petitioner's anticircumvention arguments should be dismissed as a matter of law.

Shienq Huong asserts that the facts in each of the cases cited by the petitioner is distinguishable from the facts of this investigation. First, Shienq Huong claims that the Department assigned a combination rate in Pistachios from Iran because doing otherwise would have given essentially all Iranian producers unlimited access to the U.S. market at the reduced antidumping rate when the basis for that rate (a single bag of pistachios purchased from another producer) was not

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[34] Moreover, according to the petitioner, the Department recognized in its discussion of 19 CFR 351.107 in the Preamble that there may be situations where the Department would need to account for suppliers for which the Department could not initially calculate a combination rate.

[35] The petitioner notes that, if either Dear Year or Shienq Huong receives a de minimis margin in this proceeding, its suggested approach would ensure that imports of ribbons produced by unaffiliated suppliers would remain subject to the order. Further, according to the petitioner, liquidation of such entries would be suspended until: 1) no party requested an administrative review and entries would be liquidated at the rate in effect at the time of entry (i.e., the all-others rate); 2) the unaffiliated suppliers could demonstrate through an administrative review that they did not know at the time they sold ribbons to Dear Year or Shienq Huong that those ribbons were destined for the United States; or 3) if the unaffiliated supplier had knowledge of destination, then such entries would be liquidated at the individual rate calculated for that supplier in the administrative review.

representative of the industry as a whole. According to Shienq Huong, this fact pattern is clearly distinguishable from the facts here because Shienq Huong was one of the largest exporters during the POI, and thus there is no question as to the representativeness of its sales. Second, Shienq Huong claims that the petitioner ignored key facts in Italian Bar which clearly distinguish that case as well. Shienq Huong notes that the Department found that it was unnecessary to assign a combination rate to the respondent at issue because there was no evidence that subject merchandise produced by it was exported by another (excluded) company. Shienq Huong argues that these facts are actually similar to those in the instant investigation, where there is neither affiliation nor a tolling arrangement between Hsien Chan and its unaffiliated suppliers. According to Shienq Huong, the suppliers in this investigation simply provide a raw material used by Hsien Chan to manufacture any number of finished products. Finally, Shienq Huong notes that in Italian Bar the Department did not limit the exclusion from the order as a way to ensure its effective enforcement, but rather only clarified the existing exclusion consistent with its finding in the underlying investigation.

Third, regarding SSSSC from Taiwan, Shienq Huong notes that case involved "middleman dumping" and the rate assigned there was based on AFA. Shienq Huong notes that, on remand, the Department calculated a combination rate for the producer and its middleman because it found no basis to believe that the producer was aware that the middleman would dump the subject merchandise in the United States. Thus, Shienq Huong contends that the petitioner's reliance on SSSSC from Taiwan is misplaced because middleman dumping is not at issue here.

Finally, Shienq Huong claims that, in Pasta from Italy Preliminary Results, the Department found that the respondent manufactured subject merchandise via a tolling arrangement and that the respondent was primarily a trading company, not a producer of subject merchandise. Thus, Shienq Huong claims the Department considered it likely that the respondent would export merchandise produced by other manufacturers to the United States, and thus the rate calculated for the respondent as a producer would not apply. Shienq Huong likens the facts in Pasta from Italy Preliminary Results to those in Pistachios from Iran**,** because in both cases the Department identified valid circumvention concerns which are not present in the instant investigation.

Shienq Huong argues that while the Department's regulations permit it to establish combination rates in certain instances, the Department also noted in the Preamble there are situations where combination rates may be inappropriate and/or impractical to administer. See Preamble, 62 FR at 27303. According to Shienq Huong, the Department has declined to establish combination rates in numerous cases; for example, Shienq Huong notes that in both AFBs 05-06 and Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (Sept. 11, 2008), the Department required the respondents to submit their unaffiliated suppliers' cost data but did not assign combination rates.[36]

[36] See also Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile, 70 FR 6618 (Feb. 8, 2005) (where the Department calculated a single rate for a respondent which both manufactured and purchased subject merchandise for resale); and Live Cattle From Canada, 64 FR at 56739 (where the Department calculated a single rate for a respondent which both produced and purchased subject merchandise for resale).

Shienq Huong claims that, as a practical matter, assigning combination rates in this proceeding would make this case nearly impossible to administer for both the Department and CBP. As a threshold matter, Shienq Huong points out that the identities of its suppliers are not public information and the Department has made it very clear in this investigation that cash deposit instructions must be in the public realm in order to be administrable. Shienq Huong asserts that the petitioner has no authority to sanction the release of the identities of Shienq Huong's suppliers, the public release of which would cause the company irreparable harm. Further, Shienq Huong maintains that even if the Department were to issue proprietary cash deposit instructions to CBP, CBP would be unable to implement these instructions unless Shienq Huong were to disclose the identity of its suppliers to its customers.

Moreover, as described in its responses and demonstrated in its data, Shienq Huong states that Hsien Chan selects greige ribbon suppliers on a production-order basis and then negotiates terms according to market conditions. Shienq Huong asserts that Hsien Chan may use several greige ribbon suppliers for a single order, or it may decide to manufacture a portion of an order from its own yarn. According to Shienq Huong, its U.S. sales database demonstrates that a single product in a shipment (represented as a single line item on an invoice) may in fact represent product manufactured from greige ribbon sourced from several different suppliers. Further, Shienq Huong notes that its suppliers will change over time, and thus it is not appropriate to assign combination rates here.

Shienq Huong contends that, if the Department were to either issue combination rates for it or limit Shienq Huong's de minimis margin only to products that Hsien Chan produced, the Department would be effectively punishing the company for the perceived failure of other parties. According to Shienq Huong, the Court rejected such an approach in SKF USA, 675 F. Supp. 2d at 1278. Moreover, Shienq Huong maintains that the Department has successfully managed the exclusion of companies from an order with facts similar to those in the instant investigation. Specifically, Shienq Huong cites Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part, 74 FR 32107 (July 7, 2009) (Honey from Argentina), and accompanying Issues and Decision Memorandum at Comment 1, where the Department revoked the order with respect to a non-producing exporter without limiting the revocation to certain producer/exporter combinations. Shienq Huong notes that in that decision the Department relied on the direction in section 772 of the Act to treat the first party in the chain of distribution with knowledge that its sales of subject merchandise are destined for the United States as the party subject to administrative review. Shienq Huong argues that the Department's analysis in Honey from Argentina is directly on point in this investigation. Shienq Huong maintains that it, not its suppliers, is the first party in the chain of distribution with knowledge that its sales are destined for the United States. Further, Shienq Huong notes that no greige ribbon supplier determines the ultimate appearance of Hsien Chan's finished product. Therefore, Shienq Huong asserts that the petitioner's suggestion is unfeasible and must be rejected in this proceeding.

Nonetheless, Shienq Huong maintains that its margin is de minimis, no matter if it is calculated as a single weighted-average rate or segregated based on merchandise produced from: 1) purchased greige ribbon; or 2) ribbon produced by Hsien Chan. Therefore, Shienq Huong asserts that all of

its exports of subject merchandise should be excluded from any future antidumping duty order on NWR from Taiwan.

Department's Position:

As discussed in detail above, we have continued to determine that the companies weaving the ribbon are the producers of NWR. Therefore, we find that it is appropriate to assign combination rates to Dear Year and Shienq Huong for purposes of this investigation. In this investigation, both Dear Year and Shienq Huong produced some of the NWR sold to the United States themselves, but they also exported substantial volumes of NWR to the United States produced by unaffiliated suppliers. Section 351.107(b)(1)(i) of the Department's regulations provides:

> In the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the Secretary may establish a "combination" cash deposit rate for each combination of the exporters and its supplying producer(s).

See 19 CFR 351.107(b)(1)(i).

Further, 19 CFR 351.204(e)(3) states:

> Exclusion of nonproducing exporter. In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will limit an exclusion of the exporter to subject merchandise of those producers that supplied the exporter during the period of investigation.

See 19 CFR 351.204(e)(3).

The Department has assigned combination rates to companies revoked or excluded from an antidumping duty order in numerous proceedings. See, e.g., Pistachios from Iran at Comment 10; Pasta from Italy Preliminary Results, 63 FR at 53643; Pasta From Italy Final Results, 62 FR at 853; and Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China, 60 FR 22359, 22370 (May 5, 1995). Moreover, we disagree with Shienq Huong that neither Pistachios from Iran nor Pasta from Italy Preliminary Results has fact patterns similar to the instant investigation. In both cases, the Department faced valid concerns that the revoked exporters would be selling products produced by other manufacturers. We believe that the same concerns are present here because both Dear Year and Shienq Huong export merchandise to the United States produced by unaffiliated suppliers. Therefore, we find it is appropriate to exclude merchandise exported by the respondent and produced either by: 1) itself, or 2) its suppliers which produced the merchandise during the POI.

Moreover, we disagree with Shienq Huong that it is appropriate to follow our practice in Honey from Argentina in this proceeding. In that case, the Department found it was appropriate to grant a revocation without limiting it to certain producer/exporter combinations because the Argentine honey industry comprised between 18,000 and 20,00 producers, making it impracticable to

establish revocation for specific combinations of exporters and producers. While both Dear Year and Shienq Huong used multiple unaffiliated suppliers in this investigation, the number of those suppliers is not so large as to make the application of 19 CFR 204(e)(3) unadministrable. Therefore, we find that the concerns addressed in Honey from Argentina are not present here.

Finally, we note that neither Dear Year nor Shienq Huong has disclosed for the public record the names of their unaffiliated suppliers. Therefore, our exclusion of NWR produced by these companies is contingent upon public disclosure of this information. Only after the respondents agree to permit the release of this information to the public will we notify CBP that Dear Year's and Shienq Huong's sales produced by their unaffiliated suppliers have LTFV investigation margins of zero and thus are excluded from any order resulting from this investigation. However, until and unless such public disclosure is made, we will notify CBP that all entries of merchandise produced by Dear Year's and Shienq Huong's unaffiliated suppliers will be subject to the "all others" rate established in this proceeding.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree _____

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
(Date)