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January 3, 2005

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

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

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

SUMMARY

The Department of Commerce (“the Department”) has analyzed the case and rebuttal briefs of interested parties in response to Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, (“Preliminary Results”) 69 FR 40859 (July 7, 2004). As a result of our analysis, the Department has made no changes from the Preliminary Results. The Department recommends that you approve the positions the Department has developed in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review.

BACKGROUND

The Department’s Preliminary Results of the review were published on July 7, 2004. See Preliminary Results. On October 20, 2004, the Department extended the deadline date of November 4, 2004, by 45 days, or, until December 20, 2004. See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 69 FR 61649 (October 20, 2004). On December 10, 2004, the Department fully extended the deadline date of the final results by an additional 15 days, or until January 3, 2005. See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 69 FR 75305 (December 16, 2004).

The merchandise covered by this review is stainless steel butt-weld pipe fittings as described in the “Scope of the Review” section of the Federal Register notice. The period of review (“POR”) is June 1, 2002, through May 31, 2003.

The respondents are Ta Chen Stainless Pipe Co., Ltd. (“Ta Chen”) and its wholly owned subsidiary Ta Chen International, Inc. (“TCI”), Liang Feng Stainless Steel Fitting Co., Ltd. (“Liang Feng”), Tru-Flow Industrial Co., Ltd. (“Tru-Flow”) and PFP Taiwan Co., Ltd. (“PFP”). The Department is rescinding the review with respect to Liang Feng, Tru-Flow, and PFP, based on record evidence that there were no entries into the United States of subject merchandise during the POR. For a full discussion of the intent to rescind with respect to Liang Feng, Tru-Flow, and PFP, see the Preliminary Results at 40861.

The Department did not conduct home market or U.S. sales verification for this proceeding.

The Department invited parties to comment on our preliminary results of review. The Department received written comments on August 13, 2004, from Petitioners¹ and Ta Chen. On August 20, 2004, the Department received rebuttal comments from Petitioners and Ta Chen.

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

LIST OF ISSUES FOR DISCUSSION

- Comment 1: Adverse Facts Available (“AFA”) for the Emerdex Companies²**
- Comment 2: Partial AFA for Dragon Stainless Inc. (“Dragon Stainless”) Selling Expenses**
- Comment 3: Whether to Apply Total AFA for Ta Chen**
- Comment 4: Constructed Export Price (“CEP”) Offset and Level of Trade (“LOT”)**
- Comment 5: CEP Profit**
- Comment 6: Date of Sale for Home and U.S. Market Sales**
- Comment 7: Overstated Home Market Packing Expenses**
- Comment 8: Short-Term Borrowing**
- Comment 9: Total AFA for Liang Feng and Tru-Flow**

¹Petitioners in this administrative review are Flowline Division of Markovitz Enterprise, Inc., Shaw Alloy Piping Products, Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc.

²The Department will address all the Emerdex companies within this comment: Emerdex Stainless Flat Roll Products (“Emerdex 1”), Emerdex Stainless Steel Inc. (“Emerdex 2”), Emerdex Group, Inc. (“Emerdex 3”), and Emerdex Shutters (“Emerdex 4”).

DISCUSSION OF THE ISSUES

Comment 1: Adverse Facts Available (“AFA”) for the Emerdex Companies

Emerdex 1

In their August 13, 2004, case brief submission, Petitioners argue that the Department should reject all of Ta Chen’s information and assign Ta Chen AFA due to an alleged uncooperative and untimely manner of filing responses with the Department.

Petitioners state that Ta Chen has not cooperated with the Department to the best of its ability and has deliberately concealed or inaccurately reported contradicting information regarding affiliation issues. Petitioners argue that Ta Chen submitted information on Emerdex 1 after three requests by the Department. Petitioners further argue that Ta Chen continually attempts to qualify Emerdex 1 as an unaffiliated party. Petitioners cite the record as well as the Department’s preliminary results that Emerdex 1 is an affiliated party. See Preliminary Results. Petitioners cite the relationship between Robert Shieh of Ta Chen and his brother, Jung Yao Hsieh (Shieh) of Emerdex 1 as evidence of affiliation, which was also in part due to Jung Yao Hsieh’s status as an officer, director, and agent for service of process of Emerdex 1. Petitioners also stated that until they filed a submission on Jung Yao Hsieh, Ta Chen denied any family members worked for Ta Chen or Emerdex 1. Petitioners argue that Ta Chen and Emerdex 1 are affiliated based on the Shieh family’s control and Ta Chen’s direct commercial control over Emerdex 1.

Petitioners claim that neither Ta Chen’s nor Emerdex 1’s financial statements sufficiently evidence an absence of affiliation between the two companies. Petitioners state that the financial statements of both companies fail to disclose not only their affiliation to one another but also their financial affiliation, which includes purchases, sales, and financial transactions with one another. Petitioners also state that Emerdex 1’s 2002 and 2003 financial statements are inconsistent. Petitioners state that since the financial statements do not disclose and properly identify Emerdex 1 as an affiliated party and are incorrect, the financial statements are unreliable and, therefore, should not be used as part of the Department’s review process.

In relation to Emerdex 1’s involvement with subject merchandise, Petitioners argue that, as seen in Ta Chen Taiwan’s 2002 financial statements, Emerdex 1 was the second largest accounts payable as a supplier to Ta Chen. In addition, Petitioners claim that Emerdex1 is involved with subject merchandise by virtue of its full name, “Emerdex Stainless Flat Roll Products.” Petitioners argue that since Emerdex 1 produces stainless flat coil, which is the essential input for Ta Chen’s production of subject merchandise, Emerdex 1 must be involved with subject merchandise. They further claim that Ta Chen’s own description of Emerdex 1’s business contributes to its involvement with the subject merchandise.

Petitioners also claim that initial questions for affiliation clarification sought by the Department were originally answered as not applicable and were only answered in more detail in an unsolicited and untimely comment regarding Emerdex 1 as a supplier to Ta Chen. Petitioners state that although Ta Chen stated that it had purchased machinery and equipment from Emerdex 1, it offered no evidence of that purchase. Petitioners comment that Ta Chen has not disclosed its full purchases from Emerdex 1 despite the Department's request for this information.

In its case brief, Ta Chen claims that Petitioners make more out of Robert Shieh's position involving Emerdex 1 than it is in reality. According to Ta Chen, Robert Shieh monitors the financial condition of Emerdex 1 to ensure smooth operations and the supply chain production process, which entails monitoring rather than controlling. Finally, Ta Chen claims that it does not have the ability to control Emerdex 1 simply because Jung Yao Hsieh, Robert Shieh's brother, is listed as the secretary and director of Emerdex 1. Ta Chen claims that this does not lead to the conclusion that the two companies are affiliated. Ta Chen claims that Yao Hsieh's position in Emerdex 1 was pro forma, as he is a pharmacist by trade. Ta Chen claims that the Department has no precedent for such an affiliation determination, and, therefore requests the Department to revisit its preliminary decision in finding that Emerdex 1 and Ta Chen are affiliated.

Petitioners rebut that Ta Chen's case brief fails to focus on the evidence on this review's record substantiating that Emerdex 1 and Ta Chen were involved with transacting subject merchandise during the POR. Petitioners further argue that Ta Chen has only continued its argument denying its affiliation with Emerdex 1 and Emerdex 2. Petitioners claim that the Department correctly determined that Emerdex 1 and Ta Chen were affiliated because Robert Shieh's brother was in a position to restrain or direct the activities of both Ta Chen and Emerdex 1. Additionally, Petitioners contend that Ta Chen exerted control over Emerdex 1 by having access to Emerdex 1's computer records and monitored Emerdex 1's bank accounts, inventory, and accounts receivable. Furthermore, Petitioners cite Ta Chen's April 14, 2004, Questionnaire response that Ta Chen supplied Emerdex 1 with TCI's computer software to ease Ta Chen's monitoring of Emerdex 1 as well as the purchase and sales of goods to Emerdex 1. See Ta Chen's Supplemental Section C Questionnaire Response, dated April 14, 2004, at 29.

In its rebuttal brief, Ta Chen reiterates that it does not control Emerdex 1. However, according to Ta Chen, despite its statements on the record to that effect, Petitioners insist on asserting that using the phrase "flat roll" within the company name qualifies as substantial evidence that the company exported subject merchandise from Taiwan to the United States. Ta Chen argues that Petitioners cannot discern that materials that may be used to produce subject merchandise automatically equates to Ta Chen's use of such for production and export of subject merchandise to the United States. Ta Chen rebuts that Petitioners failed to indicate how alleged affiliation allegations are related to the impact of the dumping margin of the above administrative review.

Emerdex 2

Petitioners argue that the discovery of Emerdex 2 as an affiliate of Ta Chen is a second example of uncooperative behavior in regard to the Department's questioning. Petitioners contend that Ta Chen did not disclose information about Emerdex 2, despite U.S. sales made to Emerdex 2. Moreover, Petitioners claim that Emerdex 1 and Emerdex 2 share an address, resulting in serious affiliation assumptions. They also argue that Ta Chen's financial statements failed to identify Emerdex 2 as an affiliated party. Petitioners request that (a) the Department confirm the preliminary finding that Ta Chen is affiliated with Emerdex 2, (b) the Department reject Ta Chen's financial statements, and (c) the Department reject Ta Chen's U.S. sales listing due to Ta Chen's failure to report U.S. sales to Emerdex 2. Petitioners claim that these actions are warranted due to Ta Chen's pattern of withholding affiliation information.

In its case brief, Ta Chen claims that it is not affiliated with Emerdex 2. Ta Chen argues that determining an affiliation with Emerdex 2 due to the shared use of an address and a similar name is not grounds for such a determination. Ta Chen contends that there is no substantial record evidence that Ta Chen is affiliated with Emerdex 1, thus it cannot be affiliated with Emerdex 2 (or any other companies containing the name Emerdex). Ta Chen opines that sharing an address for service of process and mail is not a statutory basis for a determination of affiliation as was the case in the Preliminary Results.

In their rebuttal, Petitioners claim that Ta Chen's case brief did not properly address the evidence and documentary support confirming Emerdex 1 and Emerdex 2 are affiliated parties and were involved with the subject merchandise. Petitioners also reiterate the foregoing arguments made in their case briefs regarding Ta Chen's non-disclosure of Emerdex 2. Petitioners conclude that the Department preliminarily and correctly found that Ta Chen, Emerdex 1 and Emerdex 2 were affiliated parties. Furthermore, the Department should, for the final results, assign to Ta Chen total AFA regarding its behavior and failure to disclose and/or submit information vital to the record.

In its rebuttal brief, Ta Chen made no specific argument for Emerdex 2.

Emerdex 3 and Emerdex 4

Petitioners claim that, like the situation with Emerdex 2, Ta Chen did not disclose affiliation information for Emerdex 3 and Emerdex 4, though through the Department's investigation, it was found that Emerdex Stainless and Emerdex 2 and 3 list the same principal office address. Moreover, Petitioners state that Emerdex 1, 2 and 4 share an address. Petitioners argue that the Department should affirm the preliminary finding that Emerdex 3 and 4 are affiliated with Ta Chen.

Ta Chen made no specific comment regarding Emerdex 3 and Emerdex 4.

Department's Position:

The Department disagrees with Ta Chen and Petitioners in part.

In the Preliminary Results, the Department found Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4 were affiliated with Ta Chen under section 771(33)(F) of the Act. In addition, the Department found that Emerdex 1 was also affiliated with Ta Chen under section 771(33)(G) of the Act. See Memorandum for Jeffrey May, Deputy Assistant Secretary, from Joseph Welton, Analyst, Ta Chen Affiliations Memorandum: Stainless Steel Butt-Weld Pipe Fittings from Taiwan 2002-2003 Review (“Affiliation Memo”), dated June 29, 2004, at 9.

For these final results, the Department continues to find that Ta Chen is affiliated with Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4 under section 771(33)(F) of the Act and that Emerdex 1 is also affiliated with Ta Chen under section 771(33)(G) of the Act. In addition, the Department finds that facts available is appropriate for Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4. Moreover, the Department continues to find that partial AFA is warranted for Emerdex 2's unreported downstream sales information.

Affiliation

Ta Chen failed to promptly disclose information about four affiliates: Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4. The Department provided Ta Chen with numerous opportunities to report its affiliations with these companies. As explained in the Affiliation Memo,

Emerdex 1 was originally identified on the record of this review as a supplier of unidentified trade merchandise in a note to Ta Chen's financial statements for the year ended December 31, 2002. (See September 12, 2003, Section A response at A-334). However, Ta Chen did not otherwise describe any aspects of its relationship with Emerdex 1 until the January 23, 2004, submission in response to the Department's **third request** for a comprehensive disclosure of all **potentially** affiliated parties.

See Affiliation Memo at 5, *emphasis added*.

The Department also noted in the Affiliation Memo that:

On May 11, 2004, Ta Chen made an unsolicited filing which reported that Jung Yao Hseih is the brother of Robert Shieh, the President of Ta Chen and the President of TCI, Ta Chen's wholly-owned U.S. subsidiary. (See Ta Chen's May 11, 2004, comments at 3). Petitioners also filed a Dunn & Bradstreet report which indicates that Emerdex 1's line of business is “blast furnace - steel works.”

Subsequently, in unsolicited comments on June 17, 2004, Ta Chen stated that “Ta Chen Taiwan's transactions with Emerdex were (1) purchases of blanks (work-in-process) to

produce investment casting fittings and ball valve from Emerdex {1} and (2) purchase of machinery and equipment to produce square tube or polish tube.” (See June 17, 2004, submission at 3). While this revelation was somewhat more specific than Ta Chen’s prior responses, it was untimely and incomplete with respect to the information previously requested, and Ta Chen did not provide any evidence to support its assertion.

See Affiliation Memo at 6-7.

Additionally, with regard to Emerdex 2, Emerdex 3 and Emerdex 4, the Department noted in the Affiliation Memo that:

the record shows that Emerdex 2, Emerdex 3, and Emerdex 4 are active entities and share the same commercial facilities as Emerdex 1, a steel producer and a trader of specialty steel products and a customer and vendor of Ta Chen, and that substantial evidence on the record indicates that Emerdex 1 is affiliated with Ta Chen.

The evidence on the record of this review indicate{s} that Emerdex 1, Emerdex 2, Emerdex 3, and Emerdex 4 **commercially operated as one entity, and are under common control.**

See Affiliation Memo at 9, *emphasis added*.

Moreover, the Department noted in the Affiliation Memo that “Emerdex 1, 2, 3, and 4 all share the same business location and are listed on Ta Chen’s customer list as potential purchasers of the product under investigation.” See Affiliation Memo at 4-5. As such, for these final results, the Department continues to find that Ta Chen is affiliated with Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4 under section 771(33)(F) of the Act and that Emerdex 1 also continues to be affiliated under 771(33)(G) of the Act.

Ta Chen does not provide evidence to refute that Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4 were (1) operating as one entity, (2) shared the same commercial facilities, and (3) had the potential to legally or operationally be in a position to exercise restraint or direction over each other. In addition, proprietary reasons also exist for continuing to find that Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4 are affiliated. See Affiliation Memo at 8. Ta Chen challenges the Department’s finding on the basis that there is no evidence that such restraint or direction existed.

The Department is not required to provide evidence that such restraint or direction occurred. The Department must simply establish that the potential for such restraint or direction existed. See section 771(33) of the Act and section 351.102 of the Department’s regulations. Based on the facts cited above, the Department finds that there is sufficient evidence on the record to conclude that the potential for such restraint or direction did exist between Ta Chen and its affiliates.

With respect to Petitioners' arguments that the Department should not rely on Ta Chen's or Emerdex 1's financial statements, the Department disagrees in part. First, the Department is not using Emerdex 1's financial statements; therefore, Petitioners' request that we not rely on them is moot. With regard to Ta Chen's financial statements, the Department notes that its affiliation definition is not necessarily consistent with Taiwan or U.S. Generally Accepted Accounting Principles ("GAAP") definitions of related parties. As such, a finding of affiliation by the Department does not necessarily mean that such an affiliation should be reflected in Ta Chen's financial statements. Furthermore, Petitioners have not demonstrated how Ta Chen's financial statements are inconsistent with Taiwanese GAAP. Therefore, for these final results, the Department will continue to rely on Ta Chen's financial statements.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In its original questionnaire response dated September 3, 2003, Ta Chen had the opportunity to disclose all of its affiliated parties to the Department. See Question 2(c) in the "Corporate Structure and Affiliations" section of the questionnaire. Moreover, the questionnaire provides a detailed description of an affiliated party as defined by the Department. In addition, question 2(c), part iv instructs Ta Chen to review the Department's definition of affiliated parties attached to the questionnaire. With the exception of TCI in this September 3, 2003, response, Ta Chen did not identify other affiliated parties.

On October 28, 2003, the Department requested that Ta Chen

provide a comprehensive organizational chart and description of Ta Chen's legal structure which includes all parent companies, subsidiaries, and affiliated persons, including affiliated persons in the United States and Taiwan, as requested previously in Question 2.c of the Section A questionnaire. Please refer to the Glossary of Terms at Appendix I of the questionnaire for a definition of affiliated persons. Describe all aspects of the relationship between Ta Chen and each affiliated person named, and describe each person's role, if any, in the manufacturing, sale, and/or development of the subject merchandise (including all inputs).

See October 28, 2003, Section A Supplemental Questionnaire at 7.

Ta Chen responded on November 19, 2003, and provided a list of affiliated parties in Exhibit 23, but

only identified the following entities:

TCI;
Ta Chen (B.V.I.) Holdings Ltd.;
Ta-Jei Investments Co., Ltd.;
Ta-Ever Investment Co., Ltd.;
Ta Chen Steel Investment Co., Ltd.;
Banner-Faster Inc.;
Tension Control Bolting, Inc.;
Shiziazhuang Jitai Precision Casting Co.;
Ta Chen Baoding Precision Casting Co., Ltd.;
and AMS Specialty Steel Inc.

See Ta Chen's Section A Supplemental Questionnaire Response, dated November 19, 2003. Ta Chen did not identify Emerdex 1, Emerdex 2, Emerdex 3 or Emerdex 4 in this response. On January 9, 2004, the Department requested the following:

In the Department's original Section A questionnaire at question 2.c, we requested a comprehensive organizational chart and a written description of Ta Chen's legal structure, including all parent companies, subsidiaries, and affiliated persons including those in the United States and in Taiwan. This request was repeated in the Department's October 28, 2003 supplemental section A questionnaire at question 30. Please confirm that Ta Chen has reported **all affiliates**, according to the Department's definition of affiliated persons provided in the Glossary of Terms in Appendix I of the original questionnaire. If Ta Chen has additional affiliates that were previously unreported, **please report such affiliates in both a revised organizational chart and in a written description**. Describe all aspects of the relationship between Ta Chen and each additional affiliated person named, and describe each affiliated person's role, if any, in the manufacturing, sale, and/or development of the subject merchandise (including all inputs). **Note, the Department is requesting the identification of all affiliates, whether or not Ta Chen considers them related to the manufacture, sale, or development of the subject merchandise. The Department, rather than Ta Chen, will determine whether or not such affiliates are relevant to the current review.**

See the Department's Second Section A Supplemental Questionnaire, dated January 9, 2004, at 1, *emphasis added*.

Ta Chen responded on January 23, 2004, and explained that it does "not believe that Ta Chen is affiliated to the below, but note just in case" and identified DNC Metal Inc., ("DNC"), Emerdex Stainless Flat Roll Products, Inc (Emerdex 1), and Billion Stainless, Inc. The Department notes that although Ta Chen identified Emerdex 1 as a potential affiliate, Emerdex 2, Emerdex 3 and Emerdex 4

were not discussed by Ta Chen. Additionally, Ta Chen provided limited information with respect to Emerdex 1 and Ta Chen continued to claim that it was not affiliated with Emerdex 1.

On March 9, 2004, in a fourth request for information, the Department explicitly stated that Ta Chen's responses had:

not fully addressed our concerns regarding Ta Chen's possible affiliations related to the production and sale of subject merchandise. We have extended the deadline for the preliminary determination in this administrative review in order to give Ta Chen this additional opportunity to address these affiliation issues.

See the Department's Third Supplemental Section A Questionnaire, dated March 9, 2004, at 1. Additionally, the Department asked detailed supplemental questions regarding those parties that Ta Chen had identified in its previous questionnaire response. Id. However, because the Department was not made aware of Emerdex 2, Emerdex 3 and Emerdex 4 by Ta Chen, the Department was unable to seek further information from Ta Chen directly. Ta Chen's response to the Department's questionnaire provided another list of parties explaining that it was providing this list as they "include these names as an exercise of caution, and not from a belief on our part that they should be deemed affiliates." See Ta Chen's Section A Supplemental Questionnaire Response, dated April 14, 2004. A review of that list of names and the revised organizational chart provided by Ta Chen again only identified Emerdex 1 as a possible affiliated party, although other names were included which are not at issue here.

In the Preliminary Results, the Department found that:

with respect to the Emerdex Companies {Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4}, Ta Chen did not cooperate to the best of its ability because it has withheld information from the Department concerning its relationship with these companies, its sales of subject merchandise to these companies, and its purchases of inputs from these companies.

See Preliminary Results at 40863.

Therefore, given Ta Chen's failure to provide to the Department information about Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4 in a timely manner and failure to disclose certain U.S. sales to Emerdex 2, Ta Chen effectively impeded the Department's administrative review by deliberately limiting the Department's access to information. Specifically, the Department is required to seek this information by statutory and regulatory law, in order to assess the totality of circumstances concerning Ta Chen's POR sales to the U.S., which are the subject of this administrative review, in order to conduct a fair and review. As a result, the Department finds that partial facts available is appropriate for Ta Chen with respect to these companies in accordance with section 776(a)(2)(B) of the Act.

Adverse Facts Available

In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interest of a party that has failed to cooperate by not acting to the best of its ability.

The Department finds that application of partial AFA to specific U.S. sales made by Ta Chen is warranted because Ta Chen failed to act to the best of its ability in providing the Department with information about certain affiliates and specific U.S. sales made to an affiliate.

Ta Chen failed to act to the best of its ability by not promptly disclosing its affiliation with Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4, despite three repeated requests by the Department throughout this administrative review. Based on the information eventually obtained from Ta Chen, the Department found in the Preliminary Results that, with regard to Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4, these companies are affiliated with Ta Chen. See Preliminary Results at 40862.

Although record evidence suggests that Emerdex1, Emerdex 3 and Emerdex 4 did not have production or sales of subject merchandise during the POR, the Department continues to find that Ta Chen failed to cooperate with the Department to the best of its ability by not disclosing its affiliation with Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4. See Preliminary Results at 40862. However, an adverse inference can only be applied to Emerdex 2.

Consistent with the Department's decision in the Preliminary Results, the Department continues to find that application of partial AFA to Ta Chen's U.S. sales to Emerdex 2 is warranted because Ta Chen did not act to the best of its ability to provide the Department with important information relevant to the Department's antidumping analysis. Specifically, Ta Chen did not promptly disclose its affiliation with Emerdex 2 to the Department, despite the Department's repeated requests for information concerning Ta Chen's affiliates, and Ta Chen did not identify certain U.S. sales of subject merchandise to Emerdex 2.

In the Preliminary Results, the Department found that:

As noted in the Analysis Memo at 2 and the Affiliation Memo at 7, **Ta Chen failed to report its downstream sales to Emerdex 2, an affiliated company.** In our March 9, 2004, supplemental questionnaire, prior to the identification on the record of Emerdex 2, the Department requested Ta Chen to identify any sales of subject merchandise to Emerdex 1, an affiliate of Ta Chen, a steel trader and steel producer, and a customer of and vendor to Ta Chen. (See March 9, 2004, questionnaire at 4). Ta Chen responded that no sales of subject merchandise existed. (See April 14, 2004, response at 28). **Ta Chen also did not identify the sales of subject merchandise to Emerdex 2. Given this opportunity to identify sales to affiliated parties, Ta Chen chose to interpret the**

Department's question in the narrowest possible manner, and thus only reported whethersales existed to Emerdex 1, an entity which is legally separate, but, as the record indicates, is not commercially separate from Emerdex 2 or the other Emerdex Companies. Thus, with respect to the Emerdex Companies, Ta Chen did not cooperate to the best of its ability because it has withheld information from the Department concerning its relationship with these companies, its sales of subject merchandise to these companies, and its purchases of inputs from these companies.

See Id., at 40863, *emphasis added*.

In applying partial AFA in the Preliminary Results, the Department assigned a margin of 76.20 percent to Ta Chen's known sales of subject merchandise to Emerdex 2. As the Department noted in its Preliminary Results, the 76.20 percent margin, originally suggested by Petitioners, originated from the petition and was applied in the 1992-1994 review.

We note that information from the petition constitutes "secondary information." See SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. The SAA further provides that the word "corroborate" means the Department will satisfy itself that the secondary information used has probative value. As explained in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Review, 61 FR 57391, 57392 (November 6, 1996) ("TRBs"), in order to corroborate secondary information the Department will examine, to the extent practicable, the reliability and relevance of the information used. Where circumstances indicate the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See also Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996).

The implementing regulation for section 776 of the Act, at 19 CFR 351.308(d), states "the fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." The SAA also recognizes that the corroboration process must be flexible enough to induce future cooperation from respondents. Specifically, page 870 of the SAA states the fact that corroboration may not be practicable in a given circumstance will not prevent the Department from applying an adverse inference. See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part, 69 FR 70638 (December 7, 2004).

As the Department stated in the Preliminary Results:

To choose a substitute margin for Emerdex 2's known U.S. sales of subject merchandise, we have selected a margin from among all other sales of subject merchandise in the United States by Ta Chen during the POR. We note that the range of margins calculated on these sales is substantially untainted by our application of partial AFA to inputs purchased from Emerdex 1 and expenses incurred by Dragon. However, there is an abnormally wide range of potential values from which to choose. In addition, given the very large number of sales observations with positive margins, a virtual continuum of values exists between the minimum and the maximum margin for these sales, such that no single margin within the continuous range appears to be more reasonable than any other.

We note that the 76.20 percent margin suggested by Petitioners originated from the petition, was applied to Ta Chen as AFA in the 1992-1994 review, and continues to be applicable for imports of subject merchandise from Tru-Flow. (See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Administrative Review 65 FR 2116 (January 13, 2000); and Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings From Taiwan 58 FR 33250, 33251, (June 16, 1993)). Given that no new information has been presented to indicate that the rate is unreliable subsequent to its applications in this proceeding as described above, we find that the rate is reliable. We also note that 76.20 percent falls within the range of margins calculated for Ta Chen's U.S. sales of subject merchandise in the POR of the current review, and that a substantial portion of Ta Chen's margins for these sales were both greater than and less than 76.20 percent. Therefore, the 76.20 percent margin is currently relevant to Ta Chen's U.S. sales of subject merchandise.

Therefore, for Ta Chen's known sales of subject merchandise in the United States to Emerdex 2, we preliminarily assigned 76.20 percent as partial AFA. (See Analysis Memo at 2).

See Preliminary Results at 40863.

The Department also notes that no new information has been presented to indicate that the rate is unreliable or irrelevant subsequent to its application in the Preliminary Results of this review. Thus, the Department finds that the rate continues to be reliable and relevant.

Therefore, for these final results, the Department continues to find that partial AFA should be applied to Ta Chen because Ta Chen failed to provide Emerdex 2's downstream sales information. With regard to Petitioners' argument that the Department should apply total AFA to Ta Chen, the Department disagrees. See Comment 3 below.

As a result, the Department continues to find that Ta Chen is affiliated with Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4. Moreover, the Department finds that facts available are appropriate for

Emerdex 1, Emerdex 2, Emerdex 3 and Emerdex 4 and that partial AFA continues to be appropriate for Emerdex 2's unreported downstream sales information.

Comment 2: Partial AFA for Dragon Stainless

Petitioners state that prior to their identification of Dragon Stainless as an affiliated party, Ta Chen had not given any indication of such an affiliation. In response, Ta Chen requested that the Department find that (1) Ta Chen is not affiliated with Dragon Stainless; (2) Dragon Stainless' tax returns and Ta Chen's financial statements are accurate and reliable; (3) Dragon Stainless is not involved with the subject merchandise; (4) and Ta Chen and Dragon Stainless' consultancy contract only addresses selling and general administrative expense allocated for Ta Chen's relatively small operations in Florida and Georgia.

Petitioners claim that the record contains substantial evidence that there is an affiliation between Ta Chen and Dragon Stainless. Petitioners state that Ken Mayes, Vice-President of TCI was concurrently also President of Dragon Stainless, and therefore, was in a position to direct and control activities for both companies during the entire POR. Petitioners also claim that Ta Chen concealed Ken Mayes' position as TCI Vice President by claiming he was a TCI sales employee until December of 2002. Petitioners state that another individual, Donna Richey, was concurrently general manager of TCI and vice president of Dragon Stainless and was, like Ken Mayes, in a position to control the activities of both companies during the POR. Petitioners also claim that Ta Chen, as a whole, was able to exert control over Dragon Stainless by requiring Dragon Stainless to open a bank account at a Los Angeles bank, and therefore, Petitioners claim, was able to oversee Dragon Stainless' banking and cash operations, and by sharing commercial facilities and two employees.

On the basis of this information, Petitioners request that the Department reaffirm its preliminary finding for the final results of the above review.

In regard to Ta Chen's financial statements and Dragon Stainless' tax returns, Petitioners argue that the U.S. GAAP requires disclosure of affiliated party transactions when a person serves as a corporate officer within the two companies. As this was the case during the POR, with regard to Ken Mayes' concurrent corporate officer posts at TCI and Dragon Stainless, Petitioners argue that, because TCI's audited financial statements did not identify Dragon Stainless as an affiliate nor did they disclose any transactions between TCI and Dragon Stainless, the Department should reject TCI's financial statements as nonconforming to U.S. GAAP. Petitioners further argue that any information derived from TCI's financial statements (for example, U.S. sales, selling expenses, costs) should also be rejected by the Department. Furthermore, Petitioners conclude that since Ta Chen Taiwan's financial statements rely on TCI's financial statements, the Department should also reject Ta Chen's financial statements.

Petitioners also request that the Department reject Dragon Stainless' tax returns on the grounds that (1) the submitted tax returns for Dragon Stainless were unsigned and undated by the corporate officer or preparer, and (2) that Dragon Stainless' tax returns document another company's Federal Employee Identification Number ("EIN") number.

Petitioners note that during the review, Ta Chen submitted information to the Department denying certain alleged affiliations were involved with the subject merchandise. Petitioners state that, despite Ta Chen's arguments to the contrary, Ta Chen's submission of May 2004 detailing a "consultancy agreement" between Ta Chen and Dragon Stainless showed that Dragon Stainless was involved with subject merchandise during the POR. Petitioners state that this consultancy agreement showed that Dragon Stainless was responsible for varied activities that entailed involvement with the subject merchandise. Petitioners conclude that since a large number of Ta Chen's reported sales were sold through Dragon Stainless facilities, they have no reasonable doubt of an affiliation between Ta Chen and Dragon Stainless. Petitioners claim that consultancy fees, which encompass fees related to the selling and general and administrative expense allocation, had not been reported and, therefore, can affect the Department's dumping margin calculation. Petitioners argue that any attempt to value these consulting fees is an exercise in guesswork due to the absence of substantial information from Ta Chen.

Ta Chen denies an affiliation with Dragon Stainless, claiming that this company is under the personal ownership and control of Ken Mayes, irrespective of any relationship Ken Mayes has with Ta Chen. Ta Chen argues that its referral of customers to Dragon Stainless is not a sign of control. Ta Chen claims that the referral system between Ta Chen and Dragon Stainless is mutually beneficial, without possessing a control aspect, in the interest of increasing sales for both companies. Therefore, Ta Chen argues that the Department should not have assigned adverse inferences for Dragon Stainless in the Preliminary Results.

Furthermore, Ta Chen argues that there was no misreporting of payments under the Dragon Stainless consultancy agreement. Ta Chen contends that the Preliminary Results wrongly assumed that the agreement between Ta Chen and Dragon Stainless only pertained to subject merchandise. Ta Chen claims that the language of the agreement clearly states that Dragon Stainless was to be involved with all merchandise related to the warehouses in question. Ta Chen argues that it is inappropriate to apply all of Ta Chen's known payments to Dragon Stainless for its direct warehousing services during the POR from warehouses in two locations that used Dragon Stainless for services. Ta Chen notes that it submitted a good deal of information about Dragon Stainless, including the consultancy agreement. Ta Chen claims, therefore, that it was cooperative with the Department in providing information, though the Department did not accept submissions dated July 8, 2004, and July 21, 2004, which would have provided the Department with the information it requested. Therefore, Ta Chen contends that adverse facts are impermissible in such circumstances.

In their rebuttal brief, Petitioners state their agreement with the Department's preliminary finding that Ta Chen and Dragon Stainless were affiliated parties. Petitioners note that in its case brief, Ta Chen did

not address the facts of the affiliation but rather stated that Dragon Stainless is Ken Mayes' personal company. Petitioners argue that Ta Chen did not address the relevant statutory language at 19 U.S.C. § 1677(33), in discussing shared officers between two companies.

Petitioners also point to Ta Chen's statement in its case brief regarding payments made by Ta Chen to Dragon Stainless for the consultancy agreement. Petitioners claim that despite Ta Chen's denial of misreporting the payments in its case brief, the Department should reaffirm its preliminary decision concluding that Ta Chen has not demonstrated the amount or extent of these consultancy fees and did not include these fees in its reported U.S. selling expenses. Petitioners request that the Department reject Ta Chen's attempt to convince the Department that it reported the consultancy agreement fees in the data. Petitioners conclude that the Department should assign total AFA to Ta Chen or risk exacerbating Ta Chen's behavior in future reviews.

In its rebuttal brief, Ta Chen argues that Petitioners are wrong to correlate Dragon Stainless' alleged missing information to the margin calculation. Furthermore, Ta Chen states that its consultancy agreement with Dragon Stainless is on the record, showing payment amounts between the two companies. Ta Chen further notes that this amount is included in its reported indirect selling expenses for the annual reviews. According to Ta Chen, even the Department has referred to these expenses as having been covered by TCI, thus included in TCI's reported costs. See Analysis Memorandum for Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of the 2002-2003 Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan from Joe Welton, Analyst, to James C. Doyle, Program Manager ("Analysis Memo") dated June 29, 2003. Ta Chen claims that facts cited by Petitioners in their case briefs belies Petitioners' assertions that Dragon Stainless has a significant effect on the Department's analysis. Finally, Ta Chen argues that, with the exception of Dragon Stainless, Emerdex 1, and Emerdex 2, the Department preliminarily found that all the other alleged affiliates produced by Petitioners are not affiliated with Ta Chen. Ta Chen contends that, notwithstanding the Department's preliminary finding, Petitioners continue to assert that other companies are involved in the importation of subject merchandise. However, according to Ta Chen, Petitioners provide no substantial record evidence to the Department that shows any reason to continue its preliminary decision.

Department's Position:

The Department agrees with Petitioners regarding Dragon Stainless' involvement with subject merchandise. However, the Department does not agree that Ta Chen's reporting failure regarding Dragon Stainless warrants the application of total AFA.

Affiliation

In the Preliminary Results of this review, the Department found, under sections 771(33)(F) and 771(33)(G) of the Act, that an affiliation exists between Ta Chen and Dragon Stainless and existed

during the POR. The Department states that:

Section 771(33)(G) of the Act states that any person who controls another person and that person shall be affiliated. Section 771(33) states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. **Ta Chen described an abnormal degree of access to Dragon's business-sensitive information, specifically to Dragon's bank accounts. The fact that Ta Chen monitors Dragon's accounts to assure that funds "are going for legitimate purposes, and not personal use" at a minimum suggests that Ta Chen approves of only certain uses of Dragon's funds...** Because of the commonality of financial interest of Mr. Mayes {Dragon's President} and Ta Chen, the close and intertwined business activities, it is not clear that Dragon in substance is a different company than TCI, Ta Chen's wholly-owned subsidiary. We therefore recommend that the Department find that Ta Chen is in a position to exercise restraint or direction over Dragon.

See Affiliation Memo at 13, *emphasis added*.

Additionally, the Department noted that:

section 771(33)(F) of the Act states that two or more people under common control are affiliated. The UBRs {Uniform Business Report} filed by Dragon and TCI with the State of Florida which were submitted to the record of this review by Petitioners in their deficiency comments clearly indicate that Mr. Mayes was a Vice-President of TCI throughout the entire POR. We note that as a Vice-President of TCI and the President of Dragon, Mr. Mayes was in a position to control both TCI and Dragon throughout the POR. We therefore recommend that you find that Dragon and Ta Chen are affiliated pursuant to section 771(33)(F).

See Id., at 13-14.

The Department notes that Ta Chen's comments submitted on July 8, 2004, were rejected because it was not clear to the Department whether the new factual information contained in that submission was intended to rebut information and analysis in the Affiliation Memo, as part of the preliminary determination process, or whether it was intended to rebut, clarify, or correct the factual information in Petitioners' June 28, 2004, submission. The Department gave Ta Chen the opportunity to revise and resubmit its rebuttal to Petitioners' comments in a letter to Ta Chen. See Department's letter to Ta Chen dated July 14, 2004. Ta Chen's revised submission, dated July 21, 2004, contained **the same** new factual information which led to the Department's earlier rejection of their July 8, 2004, submission. See Department's letter to Ta Chen, dated August 2, 2004.

Despite Ta Chen's arguments to the contrary regarding an affiliation between Ta Chen and Dragon Stainless, the Department continues to find Ta Chen has the potential to control or direct Dragon Stainless' business activities as they pertain to subject merchandise. Therefore, for the final results, the Department continues to find that Ta Chen is affiliated with Dragon Stainless. For these final results, however, Petitioners argue that the Department should not only continue to find that Dragon Stainless was affiliated to Ta Chen during the POR, but that the Department should apply total AFA to Ta Chen for its behavior and failure to disclose and/or submit information regarding its affiliations.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. For these final results, the Department finds that partial facts available should be applied to Ta Chen in accordance with section 776(a)(2)(B) of the Act.

In the Affiliation Memo, the Department notes that:

Ta Chen only indirectly provided evidence of the existence of these {consultancy} fees in an exhibit which was referenced for the purpose of arguing that Mr. Mayes {president of Dragon Stainless and vice-president of TCI} was no longer an employee of Ta Chen. Ta Chen has not in any way indicated the total amount or the extent of these fees, **nor has Ta Chen made any attempt to explain how or whether these fees were captured in its reported U.S. selling expenses in its Section C database. In fact, the record does not support a conclusion that these fees to Dragon (or the actual expenses incurred by Dragon) were in any way captured in Ta Chen's reported Section C database.** Thus Ta Chen's submissions regarding Dragon have been wholly inadequate in consideration of the Department's mandate to calculate a dumping margin which accounts for Ta Chen's U.S. selling expenses.

See Affiliation Memo at 13, *emphasis added*.

Furthermore, the Department notes that it "specifically instructed Ta Chen to describe its commercial relationship with Dragon Stainless on two occasions during the course of this review" in two questionnaires dated October 28, 2003, at 7 and March 9, 2003, at B-1. See Department's letter to Ta Chen, dated August 2, 2004. Ta Chen's responses to these questionnaires "did not mention or describe in any way the consulting arrangement that it has with Dragon. Furthermore, in response to that questionnaire, Ta Chen stated that Dragon has nothing to do with subject merchandise." See Ta

Chen's Supplemental Questionnaire Response, dated November 19, 2003, at 17. However, in the Affiliation Memo, the Department preliminarily found that Dragon Stainless was involved with subject merchandise. The Department further notes that Ta Chen had ample opportunity to describe in full Dragon Stainless' relationship with Ta Chen as it related to subject merchandise, and chose not to provide the new factual information concerning Dragon Stainless in a timely manner. See Department's letter to Ta Chen, dated August 2, 2004, at 3.

As a result, the Department finds that Ta Chen failed to provide such information in a timely manner or in the form or manner requested under the antidumping statute. In this case, the information on the record regarding its affiliations with Dragon Stainless was ultimately obtained from Ta Chen only after the Department's multiple, detailed and specific requests. Nonetheless, this information was not disclosed to the Department in a timely manner and Ta Chen was less than forthcoming about the nature of its affiliation and business transactions with Dragon Stainless. Moreover, in its Affiliation Memo, the Department found that "Ta Chen's relationship had the potential to impact pricing decisions of subject merchandise." See Id. Specifically, the Department preliminarily found that:

The record shows that Dragon incurred selling expenses in the United States related to sales of subject merchandise for the account of Ta Chen (See May 11, 2004, comments at Exhibit I-C). However, Ta Chen did not describe the nature or extent of these expenses. We have used facts otherwise available under section 776(a)(2)(B) of the Act to determine the amount of these U.S. selling expenses for our calculation of Ta Chen's constructed export price for the relevant sales.

See Preliminary Results at 40862.

Adverse Facts Available

Furthermore, the Department found in the Preliminary Results that:

Because the record shows that Ta Chen has the ability to control Dragon, and thus had the ability to provide the information, we find that Ta Chen did not act to the best of its ability to provide such information necessary for the Department to make its preliminary determination, despite repeated requests for information concerning Dragon.

As such, under section 776(b) of the Act, the Department has made adverse inferences in selecting among the facts otherwise available concerning (1) the Emerdex Companies' downstream sales of subject merchandise; and (2) Dragon's selling expenses in the United States. (See Analysis Memo at 2-3).

See Preliminary Results at 40863.

Ta Chen's failure to disclose the nature of its business transactions with Dragon Stainless in a timely manner impeded the Department's review and its ability to calculate an accurate normal value as it pertains to indirect U.S. selling expenses. As such, the application of partial FA is warranted regarding Dragon Stainless' selling expenses incurred on behalf of Ta Chen. In addition, because Ta Chen was less than forthcoming about the nature of its affiliation and business transactions with Dragon Stainless, the Department finds that Ta Chen failed to cooperate to the best of its ability and has made an adverse inference in applying partial FA.

To properly assign partial AFA in the Preliminary Results, the Department reviewed the consultancy agreement between Dragon Stainless and Ta Chen. The Department noted that this agreement and the fees payable to Dragon Stainless covered a multitude of services beyond the warehousing services for which Dragon Stainless is known to have incurred selling expenses on behalf of Ta Chen. Because these known warehousing selling expenses that Dragon Stainless incurred on behalf of Ta Chen are a fraction of the services covered under the consultancy agreement and a breakdown of the known warehousing selling expenses vis-a-vis the full list of services under the agreement (and likely incurred) is not on the record, the Department used the full amount of the fees payable to Dragon Stainless under the terms of the agreement to calculate Ta Chen's indirect U.S. selling expenses. Specifically, in applying partial AFA, the Department calculated selling expenses based upon the entirety of the fees payable to Dragon Stainless for the duration of the said contract and imputed this value in the margin calculation of indirect U.S. selling expenses.³

Nothing in Ta Chen's case or rebuttal briefs alters these preliminary findings. Therefore, the Department continues to find that partial AFA is warranted for the final results of this proceeding.

Comment 3: Whether to Apply Total AFA for Ta Chen⁴

Millennium Stainless, Inc. ("Millennium Stainless")

Petitioners claim that Millennium Stainless is another company for which Ta Chen did not disclose its affiliation status. Petitioners state that as with other alleged affiliates, Millennium Stainless also lists its address as the TCI commercial address. Moreover, Petitioners stated in a public filing from December 9, 2003, that Dragon Stainless and Millennium Stainless share similar characteristics, such as the concurrent management positions served by Ken Mayes and Donna Richey. Petitioners request that the Department find Millennium Stainless as an affiliate of Ta Chen under the same auspices as Dragon Stainless.

³The Department's calculation of the partial AFA decision for U.S. selling expenses incurred by Dragon Stainless on behalf of Ta Chen was explained in detail in the Analysis Memo at 2-3.

⁴The Department will address the remainder of the affiliates that Petitioners discussed in case and rebuttal briefs within this comment.

Moreover, Petitioners state that, just as with Dragon Stainless, Ta Chen admitted to requiring Millennium Stainless to open a bank account at a Los Angeles bank, that Millennium Stainless shared a commercial facility and two company officers with TCI .

Petitioners state that because Millennium Stainless is affiliated with Ta Chen in the same manner as Dragon Stainless, Millennium Stainless ought to be found affiliated on the same basis as Dragon Stainless was. Aside from the reasons above, the bases of exclusion are, as with Dragon Stainless, Millennium Stainless' tax returns as unreliable source documents and Millennium Stainless' involvement with the subject merchandise.

Ta Chen rebuts that, in their case brief, Petitioners improperly speculate on its relationship with Millennium Stainless through an association with Dragon Stainless. Ta Chen argues that this speculation has no basis in the record and that the Department should ignore it.

South Coast Stainless, Inc. ("South Coast Stainless")

Petitioners state the affiliation issue for South Coast Stainless is the same as Dragon Stainless and Millennium Stainless. Petitioners request that the Department find South Coast Stainless affiliated with Ta Chen on the same basis as Dragon Stainless and Millennium Stainless. As with those two companies, Petitioners allege that South Coast Stainless lists its address as the same as TCI's commercial address. Moreover, Petitioners state that Ta Chen has claimed that South Coast Stainless was not an active corporation, though the record shows otherwise from third-party documentation submitted by Petitioners. According to Petitioners, through the Secretary of State of Florida, South Coast Stainless was listed as an active company that filed its annual Uniform Business Report for 2002 and for 2003. Petitioners also state that South Coast Stainless requested and paid a fee for a Certificate of Status from the Florida Secretary of State to show active status during 2003.

Petitioners state that Ta Chen withheld financial statements and/or tax returns for South Coast Stainless because of its inactive status. Petitioners, however, claim that since South Coast Stainless possesses an EIN number, which would require it to file tax returns and other active business related filings, Ta Chen was mistaken in claiming South Coast Stainless as inactive.

Petitioners argue that, as with Dragon Stainless and Millennium Stainless, South Coast Stainless was involved with the subject merchandise. Petitioners state that Dragon Stainless, Millennium Stainless and South Coast Stainless all share Ken Mayes, as a corporate officer, with TCI, a wholly owned subsidiary of Ta Chen. Petitioners also argue that both Ta Chen and Ken Mayes made identical statements on the status of Dragon Stainless', Millennium Stainless' and South Coast Stainless' involvement with subject merchandise. Petitioners claim that sufficient evidence is on the record to warrant a finding that South Coast Stainless was involved with the subject merchandise. Petitioners claim this is justified by Ta Chen's withholding South Coast Stainless' financial statements and tax returns.

Ta Chen rebuts that Petitioners show no direct evidence that this company deals with subject merchandise. Ta Chen argues that Petitioners rely on patterns and overlapping individuals rather than record evidence to insinuate involvement with subject merchandise.

DNC Metal, Inc. (“DNC Metal”)

Petitioners claim that DNC Metal is another Ta Chen affiliate; a claim denied by Ta Chen. Petitioners argue that Ta Chen’s request to the Department to find DNC Metal not affiliated with Ta Chen should be denied. Petitioners claim that Roger Tsai, the president and chairman of DNC Metal as preliminarily determined by the Department, has, at various times during this review, been described by Robert Shieh as a brother-in-law and nephew. Petitioners state that regardless of familial tie, Robert Shieh and Roger Tsai are related, thereby creating an affiliation between DNC Metal and Ta Chen. Petitioners state that the finding of affiliation is reaffirmed by Ta Chen’s direct control over DNC Metal, via its bank account, overseeing DNC Metal’s payments, and DNC Metal’s commercial dependence on Ta Chen as a supply source. Petitioners also claim that DNC Metal shares a corporate officer with Emerdex Stainless, which the Department preliminarily found affiliated with Ta Chen.

Petitioners claim that DNC Metal’s financial statements are incorrect and unreliable for use as source documents in two ways: (1) DNC Metals was not disclosed as a related party or affiliate under U.S. GAAP, as is required, though DNC Metals is commercially dependent upon Ta Chen and DNC Metal’s financial documents should have stated this, and (2) Ta Chen explained that DNC Metal used the cash method of accounting for its recognition of income taxes, which Petitioners argue is impossible and improper under U.S. GAAP.

Petitioners also argue that DNC Metal is involved with the subject merchandise. Petitioners state that the record shows that DNC Metal deals in the purchase and sale internationally of stainless steel coils, the sole input used by Ta Chen for its production process. Petitioners claim that Ta Chen’s concealment of DNC Metal, inconsistent reporting of family connections between Ta Chen and DNC Metal, submission of inaccurate financial statements for both DNC Metal and Ta Chen, and refusal to disclose the quantity and value of its transactions with DNC Metal should all be weighed by the Department to determine whether sufficient evidence is placed on the record to find DNC Metal is affiliated with Ta Chen and was involved with the subject merchandise during the POR.

Ta Chen rebuts that Petitioners’ arguments regarding DNC Metal’s involvement with subject merchandise are unclear and unsubstantiated. Ta Chen argues that the use of coil by a company does not automatically qualify a company as a producer of subject merchandise for export to the United States.

Billion Stainless, Inc. (“Billion Stainless”)

Petitioners state that Billions Stainless is in the same situation as DNC Metal. They claim that, as with

DNC Metal, Ta Chen requested that the Department find Billion Stainless not affiliated with Ta Chen, that Ta Chen's and Billion Stainless' financial statements are correct and reliable, that Billion Stainless ceased operations three months into the POR, and that Billion Stainless is not involved with the subject merchandise.

Petitioners argue that Billion Stainless is affiliated with Ta Chen in the same way as with DNC Metal, based primarily upon Roger Tsai as a familial connection. Additionally, Petitioners state that both Ta Chen's and Billion Stainless' financial statements are inaccurate and unreliable, due to lack of disclosure of their affiliation with one another and other issues.

Petitioners also claim that Billion Stainless had not dissolved its operations as stated by Ta Chen. Ta Chen stated that Billion Stainless dissolved its corporate charter in September 2002. Petitioners state that the record shows Billion Stainless continued operations.

Additionally, Petitioners state that Billion Stainless was involved with the subject merchandise, despite Ta Chen's statement denying that TCI bought from or sold to Billion Stainless any stainless steel butt-welded pipe fittings. Petitioners claim that Ta Chen did not include language in its statement denying involvement with subject merchandise that specifically excluded inputs to subject merchandise production. Finally, Petitioners note that Ta Chen's statement that Billion Stainless was dissolved is insufficient evidence of the absence of transactions between Ta Chen and Billion Stainless. Petitioners conclude that two contradictory statements made by Ta Chen on January 23 and April 14, respectively, show sufficient evidence that Billion Stainless was involved with the subject merchandise.

Ta Chen rebuts that Petitioners' allegations of missing information pertaining to Billion Stainless are a distraction. Ta Chen argues that missing information regarding Billion Stainless is irrelevant and, therefore, understandably missing. Moreover, Ta Chen claims that there is nothing wrong with Billion Stainless' date of closing. Ta Chen notes that a company may close before it is dissolved.

PFP Taiwan Co., Ltd. ("PFP Taiwan")

Petitioners claim that PFP Taiwan is affiliated with Ta Chen, though Ta Chen has stated that there is no affiliation with PFP Taiwan and that PFP Taiwan has no involvement with the subject merchandise.

Petitioners state that a familial connection between Ta Chen and PFP Taiwan, that of Mr. Shieh and Mr. Tsai, respectively, is sufficient evidence to find that the two companies are affiliated. Petitioners claim that, in addition to the familial connection between Ta Chen and PFP Taiwan, there is a sharing of facilities, Ta Chen's access to PFP Taiwan's computer systems, and Ta Chen's control over other companies presided over by Mr. Tsai, DNC Metal and Billion Stainless, that should be regarded as evidence of affiliation. Petitioners state that the Department should take administrative notice that Roger Tsai played an active role related to Sun Stainless's dealings with Ta Chen during the first administrative review.

Petitioners argue that PFP Taiwan's financial statements are incomplete, inaccurate, and unreliable. Petitioners state that after initially not responding to the Department's request for PFP Taiwan's financial statements, Ta Chen only provided an illegible copy of a balance sheet, which Petitioners argue is not a full financial statement. Moreover, Petitioners state that Ta Chen had not attempted to submit additional financial data, such as income statements, statements of cash flow, auditor's notes, and other documents, for PFP Taiwan that were requested by the Department. Petitioners also argue that despite Ta Chen's submission of PFP Taiwan's tax return, which was allegedly incomplete, the financial statements currently on the record are insufficient and unreliable. Petitioners request that the Department find Ta Chen uncooperative with requests to submit PFP Taiwan's financial statements as requested by the Department.

Petitioners also claim that PFP Taiwan is involved with subject merchandise. According to Petitioners, Ta Chen avoided responding to the Department's: (1) direct question of the relationship between Ta Chen and PFP Taiwan, whether as owner, customer, or supplier; (2) direct question of whether Ta Chen and PFP Taiwan had any affiliations in terms of shareholders, board members, managers, employees, or familial connections; and (3) direct request for an organizational chart for PFP Taiwan.

Petitioners state that though Ta Chen stated it did not make any pipe fitting purchases from or sell pipe fittings to PFP Taiwan, Ta Chen did not respond as to whether sales transactions of coil, an input, occur between the two companies. Petitioners claim that because Ta Chen did not disclose the full financial statements from PFP Taiwan, the Department cannot ascertain whether purchases of inputs were transacted between Ta Chen and PFP Taiwan. Petitioners request that the Department find that PFP Taiwan was a supplier to Ta Chen during the POR.

Ta Chen rebuts that Petitioners offer no evidence to justify the Department's reversal of prior findings from previous reviews and the preliminary finding in this review. Ta Chen contends that there is no reason to address Petitioners' comments and arguments on the remaining companies, as they had already been rejected and are of no consequence for the final results of this review.

AMS Specialty Steel, Inc. ("AMS California"), AMS Specialty Steel, LLC ("SOSID # 552293") (AMS North Carolina 1"), and AMS Specialty Steel, LLC (SOSID #0654511) ("AMS North Carolina 2")

Petitioners claim that although Ta Chen denied affiliations with AMS California, AMS North Carolina 1, and AMS North Carolina 2, the Department should find that Ta Chen misstated its relationship with and submitted inconsistent information about these companies. Petitioners claim that on separate occasions, Ta Chen did not identify any of the above companies as affiliated. For example, Petitioners note that TCI's 2002 financial statements included Ta Chen's original Section A response and identified AMS California as an affiliate, while Ta Chen denied the same company as an affiliate in the same Section A questionnaire. See Preliminary Affiliation Memo at 19-26 (July 7, 2004). Additionally, Petitioners claim that Ta Chen's statement regarding sale of ownership percentages and cessation of

involvement with AMS as of December 12, 2002, is inaccurate as the California Secretary of State shows AMS California as an active company operating out of TCI's business address and that Robert Shieh is the agent for service of process for AMS California. Petitioners also claim that AMS California's most recently filed annual report, dated October 7, 2002, with the Secretary of State of North Carolina, shows Robert Shieh as the president of AMS California. Petitioners note that Ta Chen had ownership interests in AMS California through Ta Chen BVI Holdings in the November 19, 2003 submission, while on December 19, 2003, Ta Chen claimed that Robert Shieh held ownership interest in AMS California. Then, according to Petitioners, in a subsequent submission dated April 14, 2004, Ta Chen stated that both Ta Chen and Robert Shieh held ownership of AMS California and that Robert Shieh had sold his interest to the remaining shareholders, which included Ta Chen BVI. Petitioners, then, claim that in the same submission dated April 14, 2004, Ta Chen stated that Robert Shieh holds five or more percent of voting stock in AMS California, which is corroborated in the following pages of that submission stating that Robert Shieh has the potential to hold controlling interest in both Ta Chen and AMS California.

Petitioners also contend that the record shows evidence that Ta Chen is affiliated with AMS California, AMS North Carolina 1 and AMS North Carolina 2 as follows:

Robert Shieh, James Chang, and Denny Chang are purported to have served as officers and directors of AMS California for nearly seven months of the POR while concurrently serving as officers and directors of Ta Chen. Petitioners also submitted a letter to the Department arguing evidence that Robert Shieh, James Chang and Denny Chang continued in these positions throughout the POR. See Petitioners' letter, dated June 28, 2004, at 19-22.

Petitioners claim that for several days into the POR, Ta Chen owned 51 percent of AMS North Carolina 1. See Id. Additionally, Petitioners claim that AMS California, an alleged affiliate of Ta Chen, is a major shareholder of AMS North Carolina 2, which had been operating during the POR. Petitioners request that, following the Department's preliminary affiliation memo statement that questioning the AMS affiliations further would be fruitless, the Department should find that, after seeking disclosure on an affiliation with AMS California, Ta Chen produced only inconsistent and incomplete records. According to Petitioners, this lack of sufficient disclosure is evidence of being uncooperative, and should result in the Department's finding that Ta Chen is affiliated with AMS California, AMS North Carolina 1 and AMS North Carolina 2.

Petitioners also request that the Department reject Ta Chen's claim that none of the above companies were involved with the subject merchandise. Petitioners note that in the preliminary affiliation memo, the Department stated that affiliation disclosure issues caused time constraints in evaluating the nature of AMS California's activities with subject merchandise. According to Petitioners, evidence on the record shows that AMS California, AMS North Carolina 1 and AMS North Carolina 2 were probably involved with subject merchandise, as submitted in Petitioners' letters dated April 28, 2004, and June 28, 2004. See also Ta Chen Section A Questionnaire Response, dated September 3, 2003, at Exhibit

12.

Petitioners conclude that (1) Ta Chen has not cooperated in providing sufficient disclosure of its affiliation with AMS California, AMS North Carolina 1 and AMS North Carolina 2, and (2) Ta Chen's behavior has prevented the Department's findings of the nature of the above companies' involvement with subject merchandise. Petitioners, therefore, request that the Department find an existing affiliation between Ta Chen and the above three companies as well as determine that these companies were involved with the subject merchandise during the POR.

Ta Chen made no specific comment regarding the above company.

AMS Steel Corporation ("AMS Corp.")

Petitioners note that in the Department's preliminary affiliation memo, the Department found that Ta Chen failed to provide sufficient information regarding how AMS Corp is related to other steel companies. Petitioners had provided evidence on the record detailing that AMS Corp, much like Emerdex Stainless, Emerdex 2, Emerdex 3, and Emerdex 4, shares the same operating, mailing, and office address as AMS North Carolina 1 and AMS North Carolina 2. See Affiliation Memo at 25, 27. Petitioners argue that, given Ta Chen's uncooperative manner, the Department should find that Ta Chen is affiliated with AMS Corp. Moreover, Petitioners argue that since Ta Chen has refused to submit information regarding AMS Corp, the Department should find that AMS Corp was involved with subject merchandise during the POR.

Ta Chen made no specific comment regarding the above company.

Stainless Express, Inc. ("Stainless Express")

Petitioners argue that Ta Chen's claim that it is not affiliated with Stainless Express is contradictory to the record. Petitioners claim that the record shows an affiliation between Ta Chen and Stainless Express for four months of the POR.

According to Petitioners, Ta Chen and Stainless Express are affiliated through Donna Richey, who served two concurrent positions in both companies, TCI branch manager and Stainless Express president. Additionally, Petitioners note that, as previously stated in their case brief, Donna Richey also served as vice-president at Dragon Stainless and Millennium Stainless, two other affiliates of Ta Chen. Therefore, Petitioners argue that Ta Chen and Donna Richey were in positions to restrain or direct the activities of both TCI and Stainless Express between June 1, 2002, and October 4, 2002. Petitioners request that, for the final determination of the instant proceeding, the Department affirm its preliminary finding that Ta Chen had the ability to influence or exert influence on the activities of Stainless Express through Donna Richey for five months of the POR.

Petitioners also request that the Department find that Ta Chen failed to cooperate with the Department in disclosing affiliation information about Stainless Express, and, therefore, was unable to refute Stainless Express' involvement with the subject merchandise.

Ta Chen made no specific comment regarding the above company.

SouthStar Steel Corp. ("SouthStar")

Petitioners state that Ta Chen has claimed that SouthStar is not an affiliate, the corporation is inactive, and therefore, cannot be involved with subject merchandise. Petitioners argue that these claims are false, as evidenced by the record.

Petitioners claim that during the POR, Klaus Becker served concurrently as an officer in AMS California and SouthStar. Petitioners argue that since the Department preliminarily determined that AMS California is affiliated with Ta Chen, Klaus Becker, in his two concurrent positions, was in a position to restrain or direct the activities of both AMS California and SouthStar during the POR. Additionally, Petitioners, citing the Department's Preliminary Affiliation Memo, note that SouthStar shares TCI's principal address and registered address at 5855 Obispo Avenue. Petitioners also note that, according to a letter they submitted on December 9, 2003, a news article suggested that a possible joint venture between SouthStar and Ta Chen was under discussion between the two companies. See Petitioners' Letter, dated December 9, 2003, at 11. Petitioners claim that Ta Chen and SouthStar are affiliated parties as evidenced by certain business arrangements. See Ta Chen Section A Questionnaire Response at Exhibit C-3-2.

Petitioners further argue that SouthStar is an active corporation shown through official corporate records, notwithstanding Ta Chen's claim that it is not. Petitioners claim that SouthStar's affiliation situation is similar to Billion Stainless' as discussed in Petitioners' case brief. See Petitioners' Case Brief at 41-42 through Ta Chen Sections B, C, & D Questionnaire Response, dated October 6, 2003, at Exhibit C-1.

Petitioners also argue that SouthStar is involved with subject merchandise, through the same article that discussed the joint venture between Ta Chen and SouthStar. Petitioners note that Klaus Becker spoke of expanding the company into other stainless products and in the Atlanta region. See Petitioners' Letter, dated December 9, 2004. Petitioners claim that, given SouthStar's long-term business as an importer and distributor of stainless steel bar, it is likely that SouthStar expanded into subject merchandise, stainless steel butt-weld pipe. Nevertheless, Petitioners argue that the Department cannot determine the exact nature of SouthStar's involvement with subject merchandise due to Ta Chen's lack of disclosure of its affiliation with SouthStar. Petitioners request that the Department find that SouthStar was involved with subject merchandise due to Ta Chen's decision to be uncooperative.

Ta Chen made no specific comment regarding the above company.

Estrela Specialty Steel, Inc. (“Estrela 1”) and Estrela, LLC (“Estrela 2”)

Petitioners state that Ta Chen’s claim that it was not affiliated with Estrela 1 is not accurate. Petitioners argue that Ta Chen did not disclose the identity of Estrela 1 until seven months into the proceeding. Petitioners further state that Estrela 1 is the sister company of SouthStar, another alleged affiliate of Ta Chen. Petitioners claim that, as SouthStar is an affiliate of Ta Chen, so must be Estrela 1 through Klaus Becker, who, according to Petitioners, served concurrently as an officer at AMS California, Estrela 1, and SouthStar. Petitioners contend that Robert Shieh, president of Ta Chen, provided via a statement, that he gave financial assistance to Klaus Becker for Estrela 1’s operations. Petitioners conclude that Ta Chen and Estrela 1 are affiliated.

Petitioners argue that Estrela 1’s activities are unknown. Petitioners argue that, notwithstanding Ta Chen’s explanation that Estrela 1 acts as a marketing branch for a Brazilian steel mill {producing primarily steel tools, alloy steels and some stainless steel and nickel products}, Ta Chen is still able to purchase stainless steel inputs from Estrela 1 for production of subject merchandise. Petitioners also add that Ta Chen’s description of Estrela 1’s activities do not preclude them from selling subject merchandise for Ta Chen. Petitioners argue that Ta Chen did not deny whether Estrela 1 dealt with subject merchandise. Moreover, Petitioners add that Estrela 1’s financial dependence on Ta Chen intimates Estrela 1’s involvement with subject merchandise.

Petitioners state that Estrela 2, an unidentified entity discovered by the Department, is affiliated with Ta Chen by reason of shared officers. Petitioners claim that Estrela 2 shares a common address with SouthStar and some Becmen companies {Becmen Steel Group, see below}, and is owned by Mark Menzies, Klaus Becker’s partner and another Becker family member. Petitioners allege that Estrela 2 is an active corporation involved with the wholesale of steel products. Petitioners claim that, based on this evidence, Ta Chen and Estrela 2 are affiliated through shared officers.

Petitioners request that, for the final results, the Department determine that (1) Estrela 1 and Estrela 2 are affiliated with Ta Chen, (2) Estrela 1 was involved with subject merchandise, and (3) Estrela 2 was involved with subject merchandise because the record evidence only shows that it deals with steel products and Ta Chen withheld Estrela 2’s identity, preventing the Department from sufficiently investigating it.

Ta Chen made no specific comment regarding the above company.

TCI Estrela International (“TCI Estrela”), Estrela International Corporation (“Estrela 3”), and Estrela International, Inc. (“Estrela 4”)

Petitioners note that the Department discovered and placed on the record the existence of TCI Estrela, Estrela 3 and Estrela 4, citing the Affiliation Memo of the Preliminary Results. Petitioners claim that

TCI Estrela, certainly related to TCI Long Beach, shares an address with NASTA International (“NASTA”), a Ta Chen affiliate described by Ta Chen as a division of the company. Petitioners argue that Ta Chen cannot claim ignorance of a company that shares a business address with a division of Ta Chen. Petitioners further argue that, although the Department noted that these companies had either been dissolved or were suspended, the dates of their dissolution or suspension were unclear, whether before, after, or during the POR. Petitioners further argue that suspension of a company does not necessarily mean that the company is defunct. Rather, the Petitioners contend that a company could be suspended for not filing timely reports, in which case a company may still operate. In conclusion, Petitioners request that Ta Chen’s failure to identify the companies result in the Department’s finding that substantial evidence exists to determine that TCI Estrela, Estrela 3, and Estrela 4 are affiliated with Ta Chen.

Ta Chen made no specific comment regarding the above company.

NASTA

Petitioners note that they identified NASTA as an affiliate of Ta Chen in a letter to the Department dated October 17, 2003. Petitioners also note that when asked by the Department to explain the relationship with NASTA, Ta Chen stated that the Department had already reviewed NASTA during the sales verification of the prior review. Petitioners point out that the record of that previous review contains no reference to NASTA.

Additionally, Petitioners state that the Department discovered that NASTA is a California-based corporation, formed in 1999, with Tom Chou as the agent for service of process. Petitioners note that this is the same individual who is the agent for service of process for Estrela 1, as cited in the Affiliation Memo at 32. The Petitioners argue that, though NASTA’s corporate status is revealed as suspended, as per California’s Secretary of State, the company may still be actively engaged in business as a separate entity rather than as a division of TCI.

Moreover, Petitioners argue that Ta Chen has revealed little about NASTA except for its description of NASTA as a division of TCI in a November 19, 2003, response. Petitioners request that the Department find NASTA affiliated with Ta Chen.

Ta Chen made no specific comment regarding the above company.

Becmen, LLC, Becman Specialty Steel, Inc., and Becmen Trading International (collectively referred to as “Becmen Steel Group”)

Petitioners state that they disclosed an affiliation between Ta Chen and Becmen Steel Group to the Department in an April 29, 2004, submission, which was in response to Ta Chen’s April 14, 2004, submission. Petitioners note that Ta Chen’s April 14, 2004, submission was its fourth response to the

Department regarding a comprehensive list of all affiliates. Petitioners further note that the Becmen Steel Group was not mentioned in the April 14, 2004, Ta Chen affiliates disclosure submission.

Petitioners argue that all the entities within the Becmen Steel Group are active corporations located in North Carolina and are affiliated with Ta Chen. Petitioners contend that Klaus Becker concurrently served as a company officer at the Becmen Steel Group, AMS California, SouthStar, and Estrela 1, companies affiliated with Ta Chen. Petitioners further contend that because Klaus Becker served concurrently at the Becmen Steel Group and at various Ta Chen affiliates, he was able to restrain or direct the activities of the Becmen Steel Group on behalf of Ta Chen during the POR. Additionally, Petitioners footnote that the Becmen Steel Group uses the same business address as SouthStar and Estrela 2 in Charlotte, North Carolina. Petitioners request that the Department find that Ta Chen failed to cooperate with its review because it failed to disclose information about the Becmen Steel Group after four opportunities to do so, the Becmen Steel group shares an officer with other Ta Chen affiliates, and the Becmen Steel Group is involved with specialty steel, which includes the subject merchandise.

Ta Chen made no specific comment regarding the above company.

KSI Steel, Inc. K. Sabert, Inc. and Sabert Investments (“Sabert Steel Group”)

Petitioners state that the case with the Sabert Steel Group is similar to that of the Becmen Steel Group, in that the Sabert Steel Group was identified in Petitioners’ April 29, 2004, submission addressing this company’s absence from Ta Chen’s fourth affiliate disclosure submission dated April 14, 2004. Petitioners contend that the Sabert Steel Group is affiliated with Ta Chen due to the sharing of an officer between the Sabert Steel Group and Ta Chen. Petitioners state that Klaus Sabert, a joint investment partner of Ta Chen, and with Ta Chen, was able to restrain or direct the activities of the Sabert Steel Group during the POR.

Additionally, Petitioners cite the Department’s Affiliation Memo from the Preliminary Results to argue that the Sabert Steel Group is either an agent or broker of steel or steel products and that the companies of the Sabert Steel Group could have acted as agents and brokers to TCI for the subject merchandise. Petitioners further argue that because Ta Chen withheld the identity of the Sabert Steel Group, the Department was unable to fully investigate the extent of the Sabert Steel Group’s involvement with the subject merchandise. Petitioners request that the Department find for the final results of the proceeding that the Sabert Steel Group and Ta Chen are affiliated parties and that the Sabert Steel Group was involved with the subject merchandise.

Ta Chen made no specific comment regarding the above company.

Other Affiliation Issues

Petitioners argue that, though the Department determined that Robert Shieh, president of Ta Chen,

owns a substantial portion of entities, as cited in the Affiliation Memo, the record does not disclose the actual business activities of some of the entities and the relationship with subject merchandise. Petitioners contend that Ta Chen should have and could have placed disclosure information about several entities on the record but did not. Petitioners request that the Department find that Ta Chen has not cooperated with the Department's review regarding proper disclosure of affiliated parties.

Ta Chen made no specific comment regarding this additional affiliation issue involving Robert Shieh.

Timely and Complete Responses to the Department's Requests for Information

Citing Rhone Poulenc, Inc. V. United States, 899 F.2d 1185, 1191 (Fed.Cir. 1990) and Reiner Brach GmbH & Co. V. United States, 206 F. Supp. 2d 1323, 1333 (CIT 2002) ("Reiner Brach"), Petitioners stress the importance of timely submission of information to the Department in a review or investigation. Petitioners further note the importance of submitting complete information in the questionnaire responses, in order for the Department to determine if additional data is required from the respondent.

Petitioners refer to statutes and judicial precedents regarding inaccurate or incomplete records submitted by respondents. Petitioners cite 19 U.S.C. §§ 1677e(a)(1) and (2) regarding whether the Department is required to consider whether necessary information is on the record or whether an interested party has (1) withheld information, (2) submitted requested information in an untimely manner or in a form other than what was requested, as subject to 19 U.S.C. §§ 1677m(c)(1) and (e), (3) obstructed the Department's proceeding, or (4) provided unverifiable information. Petitioners also note that the Department is subject to 19 U.S.C. § 1677m(d) if the respondent's responses do not comply with the Department's requests.

The foregoing statute, according to Petitioners, allows the Department to permit the respondent to remedy or explain the deficiency in its response within time limits established for the investigation or review. Petitioners note that if this explanation is deficient due to an unsatisfactory response or an untimely response, the Department may use 19 U.S.C. § 1677m(e) to disregard all or part of the original and subsequent responses. Petitioners note that under the statute, the Department must consider an interested party's submitted information necessary to the determination if all five of the following conditions are met: (1) the information is timely submitted, (2) the information is verifiable, (3) the information must be complete to a point that a determination can be reached from it, (4) the interested party has acted to the best of its ability to submit information to the Department in meeting the requirements, and (5) the Department finds no difficulty with the information as evidenced in Petitioners citation to Borden, Inc. v. United States, 4F. Supp. 2d 1221, 1245 (CIT 1998). Otherwise, Petitioners argue, the Department is compelled to use 19 U.S.C. § 1677e(a) or (b) for a facts available finding or AFA, respectively.

Petitioners cite Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003) ("Nippon

Steel”), to argue that the Department must conclude that a respondent was uncooperative by (1) demonstrating that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statute, rules, and regulations, and (2) demonstrating that the respondent under review failed to bring forth requested information or was negligent in putting forth its best efforts in providing information towards the review process. Petitioners contend that in the event that the Department finds that facts available are warranted, an adverse inference may also be included to create a proper deterrent to non-cooperation and assure a reasonable margin, citing F.lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (“De Cecco”) and Micron Tech., Inc. v. United States, 243 F.3d 1301 (Fed. Cir. 2001).

Total AFA for Extreme Lack of Cooperation

First, Petitioners contend that information vital to the Department’s accurate calculation of antidumping duty margin was not placed on the record by Ta Chen. Petitioners cite the Department’s Affiliation Memo to argue the importance and relevance of information vital to the dumping margin calculation, such as adjustments for differences in merchandise, identification of the proper body of sales for normal value purposes, confirmation of all U.S. sales to first unaffiliated buyers, and specification of various adjustments to the U.S. price for direct and indirect selling expenses. According to Petitioners, because of the factors that comprise the dumping equation, the affiliation issue is relevant to the review process. To that extent, Petitioners state that the Department cannot regulate a review unless and until the Department has addressed and has been satisfied with responses, including the affiliation issue. Petitioners cite Reiner Brach to argue that the respondent must, fully and in a timely fashion, meet its burden of proof regarding identification of affiliates.

Petitioners comment that the Department’s Affiliation Memo suggests that the affiliation issue does not need to be decided by the Department unless and until the record shows that the potential affiliated party was involved with the respondent’s subject merchandise during the review period. Petitioners note the following points:

(1) The Department repeatedly requested Ta Chen to report all potential affiliates, which Petitioners contend Ta Chen did not do by “skirting” around the Department’s requests. Petitioners claim that Ta Chen prevented the Department from carrying out its statutory obligations because the Department, not Ta Chen, is the administering authority to decide whether a party is affiliated with Ta Chen; (2) The history of this review shows that Ta Chen’s claims that it had no unacknowledged affiliations and that these companies were not involved with subject merchandise is based on dubious certifications and attestations; (3) Ta Chen’s certifications and statements regarding no other unacknowledged affiliations is insufficient as evidence of such. Petitioners argue that they place substantial evidence on the record opposing Ta Chen’s statements regarding no unacknowledged affiliations. Petitioners contend that, even now, Ta Chen refuses to acknowledge these alleged affiliates. As noted, Petitioners provided a list of companies that were preliminarily found affiliated by the Department or are claimed to be a

potential affiliate; (4) Ta Chen's assertion that its affiliates were not involved with subject merchandise is insufficient. Petitioners contend that the Department's requests for financial documentation from Ta Chen to learn whether the affiliates had dealings with the subject merchandise were brushed aside. Petitioners argue that the Department's requests for documentary evidence were marked not applicable, were denied, or went unanswered; (5) U.S. GAAP requires Ta Chen and its affiliates to acknowledge each other in their respective financial statements by way of affiliation ties and financial transactions, which, according to Petitioners, has been ignored by Ta Chen and its affiliates. Petitioners contend that the financial statements provided by Ta Chen are inaccurate as they do not serve as a benchmark for the accuracy of Ta Chen's data; (6) Ta Chen was in error when it claimed that the issue of affiliation is irrelevant if a potential affiliated party had no dealings with the subject merchandise. On the contrary, Petitioners argue that occasionally there is a correlation between the Department's calculation of a dumping margin of a respondent and the financial statements of an affiliate, even if that affiliate had no dealings with the subject merchandise. Petitioners claim there are instances where the respondent's financial statements must reflect some action or cost of the affiliates notwithstanding the affiliates' non-involvement with the subject merchandise.

Essentially, Petitioners claim that Ta Chen has not fulfilled its obligation of responding to the Department's requests and questions in a complete and timely manner. Petitioners argue that Ta Chen's has supplied the Department with flawed, incomplete, and spurious data with which to make an informed and accurate dumping calculation. Furthermore, Petitioners contend that, as argued within the case briefs, Ta Chen has filled the record with statements and attestations that Petitioners prove to be false. Therefore, Petitioners conclude that, pursuant to 19 U.S.C. § 1677e(a)(1) and (2), the Department should determine that the necessary information is not on the record and that Ta Chen has withheld requested information, impeded the review process, and provided unverifiable data.

Second, Petitioners contend that Ta Chen compiled a deficient record despite several opportunities given by the Department to remedy the deficiency in its information. Petitioners, citing the Affiliation Memo at 7, claim that the Department even accepted unsolicited, untimely submissions on several occasions. Therefore, pursuant to 19 U.S.C. § 1677m(d), Petitioners request that the Department find that Ta Chen was given several chances to rectify the deficiencies in its submissions.

Third, Petitioners note that the Department should disregard, and is under no obligation to use, Ta Chen's incomplete and untimely information. Petitioners argue that Ta Chen's original and supplemental questionnaire responses regarding affiliated parties, pursuant to 19 U.S.C. §§ 1677m(d)(1) and (2) are neither satisfactory nor submitted within the applicable time limits. Petitioners further argue that under the same regulation, the Department should disregard Ta Chen's sales and cost-of-production data {which Petitioners claim should have been submitted at the end of 2003} because this information does not meet all of the criteria set forth in 19 U.S.C. § 1677m(e). Furthermore, Petitioners reiterate that: (1) Ta Chen's statements regarding affiliations have been exposed as false by official filings from various state governments and Dun & Bradstreet; (2) Ta Chen's and its affiliates' financial statements do not follow U.S. GAAP to serve as a benchmark to check the

accuracy of Ta Chen's sales and cost data; (3) Ta Chen has refused to provide information for all of its affiliates and their data, resulting in the Department's discovery of affiliates such as Emerdex 2, 3, and 4 and several Estrela companies; (4) Ta Chen has not demonstrated that it acted to the best of its ability in cooperating with the Department during the review process. {Petitioners claim that time and again, Ta Chen has avoided volunteering information, made inaccurate statements, concealed information, and submitted conflicting or unsubstantiated information to the Department} and (5) the only possible Departmental use of Ta Chen's information would require the Department to overlook the innate flaws in the data provided by Ta Chen. In conclusion, Petitioners state that because of Ta Chen's failure to meet all five criteria as stated in 19 U.S.C. § 1677m(e), the Department is justified in rejecting all of Ta Chen's information for this review. Petitioners conclude that the record, as provided by Ta Chen, is deficient. Thus, the Department should not rely on any information submitted by Ta Chen to calculate the dumping margin.

Fourth, as a result of Ta Chen's deficient information, Petitioners request that the Department determine that total AFA is warranted in the final results of this review for the following reasons: as previously stated, Ta Chen's submissions are deficient and should be ignored by the Department, resulting in the Department's use of facts otherwise available under statute 19 U.S.C. § 1677e(a), and, citing Nippon Steel, Petitioners claim the Department is warranted in using total AFA due to Ta Chen's uncooperative manner. Petitioners argue that under Nippon Steel, the Department can demonstrate that Ta Chen did not apply a reasonable and responsible manner in providing the Department with full disclosure of affiliates and their data as required. Furthermore, Petitioners claim that this attitude was aggravated by the fact that Ta Chen was given several chances throughout the review to remedy the deficiency in its responses pertaining to affiliates. Petitioners claim that Ta Chen, itself, has caused all its failures to exert maximum efforts to obtain the records that the Department requested.

Petitioners note that not only does the record show that Ta Chen did not make its best faith efforts to provide adequate responses to the Department's requests, but the record reveals that Ta Chen deliberately and intentionally concealed as much information about its affiliates as possible. Petitioners contend that the Department should find that Ta Chen has not cooperated to the best of its ability and to assign total AFA for the final results of the review.

Fifth, Petitioners claim that if total AFA is assigned to Ta Chen for the final results of this review, the Department should assign the highest margin possible to Ta Chen, 76.20 percent *ad valorem*. Petitioners note that this rate served as the all others rate in the investigation and the first administrative review, as total best information otherwise available due to Ta Chen's failure in that review pertaining to its failure to report Sun Stainless and Sanshing Hardware as affiliates. Petitioners argue that since the circumstances are similar for this review regarding Ta Chen's failure to properly disclose a number of its affiliates, assigning the 76.20 percent *ad valorem* is a reasonable consequence of a total AFA finding.

Ta Chen offered no rebuttal to Petitioners' arguments regarding a finding of total AFA for Ta Chen's alleged lack of cooperation.

In their rebuttal brief, Petitioners reiterate the foregoing arguments addressed in their case briefs regarding Ta Chen's alleged uncooperative behavior during this review. Petitioners conclude that the Department should find that Ta Chen's behavior impeaches its credibility and compromises the authenticity of all responses submitted to the Department.

Department's Position:

First, the Department disagrees with Petitioners regarding their arguments that the companies referred to within comment 3 are affiliated with Ta Chen and are involved with subject merchandise.

As addressed by the Department in the Affiliation Memo, the Department continues to find that no evidence on the record demonstrates that the above companies' business activities are related to the production or sale of subject merchandise during the POR. Additionally, the Department cannot find that the relationship between the above companies and Ta Chen had the potential to impact production or pricing decisions of subject merchandise.

As a result, the Department continues to find that neither an affiliation analysis nor facts available are necessary.

Second, the Department disagrees with Petitioners regarding their argument that Ta Chen was totally untimely and uncooperative. Although the Department acknowledges that Ta Chen was not prompt in providing information requested by the Department, the affiliation issue required complex research and analysis, and issuance of supplemental questionnaires. Based on submissions by the parties and on its own research, the Department received sufficient information regarding the alleged affiliates to make a determination for this review.

As noted above, the evidence on the record does not warrant total AFA, as argued by Petitioners, because a review of the all the entities identified by Petitioners and addressed by the Department in the Affiliation Memo demonstrates that almost all the entities did not produce, purchase, or sell the subject merchandise during the POR, as Ta Chen reported. As a result, the Department is applying partial AFA only where there is evidence that some entities **were** involved in the purchase, as is the case with Emerdex 2, and possible resale of the subject merchandise from Ta Chen, and, as in the case of Dragon Stainless, where these entities incurred U.S. selling expenses for subject merchandise during the POR.

Third, the Department disagrees with Petitioners' request to apply total AFA to Ta Chen. Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts

otherwise available in reaching the applicable determination. Additionally, section 776(b) of the Act provides that if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.

The Department finds that, with the exceptions noted in comments 1 and 2 regarding a finding of partial AFA, for Emerdex 2 and Dragon Stainless, applying total AFA to Ta Chen is not warranted in this review. Notwithstanding Ta Chen's lack of promptness in submitting information to the Department, the breadth of the information submitted was accepted by the Department as sufficient for making a determination. The Department finds that, with the exception of Emerdex 2 and Dragon Stainless, Ta Chen cooperated with the Department in providing satisfactory data for the record and therefore, total adverse facts available is not appropriate.

Comment 4: Constructed Export Price ("CEP") Offset and Level of Trade ("LOT")

Petitioners request that the Department reject Ta Chen's claim that its home market sales were at a more advanced level of distribution than its U.S. CEP sales. Petitioners further argue that Ta Chen's claim is unsupported and, therefore, the Department should deny its request for a U.S. CEP offset.

Petitioners cite a letter they submitted on October 17, 2003, discussing the record evidence that Ta Chen offers equal services to its domestic market customers and its U.S. customers as well as Ta Chen's claim that the home and U.S. markets were at the same LOT. Petitioners note that Ta Chen offered the following to its home market customers: (1) extension of payment terms; (2) indirect selling expenses; (3) inventory carrying costs; and (4) loading of fittings onto customers' trucks. Moreover, Petitioners note that the record evidence refutes Ta Chen's claims that it offered other selling services to its home market customers.

Furthermore, Petitioners claim that, pursuant to 19 U.S.C. § 1677a(d), Ta Chen's adjusted U.S. price to the first unaffiliated U.S. customer included the following services: (1) inland freight from plant to port of export; (2) inland insurance in Taiwan; (3) Taiwanese brokerage and handling expenses; (4) Taiwanese containerization expenses; (5) indirect selling expenses incurred on U.S. sales by Ta Chen Taiwan; (6) Ta Chen Taiwan's inventory carrying costs, ocean freight expenses, and marine insurance; (7) Ta Chen Taiwan's extended credit terms to TCI and associated banking expenses; (8) U.S. customs duties; and (9) packing expenses {material and labor}. From this list of services, Petitioners contend that Ta Chen clearly has fewer selling activities in its home market versus its U.S. market. Petitioners argue that, pursuant to the statute, the Department should determine that Ta Chen's home market is at a less advanced LOT than its U.S. market, and, therefore, reject Ta Chen's request for a CEP offset.

In its rebuttal brief, Ta Chen states that the Department correctly found that Ta Chen's home market

sales were at a more advanced stage of distribution than its CEP sales. Ta Chen contends that while it is responsible for home market selling efforts and inventory carrying cost, TCI is responsible for that in the United States. Ta Chen argues that Petitioners' arguments regarding movement costs are already accounted for as non-LOT adjustments. Ta Chen argues that, otherwise, to count them as an LOT adjustment would be inconsistent and double counting. Ta Chen claims that Petitioners have argued this point for several annual reviews and lost every time. Ta Chen notes that for this review, Petitioners have failed to indicate anything different pertaining to this issue.

Department's Position:

The Department disagrees with Petitioners regarding Ta Chen's CEP offset and LOT.

In the Preliminary Results of this review, the Department granted Ta Chen a CEP offset based on its examination of Ta Chen's Section A-D Questionnaire responses. Petitioners offer the argument that Ta Chen's LOT is at a more advanced stage, or at best, equal stage, in the U.S. market. However, the record evidence of this review compels the Department to continue to find that Ta Chen be granted a CEP offset.

As in the 2000-2001 review and upon examination of Ta Chen's Section B and C Questionnaire responses dated October 6, 2003, the Department continues to find that "there are more significant sales functions in the home market than in the U.S. market." See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review 2000-2001 67 FR 78417 (December 24, 2002) and accompanying Issues and Decisions Memo ("Final Results '00-'01 Memo"). Ta Chen reported that "TCI is a master distributor, who in turn sells to distributors. All Ta Chen Taiwan sales to TCI are thus to a master distributor." See Ta Chen's Section C Questionnaire Response, dated October 6, 2003, at C-17. Additionally, Ta Chen reported, on the record, that:

As to home market sales, Ta Chen Taiwan maintains inventory at Ta Chen Taiwan's Tainan plant (for shipment to customers on their request), incurs seller's risk of non-payment by customers (if a customer does not pay Ta Chen Taiwan), addresses customer complaints (as to quality, delivery, specification, etc.), handles freight and delivery arrangements (e.g., coordinates customer pick up), and engages in all selling efforts to promote Ta Chen product (e.g., salesmen traveling to and meeting customers, entertaining customers, etc.), does research and development (small), provides technical assistance (small), does packing for customer shipment where packing done, and after-sales services.

See Ta Chen Section A Questionnaire Response, dated September 3, 2003, at A-9.

Concerning U.S. sales, Ta Chen added that "Ta Chen does not undertake any of these selling functions done for home market sales." Id. Moreover, in its rebuttal brief, Ta Chen reiterated that Ta Chen is

“responsible for home market selling effort and inventory carrying cost, but not for the U.S. (which is done by TCI).” See Ta Chen Rebuttal Brief, dated August 20, 2004, at 5.

The Department notes that in this review, as in the 2000-2001 review, “while the Petitioners listed a number of activities {See Petitioners’ letter, dated October 17, 2003, at 12} that Ta Chen performs for U.S. sales, half of these enumerated activities are more properly described as moving and packing activities rather than sales functions.” See Final Results ‘00-‘01 Memo. The Department further notes that though Ta Chen provides post-sales functions for both the U.S. and home market sales, TCI is charged with U.S. customer sales negotiations. In the 2000-2001 review, the Department found that since Ta Chen “performs these functions for its home market sales and not its U.S. sales, we cannot reasonably conclude that Ta Chen Taiwan’s sales functions are the same in both markets, especially since there would be no sale at all unless the negotiation with the customer was successful.” Id.

Therefore, for the final results of this review and based on the record evidence and similarities to the two previous reviews, the Department continues to find that Ta Chen’s LOT is at more advanced level in its home market than in the U.S. market and that Ta Chen performs more sales functions in its home market than in the U.S. market. The Department was unable to quantify an LOT adjustment pursuant to section 773(a)(7)(A) of the Act. Therefore, the Department confirms its preliminary decision to grant Ta Chen a CEP offset for the final results of this review and will apply a CEP offset to the NV-CEP comparisons, in accordance with section 773(a)(7)(B) of the Act.

Comment 5: CEP Profit

In its case brief, Ta Chen claims that CEP profit was improperly calculated by the Department. Ta Chen argues that imputed credit and inventory carrying costs should be removed from that profit to accurately calculate profit. Ta Chen notes that this was not done for the Preliminary Results.

In their rebuttal brief, Petitioners contend that despite Ta Chen’s arguments regarding this issue in this review and the three most recently completed reviews, the Department has consistently found that its CEP profit calculation is accurate and in accordance with Department regulations, policy, and precedent. Petitioners note that the Department’s policy of calculating profit with only actual expenses rather than including imputed expenses is mathematically sound. Petitioners contend that Ta Chen has not provided any sound justification for the Department to change its practice for the final results of this review.

Department’s Position:

The Department disagrees with Ta Chen.

In this review, the Department followed precedent and practice regarding the calculation of CEP profit. See Analysis Memo at 6. The Department correctly stated that “CREDIT1U represents costs incurred

in Taiwan, and should be removed from DIREXPU to calculate CEP Profit.” Therefore, in “accordance with section 772(d)(1) of the Act, the Department deducted commissions, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States.” See Preliminary Results.

As noted in previous reviews, the Department has consistently calculated “the CEP profit ratio based on actual expenses, not imputed expenses.” See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review and accompanying Issues and Decisions Memorandum (“Final Results ‘01-‘02 Memo”), 68 FR 69996 (December 16, 2003), at Comment 13. As per the previous review, the Department also noted that:

normal accounting principles only permit the deduction of actual booked expenses, not imputed expenses, in calculating profit. Inventory carrying costs and credit expenses are imputed expenses, not actual booked expenses, so we have established a practice of not including them in the calculation of total actual profit.

See Id.

Additionally, the Court of International Trade (“CIT”) recently found the Department’s practice regarding its CEP profit calculation is correct and should remain unchanged, rejecting Ta Chen’s claim from the 1999-2000 review. In Alloy Piping Products, Inc., et al., v. United States, 2004 Ct. Intl. Trade LEXIS 134; SLIP OP. 2004 -134 (October 28, 2004), the CIT determined that “this court cannot find, however, that the ‘imputed expenses represent some real, previously unaccounted for, expenses.’” Id. at 10. Furthermore, the CIT stated “that imputed expenses are greater than actual expenses does not necessarily engender an actionable distortion,” as Ta Chen claims is the case. Id. Thus, given that the CIT has rejected this same claim by Ta Chen from a previous review, the Department will continue to follow its standard practice and make no changes in its calculations for the final results of this review.

Comment 6: Date of Sale for Home and U.S. Sales

Petitioners note that Ta Chen reported the invoice date as its date of sale for both U.S. and home market sales. Petitioners claim that the date of invoice is not appropriate as the date of sale because, according to Ta Chen, the price may (though rarely does) change between the date of the customer’s order and the date of shipment. Petitioners cite Ta Chen’s October 6, 2003, submission to stress that Ta Chen has been known to change prices and/or quantities due to telephone mis-communication, typographical errors, or lack of stock (for quantity changes). See Ta Chen Section B, C, D, Questionnaire Responses, dated October 6, 2003, at C-24, 28, 32, 40 and A-13.

Petitioners argue that based on record evidence, the Department should find that the initial terms of sale

are agreed upon between Ta Chen and its customers at home and in the U.S. due to changes resulting only from clerical errors. Therefore, Petitioners conclude that the Department must find that Ta Chen should have reported the order date which, according to Petitioners, was the date that terms of sale were initially established. Petitioners contend that instead of providing the Department with the date of order confirmation, Ta Chen improperly reported the proforma invoice {a document issued before the invoice but after the initial sales confirmation} date as the date of sale.

Petitioners request that the Department find that Ta Chen relied on the wrong date of sale for its U.S. and home market sales and that Ta Chen improperly reported the full spectrum of sales made within the POR based on the date of the sales confirmation.

Ta Chen rebuts that the record is clear that terms of sale may change up to the date the invoice is issued, though it is rare. Ta Chen also argues that the Department has previously verified this and concluded that the invoice date is the date of sale. Moreover, Ta Chen also argues that the record indicates, and the Department verified that, normally, there is only a few days difference between date of order and invoice date because product is sold from inventory.

Department's Position:

The Department disagrees with Petitioners' claim that Ta Chen incorrectly reported its date of sale.

On page I-5 of the Department's August 6, 2003, questionnaire, the Department states:

“the Department will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Department may use a date other than the date of invoice (e.g., the date of contract in the case of a long-term contract) if satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (e.g., price, quantity). (Section 351.401(I) of the regulations.)”

See Department's A-D Questionnaire, at I-5, dated August 6, 2003.

The Department has determined that, from the record evidence of this review, price or quantity may change between purchase order date (the document within Ta Chen's sales package) and date of shipment. See Ta Chen Section A Questionnaire Response, dated September 3, 2003, at Exhibit 9. Therefore, despite the fact that the terms of sale are initially recognized in the order confirmation document, the invoice date is the most appropriate date to report as the date of sale because it reflects the final quantity and value of the subject merchandise eventually shipped to the United States.

The Department also cites the Preamble to its regulations which clearly states that “we have continued to provide for the use of a uniform date of sale, which normally will be the date of invoice.” See

Preamble, 62 FR 27349. Moreover, the Preamble further states that “absent satisfactory evidence that the terms of sale were finally established on a different date, the Department will presume that the date of sale is the date of invoice.” See Id.

Furthermore, the Department’s finding is consistent with the previous review regarding use of the invoice date as the date of sale. See Final Results ‘01-‘02 Memo at 15.

The Department does not find that the record contains sufficient evidence to compel a rejection of the regulatory presumption in favor of invoice date as the date of sale. For this review, the Department has not received documentary evidence from Petitioners or Ta Chen supporting a change in the Department’s finding that use of the invoice date as the date of sale is appropriate and correct regarding the date that material terms of sale were finally set. Therefore, as in the previous review, the Department will continue to find that the date of invoice will be used as the date of sale. The Department has made no changes to its calculations for the final results of this review.

Comment 7: Overstated Home Market Packing Expenses

Petitioners contend that Ta Chen’s accounting of the costs associated with labor used to load fittings on a home-market customers’ truck is significantly overstated. Petitioners argue that Ta Chen wrongly assigned labor costs for its domestic sales vis-a-vis the level of its U.S. sales. Petitioners request for the Department to find that Ta Chen has overstated the cost of loading fittings onto domestic customers’ trucks and to reject Ta Chen’s claim for packing expenses.

Ta Chen rebuts that Petitioners are, for the first time, speculating that home market packing labor costs were incorrectly reported. Ta Chen contends that it is too late to raise such a minor issue now. Ta Chen argues that Petitioners, notwithstanding speculation, have failed to substantiate that the reported data is incorrect.

Department’s Position:

The Department disagrees with Petitioners.

Petitioners request that the Department remove the export sales portion of the “denominator” (the total quantity of sales of subject merchandise from which the packing labor ratios are calculated), which Ta Chen included in its calculation of the home market packing labor ratio. However, to do so, a similar adjustment would need to occur in the “numerator,” the total allocation of labor costs for subject merchandise (e.g., the Department would need to segregate labor costs associated with home market sales versus export sales).

In reviewing Ta Chen’s home market packing labor costs, the Department acknowledges that, in calculating its home market packing labor ratio, Ta Chen included export sales (per weight in

kilograms), which resulted in a higher “denominator” assigned to home market packing labor. See Ta Chen Section B Questionnaire Response, dated October 6, 2003, at Exhibit B-8.

In its review of the “numerator,” the Department attempted to extract more information with a supplemental questionnaire regarding the segregation of home market packing labor costs from packing labor costs for export. In its Section B Questionnaire, the Department asked Ta Chen to:

explain how you identified the laborers who loaded the subject merchandise onto trucks for shipment only for home market customers. If you have not separated the costs of packing labor specifically for home market sales of subject merchandise, please estimate the share of total packing labor costs that represents home market sales of subject merchandise, and describe the basis or {sic} your estimation.

See Department’s Supplemental Section B Questionnaire, dated December 1, 2003.

The Department notes that the “numerator” includes the following: (1) salary; (2) overtime pay; (3) meal allowance; (4) bonus; (5) retirement benefits; (6) wage fund; (7) labor insurance; and (8) health insurance. See Ta Chen’s Section B Questionnaire Response, dated October 6, 2003, at Exhibit B-7. Since the information in the original Section B Questionnaire response did not provide a break-out of these labor costs according to home market or export sales, the Department further questioned Ta Chen regarding Ta Chen’s ability to provide that information.

In Ta Chen’s supplemental Section B Questionnaire response, Ta Chen reported that:

The laborers who loaded the subject merchandise on customer’s trucks are in Ta Chen Taiwan’s packing department. But please note that because Ta Chen Taiwan does not assign a particular laborer to a specific sale (because this is simply a matter of worker availability at the time a truck is ready to be loaded), Ta Chen has no way to identify which worker packed a particular sale. We have thus **not been able to separate out the cost of packing labor specifically for home market sales of subject merchandise**. Exhibit B9 estimates the share of total packing labor cost that represents home market sales of subject merchandise fittings, based on the best assessment of those involved.

See Ta Chen’s Supplemental Section B Questionnaire Response, dated January 2, 2004, at C-18, *emphasis added*.

The Department reviewed Exhibit B-9 submitted with that response, but determined that the information was insufficient and unhelpful to accurately calculate the appropriate packing labor cost allocation for home market sales versus export sales. Thus, the Department finds that it cannot segregate the home market sales quantity from the “denominator” without making a like adjustment in the “numerator” (by segregating home market packing labor costs from packing labor costs for export

sales).

Therefore, since there is insufficient information on the record to accurately recalculate a home market packing labor ratio based solely on home market associated labor costs in the “numerator” and home market sales per kilogram in the “denominator,” the Department will not change its calculation of home market packing labor cost for the final results of this review.

Since Ta Chen's methodology could not be adjusted in recalculating the numerator and since there are no facts available on the record to apply in this instance, the Department will not apply facts available and will calculate packing in the same manner as in prior reviews. In future reviews, the Department will require Ta Chen to separate packing labor costs by market destination for the butt-weld pipe fittings sold during the POR.

Comment 8: Short-Term Borrowing

Petitioners argue that Ta Chen incorrectly stated that it had no U.S. short-term borrowing. Citing Ta Chen's submission dated April 15, 2004, Petitioners contend that based upon the loan information contained within the submission, Ta Chen cannot deny U.S. short-term borrowing claims. See Ta Chen Section C and D Questionnaire Responses, dated April 15, 2004.

Petitioners request that, for the final results, the Department find that Ta Chen wrongly stated it had no short-term borrowing and that Ta Chen wrongly calculated its U.S. credit expenses and U.S. inventory carrying costs based on the Federal Reserve's short-term borrowing rates, rather than Ta Chen's actual U.S. short-term borrowing rate.

In its case brief and in a previous questionnaire response, Ta Chen claimed that TCI has no short-term US dollar borrowing. See Ta Chen Submission, dated January 2, 2004, at 36. Ta Chen notes that in the Preliminary Results, the Department treated Ta Chen's loan as a short-term loan because it matures in less than one year. However, Ta Chen argues that this loan that the Department treated as a short-term loan was included in Ta Chen's “non-current accounts,” indicating that it is not short-term. Moreover, Ta Chen claims that the Department did not cite any preceding case where this finding was held. Ta Chen argues that the record, inclusive of TCI's audited financial statements, is clear that the loan in question set a fixed minimum interest rate for a multi-year period, resulting in a long-term loan. Furthermore, Ta Chen notes that even in the Preliminary Results, the Department admittedly noted that the terms of the loan had not changed since the previous review, proving that this loan is not a short-term loan. Ta Chen requests the Department to revisit its preliminary decision regarding short-term U.S. borrowing.

In their rebuttal brief, Petitioners claim that Ta Chen's argument {that any loan with a fixed minimum interest rate for a multi-year period is a long term loan} is incorrect. Petitioners contend that Ta Chen's definition of a short-term loan is incorrect. Petitioners argue that a short-term loan occurs when the loan is due within one year. Petitioners reiterated the foregoing argument in their case briefs and

request the Department to find that Ta Chen incorrectly stated that it had no short-term US dollar loans and incorrectly calculated its U.S. credit expenses and U.S. inventory carrying costs based on the Federal Reserve's short-term borrowing rates rather than the Ta Chen's actual short-term loan rate.

In its rebuttal brief, Ta Chen claims that Petitioners' argument is wrong. Ta Chen states that TCI had a long-term{5 year} loan, for borrowing money, which locked TCI to that 7% + interest rate for the entire period; in other words, a long-term loan. Ta Chen points out that short-term rates were well below the 7% rate that TCI received during this period. Ta Chen argues that no parties would borrow at a 7% short-term rate during this period, as the short-term rate was so much lower, according to the Department's source of short-term rates {the Federal Reserve}.

Department's Position:

The Department disagrees with Ta Chen regarding its claim of not having U.S. short-term borrowing.

Ta Chen has not provided any evidence to support that claim since the Preliminary Results. The Department will not reverse its finding regarding this issue in the final results of this review. As the Department found in the Preliminary Results and in the preceding review, Ta Chen's financing agreement for the loans in question are revolving lines of credit that mature in less than one year. Ta Chen has not provided any documentary evidence on the record of this proceeding to contradict this fact, which Ta Chen submitted in its Section C supplemental questionnaire response. See Ta Chen Section C Supplemental Questionnaire Response, dated April 15, 2004, at Exhibit C-3-2. Regarding Ta Chen's claim that the Department has not cited any precedent to support the preliminary finding, the Department cites the Final Results '01-'02 Memo. In this preceding review, the Department found that "TCI's short-term interest rate as recorded in Ta Chen's submissions, TCI's verification exhibits, TCI's accounting system, and TCI's financial statements is the appropriate rate of interest to apply to the calculation of U.S. inventory carrying costs and imputed credit for all sales to the United States." See Final Results '01-'02 Memo at 26. Furthermore, in the Preliminary Results of this review, the Department stated that:

these particular loans mature in less than one year, according to the terms of Ta Chen's financing agreement which covers these loans...{and} that the record indicates that the terms of these loans, which were determined under the financing agreement signed several years ago, have remained unchanged since the previous review.

See Preliminary Results at 40865.

Ta Chen's claim that the above reference to a lack of changes made to the agreement equates to long-term loan status is misleading. The Department notes that this revolving line-of-credit loan is a contract for several years, with revolving loan repayments for letters of credit involving shipments of subject merchandise. Because letters of credit come to term in less than one year, the actual terms of the letters

of credit are short-term loans, notwithstanding the term length of the revolving line-of-credit contract. In other words, within the contract agreement of revolving credit guarantee, there are several short-terms loans, letters of credit, that are repeatedly repaid to the guarantor over the term of the contract, according to the payment terms of the letters of credit. See Ta Chen Section C Supplemental Questionnaire Response, dated April 15, 2004, at Exhibit C-3-2. Moreover, the Department, in the Preliminary Results, found that the terms of the loans had not changed and was, therefore, consistent with the findings of the previous review. Incidentally, the Department's finding for the final results of the previous review had not been contested. Therefore, for the final results of this review, the Department will continue to find that these loans are short-term loans (that mature in less than one year) for antidumping purposes, supported by record evidence, as was the case in the previous review.

Comment 9: Total AFA for Liang Feng & Tru-Flow

Petitioners request that the Department reverse its preliminary rescission decision regarding Liang Feng and Tru-Flow. Petitioners contend that by the time of this review, Liang Feng and Tru-Flow must have knowledge, actual or manifest, that their home market sales were bound for the United States.

Petitioners note that if the Department uses its know-or-have-reason-to-know test, any sales of subject merchandise that are actually known or believed to be known to be consumed in the domestic market should be determined on a sale-by-sale basis. According to Petitioners, a respondent is required to report sales as U.S. sales when the subject merchandise is destined for the United States, but had been consumed in the home market. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea, 58 FR 37176, 37182 (July 9, 1993) (“Cold-Rolled”); Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabyte and Above from the Republic of Korea, 58 FR 15467, 15473 (March 23, 1993) (“Semiconductors”).

Petitioners contend that despite the above guidelines, Liang Feng and Tru-Flow both denied having any U.S. sales in this review. Petitioners argue that Liang Feng and Tru-Flow should have adhered to Department practice and statutory provisions by reporting actual and manifest knowledge, on a sale-by-sale basis, of any sales the companies had during the POR. Petitioners argue that, by not reporting actual or manifest U.S. sales during the POI, Liang Feng's and Tru-Flow's lack of cooperation results in a gap of their sales records, despite their certifications, which Petitioners deem insufficient as stand-alone attestations. Additionally, Petitioners cite NTN Bearing Corp. v. United States, 903 F. Supp. 62, 68-9 (CIT 1995) (“NTN Bearing”), to argue that Liang Feng's and Tru-Flow's certifications are neither a substitute for actual submission of records of sale-by-sale information nor do they relieve the two companies of their substantive burdens of proof.

Petitioners argue that, by now, Liang Feng and Tru-Flow must have at least an imputed knowledge that their merchandise was designated for the United States and should have maintained and submitted the

relevant data. Furthermore, Petitioners state that, once the U.S. sales are identified, Liang Feng and Tru-Flow should be subject to antidumping duties of 51.01 and 76.20 percent *ad valorem*, respectively. Finally, Petitioners conclude that the Department should find that Liang Feng and Tru-Flow made U.S. sales, that those sales should have been reported as such by them, and that failure to do so warrants a finding of total AFA for both companies and their affiliates' subject merchandise destined for the United States. Therefore, Petitioners request that the Department find that total AFA is warranted for Ta Chen, Liang Feng, and Tru-Flow for the final results of this proceeding.

Ta Chen made no specific comments regarding this issue.

Department's Position:

The Department disagrees with Petitioners regarding their request to reverse the Department's preliminary rescission decision and that total AFA is not warranted for Ta Chen, Tru-Flow and Liang Feng.

In this review, Liang Feng and Tru-Flow provided letters on the record that they had no sales of subject merchandise during the POR. Furthermore, as the Department stated in the Preliminary Results, that "to confirm their statements, on September 5, 2003, the Department conducted a customs inquiry and determined to its satisfaction that there were no entries of subject merchandise during the POR." See Preliminary Results at 40861. To date, Petitioners have not provided documentary evidence that demonstrates that Liang Feng and Tru-Flow knew or should have known that their home market sales were bound for the United States. Thus, the Department will not reverse its preliminary decision to rescind this review with regard to Liang Feng and Tru Flow and will not assign total AFA for sales for which the Department sufficiently deduced were nonexistent.

RECOMMENDATION:

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

AGREE_____

DISAGREE_____

James J. Jochum
Assistant Secretary
for Import Administration

Date