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February 7, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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

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

SUMMARY

We have analyzed the case briefs and rebuttal briefs of interested parties in this review. As a result of our analysis, we have made changes from the preliminary results of review for Chia Far Industrial Factory Co., Ltd. (Chia Far), Yieh United Steel Company Ltd. (YUSCO), and Yieh Mau Corporation (Yieh Mau). These changes can be found in the Analysis Memorandum for Yieh United Steel Company, Ltd. for the Final Results of the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan covering the period July 1, 2002 through June 30, 2003, dated February 7, 2005, and the Analysis Memorandum for Chia Far Industrial Factory Co., Ltd. for the Final Results of the Administrative Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan covering the period July 1, 2002 through June 30, 2003, dated February 7, 2005.

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

BACKGROUND

The Department of Commerce (the Department) published its notice of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils (SSSS) from Taiwan on August 9, 2004. See Stainless Steel Sheet and Strip in Coils From Taiwan; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 48212 (August 9, 2004) (Preliminary Results).

The merchandise covered by this order is SSSS, as described in the Scope of the Review section of the Preliminary Results notice. The period of review (POR) is July 1, 2002, through June 30, 2003.

We conducted a verification of the sales and cost information provided by YUSCO from October 25 through November 5, 2004. We also conducted a verification of the sales and cost information provided by Chia Far from October 18 through October 29, 2004, and from November 17 through November 18, 2004.

We invited interested parties to comment on our Preliminary Results, and we received written comments on December 16, 2004, from petitioners and Chia Far. We received rebuttal briefs from petitioners, Chia Far, YUSCO, and Ta Chen Stainless Pipe Co., Ltd. (Ta Chen) on December 21, 2004.

LIST OF ISSUES DISCUSSED

A. Issue with Respect to Ta Chen

Comment 1: Whether Ta Chen Exported Subject Merchandise During the POR

B. Issues with Respect to Chia Far

Comment 2: Whether the Gauge for a U.S. Sale was Coded Correctly
Comment 3: Whether the Department Should Grant a CEP Offset
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Comment 5: Whether Order Confirmation Date is the Most Appropriate Date of Sale
Comment 6: Whether the Department Should Continue to Apply the Interest Rate Used for the Preliminary Results in Calculating Credit Expense on CEP sales
Comment 7: Whether the Department Should Make Changes to Certain U.S. Selling Expenses
Comment 8: Whether Chia Far Absorbed Antidumping Duties on All U.S. Sales Through Lucky Medsup

C. Issue with Respect to YUSCO

Comment 9: Whether the Department Should Reject YUSCO's Sales Data and Resort to Total Adverse Facts Available

DISCUSSION OF THE ISSUES

A. Issue with Respect to Ta Chen

Comment 1: Whether Ta Chen Exported Subject Merchandise During the POR

Petitioners argue that, contrary to the claims of Ta Chen, record evidence demonstrates that Ta Chen exported subject merchandise to the U.S. during the POR. Specifically, petitioners contend that there are numerous documents on the record relating to Ta Chen's U.S. sales during the POR (e.g., sales invoices, packing lists, mill test certificates, and purchase orders) that do not refer to the length of, or the number of pieces of, the SSSS sold. Petitioners conclude that this indicates that the SSSS was in coil form, and thus subject merchandise, rather than cut-to-length SSSS (non-subject merchandise).[1] For proprietary information relied upon by petitioners, see Proprietary Memorandum: Final Results of the Fourth Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan, dated February 7, 2005 (Proprietary Memorandum). Finally, petitioners claim that the documents that Ta Chen relies upon to support its claim that it did not export subject merchandise to the United States during the POR contain inaccuracies and inconsistencies and thereby are unreliable (e.g., the mill test reports provided by Ta Chen are discredited by the mill test reports obtained by the Department from U.S. Customs and Border Protection (CBP)). See Proprietary Memorandum, for details regarding the alleged discrepancies.

Given the foregoing, petitioners urge the Department to not only assign total adverse facts available (AFA) to Ta Chen, but to also refer this matter to CBP. Petitioners contend that the respondent has the responsibility of creating an accurate record and may be subject to AFA to the extent that the record is deficient because respondent failed to act to the best of its ability. See, e.g., NTN Bearing Corp. of America v. United States, 997 F.2d 1453, 1458 (Fed. Cir. 1993). Furthermore, citing Nippon Steel Corp. v. United States, 337 F. 3d 1373 (Fed. Cir. 2003) (Nippon Steel), petitioners note that failure to act to the best of its ability means failure to do the maximum one is able to do. Petitioners also note that in Nippon Steel, the U.S. Court of Appeals for the Federal Circuit stated that in order to find that a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department must find that: 1) a reasonable and responsible party would have known that the requested information was required to be kept and maintained under antidumping law; and 2) the party has not promptly responded either because it failed to keep and

[1] Petitioners point out that they noted a shift in U.S. imports of stainless steel products from Taiwan away from the Harmonized Tariff Schedule (HTS) subheadings for stainless steel "coiled sheet" to HTS subheadings that may include both subject coil and non-subject cut-to-length merchandise. See petitioners December 18, 2003, submission to the Department.

maintain all required records or it failed to put forth its maximum effort to investigate and obtain the requested information from its records. Petitioners argue that Ta Chen, given its prior involvement in earlier segments of this proceeding, and its statements over the course of this review that it had no exports or imports of subject merchandise during the POR, would have known that the Department would expect it to maintain records to support its claims. Further, petitioners argue that had Ta Chen put forth its maximum effort to investigate and gather the information requested by the Department, the administrative record would not have the inconsistencies and inaccuracies that it now does. Consequently, petitioners maintain that the Department should: (1) base Ta Chen's dumping margin on total AFA; (2) refer this matter to CBP for further investigation to determine whether evasion of the antidumping order on SSSS in coils from Taiwan has occurred; (3) work with CBP to correct the mis-classification by Ta Chen of subject merchandise previously liquidated by CBP; and (4) instruct CBP to suspend liquidation on entries of all HTS subcategories listed in the Preliminary Results.

Ta Chen finds fault with petitioners' speculation that an increase in imports of non-subject merchandise after the issuance of the antidumping order indicates that Ta Chen impermissibly reclassified subject merchandise as non-subject merchandise under another HTS subheading. Ta Chen maintains that the Department resolved this issue in the Preliminary Results, when it concluded that subject merchandise was not entering under other HTS subheadings.

In addition, Ta Chen argues that the evidence on the record does not indicate that Ta Chen exported subject merchandise. Specifically, Ta Chen asserts that the absence of a product length reference on a few mill reports, or a variation in weight measurements, has no bearing on whether the goods are subject merchandise. Additionally, Ta Chen contends that the references to ASTM specifications are for non-subject merchandise, which it states it noted in its
July 21, 2004, submission. Further, Ta Chen finds no merit in petitioners' speculation that SSSS must be in coils when the number of pieces is not indicated, asserting that petitioners fail to either explain or provide evidence to support this speculation. Ta Chen contends that just as with non-subject merchandise, the number of pieces of coil can be reported, as well as whether the coil is bundled. Therefore, the manner in which merchandise is described does not necessarily indicate whether it is subject or non-subject. Ta Chen also rebuts petitioners' speculation that any sales of coiled product by Ta Chen International (CA) Corp. (TCI) must have been sales of subject merchandise exported by Ta Chen Taiwan to TCI. Ta Chen notes that TCI purchases coiled subject merchandise from sources other than Ta Chen Taiwan. Ta Chen reiterates the Department's middleman dumping finding from the investigation which states that TCI is only subject to a dumping rate if it imports subject merchandise from Ta Chen Taiwan.

In addition, Ta Chen characterizes as baseless, petitioners' claim that a customer of TCI requested coiled merchandise. Ta Chen maintains that record evidence does not indicate this type of request. Rather, Ta Chen argues that the record demonstrates a request for plate-cut flat bars, i.e., non-subject merchandise. Ta Chen provides that further explanation of this terminology is included in its December 8, 2004, submission. Moreover, Ta Chen takes exception to petitioners' claim that discrepancies in Ta

Chen's record evidence discredit its claims not to have shipped subject merchandise. Ta Chen asserts that petitioners' discussion of these alleged discrepancies does not demonstrate that Ta Chen exported subject merchandise to the United States during the POR. Ta Chen alleges that the discrepancies noted by petitioners are both erroneous and insignificant.[2] Given these inadequacies, Ta Chen argues that petitioners have failed to demonstrate that it exported subject merchandise to the United States during the POR.

Department's Position: We disagree with petitioners' allegation that the record shows that Ta Chen exported subject merchandise to the United States during the POR. Petitioners' allegation stems from its analysis of record information (i.e., sales and customs documents) relating to 18 U.S. entries of merchandise sold by Ta Chen. The CBP documents that the Department obtained regarding these entries show the following: two entries were for sales made outside of the POR; four entries were for sales of merchandise that are thicker than the merchandise covered by the scope of the order; and 12 entries were of merchandise described as "stainless steel plate cut strip" in Ta Chen's invoices and packing lists accompanied by Mill Test Reports (MTRs) which, except as noted below, list three dimensions (thickness, width, and length) for the product. The fact that the documents for these 12 entries identify the merchandise as being "cut" and the MTRs (except as noted below) list three dimensions for the product, indicates that the merchandise that entered the United States was cut-to-length (not in coils), and thus, not subject merchandise (even where a document does not list the number of pieces produced (in the case of a MTR) or sold (in the case of an invoice or packing list)). Also, we note that none of the documents relating to these entries describe the merchandise as being in coil form.

Additionally, Ta Chen reported that "stainless steel plate cut strip" refers to merchandise that is cut to a length of 144 inches or 12 feet, with a thickness of 4.75 mm or greater, and a width over 254 mm (plate), or a thickness of up to 4.75 mm and a width of up to 609.6 mm (strip). See Ta Chen's December 8, 2004, submission to the Department. Hence, even though Ta Chen's sales invoices and packing lists may not identify the length of the product in specific line items on the document, the fact that the product is identified as "stainless steel plate cut strip" indicates that it has been cut to 144 inches in length, and thus does not constitute subject merchandise.

Furthermore, we disagree with petitioners' claim that the documents for the entries in question provided by Ta Chen are inconsistent with the corresponding documents obtained from CBP. We compared all 12 MTRs obtained from CBP to the corresponding MTRs submitted by Ta Chen on August 18, 2004. Except for two MTRs,[3] all of the CBP MTRs identify sizes, dimensions (three dimensions, including 144 inches in length), weight characteristics, and other descriptive information that are identical to the information identified on the MTRs submitted by Ta Chen. Also, we disagree with petitioners' assertion that there are discrepancies and inconsistencies within and between the invoices and packing

[2] See Ta Chen's Rebuttal Brief at 5.

[3] See the Proprietary Memorandum for additional information regarding these MTRs.

lists that Ta Chen provided to the Department. Moreover, the invoices and packing lists submitted by Ta Chen and those received by CBP for the corresponding entries are identical.

However, one of the two MTRs noted above listed only two dimensions for the product, while all accompanying documentation referred to and described the merchandise entered as "plate cut strip," meaning 144 inches in length. In response to the Department's request, Ta Chen provided additional information regarding this MTR and a copy of a corrected MTR, which identifies the product as three-dimensional "plate cut strip" and lists the number of pieces. Ta Chen sent the corrected MTR, via facsimile transmission, to the importer on June 11, 2003, one day after the merchandise entered the United States. The corrected MTR, which Ta Chen provided to the Department on September 22, 2004, indicates the merchandise was three-dimensional (cut and not in coil form), resulting in its classification as non-subject merchandise. Even though Ta Chen's invoices list only two dimensions, the same invoices also refer only to "plate cut strip," and all other corresponding documentation for the invoices also refer only to "plate cut strip" and make no reference to material in coil form (subject merchandise). Finally, all information on the record pertaining to Ta Chen's merchandise, and all relevant entry packages reviewed by the Department, make references only to stainless steel material that is cut and not in coil form.

We cannot address certain aspects of petitioners' and the respondents' arguments without referencing business proprietary information. Therefore, we have addressed these aspects in the Proprietary Memorandum dated February 7, 2005.

In the current administrative review, the Department has reviewed the record after conducting inquiries with CBP and receiving responses to supplemental questionnaires issued to Ta Chen. The Department has concluded, based on record evidence in this administrative review, as we did in the three previous reviews, that there have been no entries of subject merchandise into the United States during the POR by Ta Chen. See Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, and accompanying Issues and Decision Memorandum at Comment 31; Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 76721 (December 13, 2002) and accompanying Issues and Decision Memorandum at Comment 2; Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 5960
(Feb. 9, 2004)(Comment 1). Therefore, we have made no changes to our Preliminary Results with respect to this issue, and we are rescinding the review with respect to Ta Chen for these final results.

B. Issues with Respect to Chia Far

Comment 2: Whether the Gauge for a U.S. Sale was Coded Correctly

Chia Far argues that the Department's verification report mistakenly characterized the gauge code reported for one U.S. sale as being inaccurate. In addition, Chia Far concludes that this matter was discovered by the Department post-verification because the verifiers neglected to ask Chia Far to explain the discrepancy during the course of verification. However, Chia Far maintains that the discrepancy can be explained.

Specifically, Chia Far states that, as requested by the Department's questionnaire, it reported the nominal gauge of the material shipped to the customer, a fact it maintains was verified by the Department. However, Chia Far explains that the nature of its order process can cause differences to appear between shipped and invoiced material. Namely, the gauge shown on the invoice is the gauge ordered by the customer. Chia Far argues that it is permissible for the actual gauge to differ slightly from the ordered gauge as long as the difference is within the thickness tolerance specified on the order. Chia Far claims that it showed the Department an example of a sale in which the ordered gauge fell into a different category from actual gauge, but the difference was within the allowable tolerance (see sales observations 132-139). Chia Far also suggests that the Department could have settled this discrepancy at verification had it requested to review the production records for the sale in question.

Petitioners disagree with Chia Far's arguments and urge the Department to continue to find that Chia Far improperly reported the gauge for this U.S. sale. Petitioners assert that Chia Far has not provided substantial record evidence to support its claim that it reported the nominal shipped gauge, as opposed to the actual invoiced gauge, for this sale. Petitioners argue that Chia Far's reliance on information concerning other unrelated U.S. sales (i.e., sales observations 132-139) to bolster its claims regarding the gauge of the sale in question is improper because it offers no insight into whether Chia Far reported the proper gauge for the sale noted in the Department's verification report. Petitioners contend that Chia Far recognizes that it lacks record evidence to support its arguments because Chia Far stated that "the only way to be certain {of the gauge shipped to the customer} is to review the production records maintained at Chia Far."[4] Petitioners argue that the Department's final results must be based on substantial evidence on the record, and that the only evidence provided by Chia Far showed that the gauge of the U.S. sale was incorrectly reported to the Department. Petitioners argue that in cases where the reported and invoiced gauge of this U.S. sale differ, Chia Far had a responsibility to provide the Department with documentation and information to support its reported data. Petitioners also contend that Chia Far had the opportunity to present this information at verification because the sale in question was specifically examined by the Department. Given the lack of record evidence to support Chia Far's claims, petitioners urge the Department to confirm its findings at verification, and correct the gauge when calculating the dumping margin.

Department's Position: We agree with petitioners. Both the invoice from Chia Far to its U.S. affiliate (Lucky Medsup) and the invoice from Lucky Medsup to the unaffiliated U.S. customer identify a gauge that differs from that reported to the Department. See Memorandum To The File From Jeff

[4] See Petitioners Rebuttal Brief at 9, citing Chia Far's Case Brief at 7.

Pedersen, Senior Import Compliance Specialist, and Sam Zengotitabengoa, International Trade Compliance Analyst, Re: Verification of the Sales Questionnaire Responses of Chia Far Industrial Factory Co., Ltd. in the 2002-2003 Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan, dated December 8, 2004, (Chia Far Sales Verification Report), Exhibits CEP-5 and SVE-21. No other documentary evidence regarding the product gauge for the sale in question exists on the record. Thus, the Department has changed the reported gauge code to the gauge code that is supported by the extant records of this review.

Comment 3: Whether the Department Should Grant a CEP Offset

Although it did not request a CEP offset in its original questionnaire response, Chia Far argues that it should receive one for the final results because: 1) the Department did not make a level of trade (LOT) adjustment in the preliminary results; and 2) its sales in the home market were at a more advanced LOT than its sales in the U.S market, after deducting CEP expenses. In support of its request for a CEP adjustment, Chia Far recounts that it is the Department's practice to grant a CEP offset when there is no LOT adjustment and when the normal value (NV) is established at a more advanced LOT than the LOT of CEP sales. To grant a CEP offset, Chia Far notes that the Department bases the LOT of the CEP sales on the transaction to the affiliate in the United States after making all of the CEP deductions required by section 772(d) of the Tariff Act of 1930, as amended (the Act). Chia Far further relates that the Department should make the adjustment by reducing NV by the amount of indirect selling expenses on home market sales not exceeding the indirect selling expenses deducted from the U.S. price.

Claiming that it performed certain services for home market sales that were not incurred on CEP sales after deducting all CEP expenses (e.g., sales support, freight and delivery services, technical services, warranty services, post-sale warehousing and post-sale processing), Chia Far argues that it is entitled to a CEP offset. Moreover, Chia Far argues that all of the information needed to make this adjustment is on the administrative record because it provided the amount of indirect selling expenses for sales in the home and U.S. markets in its October 21, 2003, questionnaire response.

Petitioners disagree that Chia Far is entitled to a CEP offset because they believe that Chia Far has not met the requirements for such an adjustment. Citing 19 U.S.C. section 1677b(a)(1)(B), petitioners state that the Department's goal is to compare CEP sales and NV sales at the same LOT. To determine whether these sales were made at the same LOT, petitioners assert that the Department examines stages in the marketing process and selling functions in each channel of distribution. In order for Chia Far to receive a CEP offset, petitioners assert that Chia Far must demonstrate that its home market sales were at a different and more advanced LOT than its CEP sales. Further, petitioners contend that for the home market, the Department bases its LOT analysis on the starting price from the producer to the customer, without adjustment. Petitioners argue that the record evidence shows that Chia Far provided the following services to its home market customers: freight expenses, Chia Far's inventory carrying costs, Chia Far's indirect selling expenses, credit expenses and warranty expenses.

See Petitioners' Rebuttal Brief at 4. For CEP sales, petitioners assert that the Department bases its LOT analysis on the starting price to the U.S. customer, with downward adjustments for the expenses discussed in section 351.412(c)(ii) of the Department's regulations. Petitioners argue that the specific downward adjustments made in conjunction with section 351.412(c)(ii) of the Department's regulations are contrary to Chia Far's claim that the U.S. price should be reduced for all claimed selling expenses for U.S. sales. In other words, petitioners argue that the adjusted U.S. price is not a price exclusive of all selling expenses; rather, they assert that it is a price that is exclusive only of those U. S. selling expenses that are incurred after the time of importation into the United States (see Petitioners' Rebuttal Brief at 5), and that the adjusted CEP price is adjusted to reflect the same type of selling expenses as those associated with a U.S. EP transaction. Moreover, petitioners argue that the Department's LOT determination only takes into account whether the claimed selling activities are associated with U.S. economic activities; it does not take into account the location of the party providing the U.S. selling activity.

To support its claims that Chia Far has not demonstrated that its home market sales were at a more advanced LOT than its CEP sales, petitioners point to record evidence establishing that Chia Far provided the following services to its U.S. customers: foreign inland freight, indirect selling expenses incurred on U.S. sales, inventory carrying costs, warranty expenses, domestic banking expenses, domestic brokerage and handling, international ocean freight expenses, marine and inland insurance expenses, packing expenses, container handling charges, harbor construction fees and Chia Far's extension of credit terms to Lucky Medsup. See Petitioners Rebuttal Brief at 6. Petitioners argue that record evidence demonstrates that Chia Far, in fact, provided more selling expenses to its United States customers than it provided to its home market customers. In addition, petitioners allege that Chia Far itself has recognized that its home market sales are at a lower LOT than its U.S. sales. See Petitioners Rebuttal Brief at 3. Given this comparison, petitioners argue that Chia Far's LOT in the U.S. market is far more advanced than Chia Far's home market LOT. Therefore, petitioners urge the Department to continue to find that Chia Far is not entitled to a CEP offset.

Department's Position: We disagree with Chia Far and for these final results of review, have not granted Chia Far a CEP offset. The Department may grant a CEP offset where there are differences between the home market and U.S. LOTs and the home market LOT is more advanced than the U.S. LOT. The Department bases the LOT analysis of CEP sales on the sales price in the United States after making CEP deductions for selling expenses (and related profit) associated with economic activity occurring in the United States (see section 772(d) of the Act). Thus, here, we have determined whether a CEP offset is appropriate by comparing the selling activities taking place in the home market to those selling activities taking place between Chia Far and its U.S. affiliated reseller, Lucky Medsup.

The record indicates that Chia Far performed sales support, freight and delivery services, technical services and warranty services at the same level of intensity (frequency) for sales to both Luck Medsup and home market customers. See Exhibit 7 of Chia Far's Section A questionnaire response. While

Chia Far reported that it performed post-sale warehousing and post-sale processing for home market sales, but not U.S. sales to Luck Medsup, at verification, a sales manager stated that post-sale processing is done very rarely and post-sale warehousing involves a very low degree of effort. See Chia Far Sales Verification Report at 10 (also, in its Section A Questionnaire response, Chia Far provided no narrative explanation regarding post-sale warehousing or processing, while it provided detailed narrative explanations of the other sales activities). Moreover, at verification, Chia Far's sales manager stated that "sales to Lucky Medsup (U.S. affiliate) are very similar to home market sales in terms of the overall degree of effort required by the sales departments." See id.[5] Notwithstanding this statement, Chia Far indicated that arranging delivery for sales to Lucky Medsup is much more involved than arranging delivery for home market sales (Chia Far must prepare documentation and file duty drawback applications for its sales to Lucky Medsup, activities that it does not engage in for home market sales). See Exhibits 8 and 9 of Chia Far's Section A Questionnaire response. Thus, the record does not show that the home market LOT is more advanced than the U.S. LOT.[6] Hence, as in the Preliminary Results, for these final results we have not granted Chia Far a CEP offset.

Comment 4: Whether Export Sales were Improperly Classified as Home Market Sales

Petitioners argue that the Department should apply either partial or total AFA to Chia Far's antidumping margin because the record demonstrates that Chia Far improperly classified export sales as home market sales.

First, petitioners note that the Department's sales verification report mentions several times the fact that Chia Far classified as home market sales its sales of SSSS to customers located in Taiwan for which it packed the merchandise in ocean containers which it delivered to a container yard or which the customer picked up. See Petitioners Case Brief at 5. Specifically, petitioners note that the Department's verification report contains the following statement: "Company officials added that, to their knowledge, no containerized shipments to domestic customers were unloaded in Taiwan." Id. Petitioners contend that even though Chia Far had knowledge that these sales would be exported without being consumed in Taiwan, Chia Far continued to report these sales as home market sales. Given Chia Far's knowledge of the destination of these sales, petitioners argue that the Department should find that Chia Far improperly reported export sales as home market sales to the Department. In addition, petitioners argue that Chia Far has submitted no evidence to demonstrate that these sales

[5] At verification, the Department's verifiers made it clear that company officials' statements indicate that Chia Far is not eligible for a CEP offset. Chia Far was given every opportunity to provide contrary evidence and did not do so.

[6] We note that Chia Far itself initially stated that it "does not claim that a CEP offset should be made." See Chia Far's October 1, 2003, Section A Questionnaire response at 12

were intended for any country other than the United States. Even though the Department's verification report states that there is no evidence on any of the documentation examined to indicate that Chia Far knew the merchandise was destined for the United States, petitioners argue that the examined documentation does not appear to indicate the country to which the merchandise was being exported. Therefore, petitioners argue that Chia Far has not demonstrated that these sales were intended for a third country.

Further, petitioners argue that the Department should find that Chia Far knew the ultimate destination of the goods in question, but failed to provide that information to the Department. According to petitioners, given that it is an exporter, Chia Far would have to know the ultimate destination of the merchandise that it sold to Taiwanese exporters so as not to place itself in a position where it competes against its own products in another market. Thus, petitioners argue that Chia Far logically knew or should have known the destination of the merchandise sold to home market customers for export, but that it failed to provide that information to the Department because it presumably would have harmed Chia Far in this review.

Petitioners contend that Chia Far is fully aware of the Department's knowledge test concerning the classification of sales as domestic or export. Given this, petitioners assert that Chia Far was aware that it must provide evidence to the Department supporting its classification of reported sales. Citing NTN Bearing Corp. of America v. United States, 997 F.2d 1453, 1458 (Fed. Cir. 1993)(NTN Bearing), petitioners note that a respondent in an antidumping proceeding has the responsibility of creating an accurate record. To this end, petitioners contend that respondents who do not cooperate to the best of their ability to comply with a Departmental request for information, may be subject to AFA to the extent that the record is deficient due to the respondent's failure to act to the best of its ability. Specifically, citing Nippon Steel, 337 F. 3d 1373 (Fed. Cir. 2003), petitioners contend that the Federal Circuit devised a two-part test to determine whether a respondent has acted to the best of its ability: 1) Whether a reasonable and responsible party would have known that the requested information was required to be kept and maintained under antidumping law; and 2) whether a respondent has not promptly produced requested information due either to failure to maintain all required records or to a failure to make its maximum efforts to investigate and gather the requested information from its records. In this case, petitioners argue that the Department's knowledge test is a long-standing test that is central to every antidumping proceeding. Specifically, petitioners note that in this proceeding, the knowledge test has long been a controversial issue. Therefore, given the Nippon test, petitioners assert that Chia Far should have known that it was required to maintain information regarding the ultimate destination of its sales. In addition, petitioners argue that the Department is unable to determine the final destination of these contested sales because Chia Far failed to keep proper records and failed to make the maximum effort to investigate and gather evidence showing the export destination for these sales. Given these facts, petitioners urge the Department to find that Chia Far has not acted to the best of its ability. Petitioners assert that the Department should assign, as total AFA to Chia Far, the highest antidumping margin from any segment of this proceeding. However, if the Department decides that it is

inappropriate to assign total AFA, petitioners contend that the Department should assign, as partial AFA, the highest antidumping margin from any segment of this proceeding, to any U.S. sale that potentially could match to the mis-classified and reported export sales.

Chia Far argues that the application of facts available is unwarranted. Chia Far asserts that it agrees with the Department's decision to treat the sales in question as export sales, as evidenced by the fact that it provided the Department with everything it knew about these sales and identified these sales in the event that the Department determined them to be export sales. Chia Far contends that although it notified the Department that these sales existed, it included these sales in its home market database because it could not conclusively establish that the products were exported from Taiwan. Further, it contends that the Department's verification report does not contradict what Chia Far itself reported in its questionnaire responses regarding the nature of these sales. Namely, that because the sales in question were containerized, which was a deviation from the normal handling of domestic sales, it likely indicated that the customer intended to export the merchandise. See Chia Far's Rebuttal Brief at 4. However, even given this admission, Chia Far maintains that it possessed no documentation stating that the product was to be exported. In addition, Chia Far contends that the sales in question had many characteristics of typical home market sales, e.g., handled by the home market staff, not VAT-exempt, no bill of lading, shipping marks, etc. Given these characteristics, Chia Far asserts that, rather than completely omitting these sales from the home market database, it preferred to provide the Department with all the necessary information so that the Department could make the final decision on whether to classify the sales as export. Because it acted reasonably and fully disclosed the uniqueness of these sales in its initial response, provided a complete response and allowed the Department to determine the appropriate market, Chia Far argues that there is no basis for the application of facts available.

Department's Position: We disagree with petitioners' contention that Chia Far misrepresented its reported home market sales. The sales at issue are sales to customers located in Taiwan for which Chia Far packed the SSSS in ocean containers which it delivered to a container yard or which the customer picked up. In response to Section B of the Department's Questionnaire, Chia Far identified these sales (using a code in its home market sales file) and explained that it reported these sales in the home market sales file because it does not definitively know whether these were sales of merchandise that would be exported. See Chia Far's October 31, 2003, response to Section B of the Department's Questionnaire at 2. Additionally, in its April 29, 2004, supplemental questionnaire response, after noting that it had reason to believe that these may be sales of merchandise that will be exported, Chia Far stated that it "prefers to include the sales on the home market sales listing and allow the Department to make a determination, based on this full explanation of what Chia Far knows and does not know, of whether or not to include those sales as home market sales in its antidumping duty determination." See Chia Far's April 29, 2004, Supplemental Questionnaire response at 2. In the Preliminary Results, the Department excluded these sales from Chia Far's home market sales database. Our verification findings support the information that Chia Far reported regarding these sales as well as the Department's preliminary decision to exclude these sales from the home market sales file. See Chia

Far Sales Verification Report at 7 and 8. Moreover, during our verification, we found no evidence that would cause the Department to question the overall completeness and accuracy of Chia Far's home market sales file. See Chia Far Sales Verification Report at 12-15. Thus, there is no reason to rely upon facts available rather than Chia Far's reported home market sales.

Furthermore, there is no reason to conclude that the sales at issue should have been reported as U.S. sales. None of the documents examined at verification indicated "that Chia Far knew that the containerized merchandise that it sold to customers located in Taiwan was destined for the United States." See Chia Far Sales Verification Report at 8 (noting, among other things, that "documents from Chia Far's customers provided no indication that these were sales of merchandise destined for the United States."). What is more, at verification, we found no evidence that would cause the Department to question the overall completeness and accuracy of Chia Far's U.S. sales file. See Chia Far Sales Verification Report at 13-15. Thus, there is no reason to rely upon facts available rather than Chia Far's reported U.S. sales.

Additionally, contrary to petitioners' claim, Nippon Steel does not support a finding that Chia Far failed to act to the best of its ability to maintain or obtain information regarding the destination of the containerized merchandise. In Nippon Steel, the CIT noted that in determining whether a respondent acted to the best of its ability "the statute requires a factual assessment of the extent to which a respondent keeps and maintains *reasonable* records and the degree to which the respondent cooperates in investigating those records and in providing Commerce with the requested information." (emphasis added). See Nippon Steel 337 F. 3d 1373, 1383. Chia Far provided the Department with records regarding sales of the containerized merchandise that are consistent with the role that it played in those transactions (i.e., it did not export or ship the containerized merchandise from Taiwan). Moreover, Chia Far allowed the Department to investigate those records at verification. Thus, there is no basis for finding that Chia Far failed to act to the best of its ability in providing information required by the Department.

Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party that acted to the best of its ability in providing timely, verifiable information that can be used without undue difficulties and that is not so incomplete as to be unreliable. Chia Far has met the requirements of section 782(e) of the Act. Therefore, for these final results of review, we have not declined to consider Chia Far's U.S. and home market sales information.

Comment 5: Whether Order Confirmation Date is the Most Appropriate Date of Sale

Petitioners note that the Department's preferred date of sale is the invoice date. See Petitioners Case Brief at 9. However, petitioners state that the Department may allow an alternative date of sale if the

information submitted by the party requesting the alternative date fully supports the use of a different date. In this case, petitioners argue that Chia Far has not provided information to fully support its use of the initial order confirmation as the sales date for U.S. sales. Moreover, aside from the lack of record evidence to support the use of an alternative date, petitioners allege that the Department's verification report shows that Chia Far has not established that the initial order confirmation date is most appropriate date of sale. Petitioners assert that the Department's verification report shows that the material terms of sale changed several times after the issuance of the initial order confirmation, with the terms of sale not being finalized for several sales until either the final order confirmation date or the invoice date. Specifically, according to petitioners, the record indicates that the width of one order changed after the order confirmation, and the gauge of another product changed at the time of invoicing.

Given these inconsistencies, petitioners argue that the Department is not in a position to determine the most appropriate date of sale. Consequently, petitioners assert that the Department should reject Chia Far's U.S. sales database because it cannot determine whether the full universe of required sales has been reported. Since the verification report noted three distinct possibilities for date of sale, i.e., initial order confirmation date, final order confirmation date, and invoice date, petitioners argue that the universe has yet to be determined and finalized. Consequently, petitioners argue that the Department should find that Chia Far has not cooperated to the best of its ability because it failed to support its alternative U.S. date of sale. As a result of the unreliability caused by the inconsistencies surrounding the reported date of sale, petitioners urge the Department to assign Chia Far the highest dumping margin from any segment of this proceeding, as total AFA. If, in the alternative, the Department continues to use Chia Far's U.S. date of sale, petitioners assert that the Department should assign partial AFA to Chia Far for those sales with unconfirmed dates of sale.

Chia Far argues that petitioners have failed to demonstrate that Chia Far's reported date of sale for U.S. sales is inaccurate. Specifically, Chia Far argues that certain observations noted by petitioners as having inaccurate dates of sale, were actually the subject of a minor clerical error at the onset of verification (involving the width of a portion of the ordered material). Moreover, Chia Far asserts that this change was not a change to the material terms of sale, pursuant to the definition of "material terms" devised by the Department when it developed its control numbers in this administrative review. Therefore, given that the change was immaterial, Chia Far argues that it does not support a conclusion that the terms of sale for its U.S. sales changed after the initial order confirmation date. Further, Chia Far rebuts petitioners' claim that material terms of sale changed for another U.S. sale at the time of invoicing. Specifically, Chia Far notes that the change at the time of invoicing concerned the reported gauge. Chia Far asserts that it addressed this issue elsewhere in its brief (see Comment 2 above), when it argued that there is insufficient information on the record to conclude that the reported gauge was incorrect. Therefore, Chia Far argues that the instances cited by petitioners do not support a finding that its reported date of sale for U.S. sales is inaccurate. As a result, Chia Far argues that its dumping margin should not be based on AFA.

Department's Position: We disagree with the petitioners. When a party records sales in its books based on invoice date, the Department will normally use invoice date as the date of sale unless there is sufficient evidence indicating that the material terms of sale were established on another date. See 19 CFR. § 351.401(I); see also Allied Tube and Conduit Corp v. United States, et al., 132 F. Supp. 2d 1087, 1090 (CIT 2001). In practice, the Department has used a date other than invoice date as the date of sale when the record shows "that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date of sale, i.e., sale confirmation date, and the invoice date." See id. The Department has interpreted "material terms of sale" to include, price, quantity, and payment terms and has indicated that the terms to examine in selecting the date of sale are those terms which directly affect the calculation of the dumping margin. See Hornos Electricos De Venezuela, S.A., v. United States et al., 285 F. Supp 2d 1353, 1367(CIT 2003) citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 65 FR 5554, 5575 (February 4, 2000) and Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Canned Pineapple Fruit From Thailand, 66 FR 52744 (October 17, 2001) and the accompanying Issues and Decision Memorandum at Comment 12 (noting that the central purpose of establishing a date of sale is to select the point in time "when the terms which directly affect our dumping calculation were actually set.").

The record evidence cited by petitioners does not show that the material terms of U.S. sales were subject to change between the order confirmation and invoice dates. The change to the width of SSSS ordered by one customer, which occurred between the order confirmation and invoice dates, did not result in a change to the price, quantity, or any other material term of the sale, as alleged by petitioners.[7]

Furthermore, there is no evidence on the record showing that there was a difference between the invoiced gauge and the ordered gauge for the one sale noted by petitioners. Rather, the Department simply noted that Chia Far, in its U.S. sales database, failed to report the gauge code listed on its sales invoice. Thus, the evidence does not show that there was any change to the gauge between the order confirmation date and the invoice date. See Chia Far Sales Verification Report at 31.

Finally, we note that in the last administrative review, Chia Far reported, and the Department accepted, order confirmation date as the date of sale for CEP sales. Given that the record evidence cited by petitioners does not indicate that the material terms of CEP sales changed between order confirmation and invoice date, and absent documentation evidencing a shift in the U.S. affiliate's (Luck Medsup's) business or sales practices, we have continued to find order confirmation date to be the appropriate

[7] Also, we note that the change in the width did not result in a change to the control number assigned to the product.

date of sale for U.S. sales. Therefore, we have not rejected Chia Far's U.S. sales data in favor of AFA.

Comment 6: Whether the Department Should Continue to Apply the Interest Rate Used for the Preliminary Results in Calculating Credit Expense on CEP sales

Chia Far contends that for purposes of calculating credit expense on CEP sales, the Department should continue to apply the interest rate used for the preliminary results of this review, despite the disclosure at the CEP sales verification of a previously unreported short-term loan incurred by its U.S. affiliate, Lucky Medsup. This unreported short-term loan was not used in the preliminary margin calculation. In the alternative, Chia Far argues, the Department should only apply the short-term interest rate of the loan incurred by Lucky Medsup for a portion of the credit period used in the Department's credit expense calculation and should use the interest rate applied in the Preliminary Results for the remainder of the credit period in order to reflect the financing relationship that existed between Chia Far and Lucky Medsup.

Chia Far states that in its response to the Department, it computed the credit cost on EP and CEP sales based on the average short-term interest paid by Chia Far on U.S. dollar loans. According to Chia Far, this reported short-term interest rate, which was used to calculate credit expenses in the Preliminary Results, was verified by the Department. Chia Far maintains that during the preparation for the CEP verification, its U.S. affiliated reseller, Lucky Medsup, discovered that it had failed to report a loan it incurred for a very brief period that it had overlooked because it usually does not borrow money to finance its activities, rather it receives financial support through Chia Far in the form of extended payment terms.

In support of its initial assertion that the Department should continue to apply the short-term interest rate used in the Preliminary Results, Chia Far offers three arguments. First, Chia Far argues that it, in fact, finances Lucky Medsup during the period between the date of shipment of subject merchandise from the factory and the date Lucky Medsup's customer remits payment (i.e., the credit period used by the Department in its credit expense calculation). Chia Far claims that an analysis of the payment terms between Chia Far and Lucky Medsup and the payment terms between Lucky Medsup and its customers demonstrate that the credit cost period used in the calculation of credit expenses was, in fact, financed by Chia Far. Second, Chia Far submits that the weighted-average interest rate on U.S. dollar short-term loans incurred by both Chia Far and Lucky Medsup is the same rate as the one used to calculate Chia Far's credit expense in the Preliminary Results. Third, according to Chia Far, under the rule of LMI La Metalli, it is the Department's practice to use the lower of two rates where a manufacturer and its affiliate have access to two different interest rates in the same currency. See Chia

Far's Brief at 4-5 (citing LMI La Metalli Industriale, S.p.A. v. United States, 912 F.2d 455 (Fed. Cir. 1990), Engineering and Forging v. United States, 779 F. Supp. 1375, 1386-7 (CIT 1991), Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Reviews, 60 FR 38542 (July 27, 1995) and Accompanying Issues and Decision Memorandum at Comment 8, and Final Determination of Sales at Less Than Fair Value: Class 150 Stainless Threaded Pipe Fittings from Taiwan, 59 FR 18432, 38434 (July 28, 1994).

In support of its alternative position, Chia Far presents a formula by which it purports the Department can calculate credit expense on CEP sales which reflects both Chia Far's calculated weighted-average short term interest rate, and the short-term loan interest rate disclosed by Lucky Medsup at the CEP verification. This formula divides the credit expense calculation in two: an expense calculation for the period of time financed by Chia Far (to which the rate used in the Preliminary Results would be applied), and one for that period, if any, financed by Lucky Medsup (to which the interest rate of Lucky Medsup's short-term loan would be applied), thus associating the credit cost with the company's cost of funds incurred on financing the receivable.

In rebuttal, petitioners argue that the Department should apply its standard policy and calculate the credit expense on CEP sales using only the short-term interest rate of Lucky Medsup, rather than that of Chia Far. To support this contention, petitioners assert that it is the Department's current policy, under the Department's Policy Bulletin 98.2, Imputed Credit Expenses and Interest Rates, (February 23, 1998) (Policy Bulletin 98.2), to use the actual short-term borrowing rate of an affiliated U.S. reseller to determine the credit expense on CEP sales. This policy, petitioners argue, supercedes the Department's previous practice, which is advocated by Chia Far. Petitioners also assert that Chia Far appears to argue that the Department must rely on the short-term interest rate of the party that has the greater number or amount of U.S. short-term loans. However, assert petitioners, the Department's Policy Bulletin 98.2 imposes no such requirement nor a suggestion that the size of the loan is somehow relevant. Petitioners further claim that the record demonstrates that Lucky Medsup's short-term loan and interest rate is a normal commercial loan that had a reasonable interest rate. Therefore, conclude petitioners, the Department should base U.S. credit expenses for Chia Far on the actual U.S. short-term borrowing rate of Lucky Medsup.

Department's Position: We disagree with Chia Far. Policy Bulletin 98.2 notes that where U.S. sales were made by a U.S. party related to the respondent, the Department's practice has been to use the related U.S. reseller's short-term dollar borrowing rate to impute U.S. credit expenses. See Policy Bulletin 98.2 at footnote 2. Policy Bulletin 98.2 further explains that the Department's imputation of credit cost is a reflection of the time value of money that must correspond to a figure reasonably calculated to account for such value during the period between delivery and payment, and it should conform with "commercial reality." Although Chia Far claims that it finances the CEP sales through Lucky Medsup, such financing relates to the transaction between Chia Far and Lucky Medsup, not

Chia Far and the unaffiliated U.S. customer, which is the sale at issue. Lucky Medsup extends payment terms to the unaffiliated U.S. customer for all U.S. sales. The date of payment reported in Chia Far's Section C database is the date of deposit in Lucky Medsup's bank account. Since Lucky Medsup, and not Chia Far, extends credit and receives payment for the reported sales amount for all U.S. sales, Lucky Medsup's short-term cost of borrowing U.S. dollars is the appropriate basis for calculating imputed credit expenses. Therefore, consistent with Departmental practice, we applied Lucky Medsup's cost of borrowing to calculate U.S. credit expenses for all CEP sales for the final results of review. See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 68 FR 69996 (December 16, 2003) and accompanying Issues and Decision Memorandum at Comment 12; see also Notice of Final Determination of Sales at less than fair value: Polyethylene Terephthalate Film, Sheet, and Strip from India, 67 FR 34899 (May 16, 2002), and accompanying Issues and Decision Memorandum at Comment 8. Chia Far has raised no compelling reason to deviate from this practice. The Department finds that the cases cited by Chia Far, which require that the Department use a respondent's lowest borrowing rate, predate the Department's current practice pursuant to Policy Bulletin 98.2.

Comment 7: Whether the Department Should Make Changes to Certain U.S. Selling Expenses

Petitioners contend the Department found at verification that Lucky Medsup mis-allocated certain U.S. selling expenses, U.S. insurance expenses, U.S. banking charges, and U.S. brokerage and handling fees, which resulted in an over- or understatement of per-unit expenses for individual sales, citing one sales observation verified by the Department. Petitioners acknowledge Lucky Medsup correctly reported the total expenses for these items, even though the total expenses were not properly allocated. Petitioners claim the deficiency cannot be remedied at this time, rendering the data for these expenses unreliable for use in calculating an accurate dumping margin for Chia Far. Therefore, argue petitioners, the Department should apply the highest per-unit expense amount reported for U.S. insurance, banking charges, and U.S. brokerage and handling fees to all U.S. sales.

Chia Far in rebuttal argues that the Department should make no changes to Chia Far's reported per-unit expenses for U.S. insurance, banking charges, and U.S. brokerage and handling fees. Chia Far contends the errors found at verification were insignificant and so small in fact, accounting for less than 0.02% of the value of the product, that they should simply be disregarded by the Department in the final results under section 777A(a)(2) of the Act as amended and 19 CFR § 351.413 citing Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part, 68 FR 6880 (Feb. 11, 2003) (Comment 6), and also Light Weight Polyester Filament Fabrics from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 48 FR 49679 (Oct. 27, 1983) (Comment 5).

Department's Position: We disagree with both petitioners and Chia Far. While the Department will make no adverse inference regarding the adjustments in question, the Department will correct mis-allocations contained therein.

Contrary to petitioners' implication that the Department only sampled reported U.S. insurance, banking charges, and U.S. brokerage and handling fees, Department verifiers actually tested all adjustments to U.S. price for all U.S. sales, EP and CEP (see 7.c., 8.c., and 9.c. of the Chia Far Sales Verification Report). In doing so, the Department discovered mis-allocations on only one invoice. The mis-allocations involve U.S. insurance, banking charges, and U.S. brokerage and handling fees. We also note that the mis-allocations were extremely small. Thus, the Department determined that the mis-allocation was not systematic and was very minor.

While the amounts may be insignificant, in such situations section 777A(a) of the Act provides the Department with discretion as to whether to act to correct insignificant errors. As the correct adjustments were easily calculated based on information already on the record, the Department has corrected U.S. insurance, banking charges, and U.S. brokerage and handling fees in calculating Chia Far's final margin.

Comment 8: Whether Chia Far Absorbed Antidumping Duties on All U.S. Sales Through Lucky Medsup

Petitioners contend that the Department correctly found that Chia Far absorbed antidumping duties on all U.S. sales made through Chia Far's affiliated importer (Lucky Medsup). According to petitioners, no evidence or reason has been advanced by Chia Far to change this conclusion for the final results.

In rebuttal, Chia Far asserts that the Department's finding of duty absorption in the Preliminary Results is contradicted by record evidence. Chia Far states that on July 19, 2004, it submitted a statement of non-reimbursement of antidumping duties, executed by Lucky Medsup, which attested to the fact that Lucky Medsup has no agreement with Chia Far that Chia Far will reimburse Lucky Medsup for the amount of any antidumping duties imposed. Additionally, Chia Far asserts that the record contains evidence demonstrating that a refund by CBP for antidumping duties was retained by Lucky Medsup, rather than remitted to Chia Far. The fact that Lucky Medsup retained this refund of antidumping duties, Chia Far claims, is consistent with its assertion that no agreement exists between Lucky Medsup and Chia Far regarding the reimbursement of antidumping duties.

Furthermore, Chia Far asserts, the Department's thorough review of Luck Medsup's check register revealed no reimbursements from Chia Far for antidumping duties paid by Lucky Medsup. Thus, Chia Far argues, if any duty absorption on sales through affiliated parties were to occur, it would have been done by Lucky Medsup. However, Chia Far states, an examination of Lucky Medsup's financial statement demonstrates that Lucky Medsup passed on the full cost of antidumping duty to its customers.

In light of these facts, Chia Far argues, the Department should find that neither Chia Far nor Lucky Medsup absorbed antidumping duties.

Department's Position: We disagree with Chia Far. In determining whether antidumping duties have been absorbed, 19 CFR § 351.213 (j)(3) directs the Department to consider the dumping margins calculated in the administrative review in which the issue of duty absorption is being examined. If dumping margins are found for an exporter allegedly absorbing duties, it indicates that the exporter and its U.S. affiliate have not adjusted their prices to eliminate dumping. This leads to the presumption that duties are being absorbed (e.g., the U.S. affiliate may have decided to pay the antidumping duties rather than eliminate the dumping). See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 13943 (March 15, 2000) (Gray Portland Cement from Mexico) and accompanying Issues and Decision Memorandum at Comment 26. It is the respondent's responsibility to provide evidence to overcome this presumption. See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Order in Part, 64 FR 69694, 69705 (December 14, 1999). Here, Chia Far has failed to provide evidence (e.g., an agreement between the U.S. affiliate and its unaffiliated customers) that the unaffiliated customers in the United States will pay the full duty ultimately assessed on the subject merchandise. See Gray Portland Cement from Mexico and accompanying Issues and Decision Memorandum at Comment 26 (noting that the Department has articulated in numerous administrative reviews the need for respondents to provide an "irrevocable agreement between the unaffiliated purchaser and the affiliated importer that demonstrates that the unaffiliated purchaser will pay the antidumping duties."). The fact that a U.S. affiliate's profit may exceed the antidumping duty liability does not demonstrate that dumping duties assessed on entries will ultimately be paid by U.S. customers. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590, 35602 (July 1, 1999), in which the Department noted that "a company's profit on CEP sales is not relevant to a duty-absorption inquiry. The existence of profit on such sales does not negate the fact that the dumping duties assessed on entries are absorbed by the affiliate." Therefore, without sufficient evidence on the record to support Chia Far's claim, the Department will presume that duties are being absorbed by Chia Far's affiliate, Lucky Medsup.

C. Issue with Respect to YUSCO

Comment 9: Whether the Department Should Reject YUSCO's Sales Data and Resort to Total Adverse Facts Available

In its response to Section B of the Department's questionnaire, YUSCO reported sales to a home market customer in which it shipped the merchandise to the home market customer's bonded warehouse. YUSCO also reported sales of the foreign like product that would possibly be exported by home market customers (indirect export sales). YUSCO reported these sales in separate home

market (HM) databases (namely HM 3 - bonded warehouse sales and HM 4 - indirect export sales). Petitioners point out that even if the foreign like product is ultimately exported by the home market customer, the Department will consider such sales to be home market sales if a respondent knew, or had reason to know, at the time of the sale, that the merchandise would be consumed in the home market (i.e., manufactured into non-subject merchandise) prior to exportation. With respect to the sales reported in HM 3 and HM 4, petitioners contend that YUSCO has failed to address, on a sale-by-sale basis, the central question of whether it knew, or had reason to know, that these were sales of merchandise that would be used in the manufacture of non-subject merchandise in Taiwan before exportation.
For example, while YUSCO stated that it believed sales in HM4 should be treated as export sales because it thought these were sales of merchandise that might be exported, petitioners note that YUSCO reported these sales in its home market sales database based on its reading of the CIT's decision in Tung Mung.[8]

Petitioners contend that YUSCO classified these sales without addressing the central question of whether it knew, at the time of sale, whether the merchandise would be consumed in the home market prior to exportation. Petitioners also contend that YUSCO failed to properly apply the knowledge test to the sales reported in HM 3. Petitioners note that YUSCO initially stated that these sales should be treated as export sales, based on its understanding that the merchandise would be exported, but, for the first time at verification, YUSCO reported that these sales were home market sales. In addition, petitioners claim there is evidence on the record that certain SSSS, which YUSCO shipped to the bonded warehouse noted above, was not used to manufacture non-subject merchandise but was resold, as subject merchandise, to the United States. Thus, petitioners contend that YUSCO's HM 3 database inappropriately contains a U.S. sale. In sum, petitioners maintain that YUSCO has failed to apply the proper legal standard in identifying its home market sales and again relied on its internal order system, a reporting methodology that was discredited by both the Department and the CIT in the investigation in this proceeding.

Additionally, petitioners contend that YUSCO failed to properly report the downstream sales of its home market affiliate, Yieh Mau (which were reported in HM 5). Specifically, petitioners state that the Department found, at verification, that Yieh Mau sold foreign like product to home market customers who, according to Yieh Mau, will export the merchandise (sales with customer codes beginning with the letter "F"). However, petitioners maintain that none of these sales have been reported to the

[8] See Tung Mung Development Co., Ltd. v. United States, Slip Op. 01-83 at 46-47 (CIT 2001) in which the CIT found that YUSCO failed to properly report certain indirect export sales as home market sales (sales similar to those at issue here). Petitioners point out however, that this was based on YUSCO having admitted that it knew that some of these were sales of merchandise that would be further manufactured prior to exportation. Thus, petitioners state that the CIT did not find that YUSCO must report all of its indirect export sales as home market sales, but it found that YUSCO failed to properly apply the knowledge test.

Department in HM 5, nor does the record address Yieh Mau's knowledge, at the time of sale, of whether this merchandise would be consumed in the home market (used to produce non-subject merchandise) prior to exportation.

Petitioners contend that YUSCO's failure to properly apply the knowledge test is evidence of its uncooperative behavior, particularly given the fact that classification of YUSCO's home market sales has been an issue in every segment of this proceeding. Moreover, petitioners note that HM 3, HM 4, and HM 5 constitute a substantial portion of YUSCO's sales. Thus, petitioners urge the Department to base YUSCO's dumping margin on a total AFA rate of 34.95 percent ad valorem.

Petitioners claim that the burden of creating an accurate record lies with the respondent in an antidumping proceeding. See, e.g., NTN Bearing, 997 F.2d 1453, 1458 (Fed. Cir. 1993). Moreover, according to petitioners, there is substantial evidence on the record of this administrative review that YUSCO has not cooperated to the best of its ability with the Department. Citing Nippon Steel, 337 F. 3d, petitioners state that the Department need only make two findings in order to conclude that a party has not cooperated to the best of its ability and to draw an adverse inference under section 1677 e(b). First, the Department must find that a reasonable and responsible party would have known that the requested information was required to be kept and maintained under antidumping law. Petitioners claim that YUSCO should have known that it was required to maintain records that demonstrate that it accurately classified its home market sales, given that it received dumping margins based on AFA in the investigation and the 2001/2002 administrative review of SSSS from Taiwan because it mis-classified its sales. Second, petitioners note that under Nippon Steel, the Department must determine whether the respondent has not promptly produced requested information due to a failure to keep and maintain all required records, or due to a failure to make a maximum effort to investigate and gather the requested information from its records.

According to petitioners, if YUSCO had put forth its maximum effort to correctly classify its home market sales, the record would not have the problems noted above. Petitioners point out that it is YUSCO's responsibility to develop the record correctly. Moreover, petitioners maintain that YUSCO must provide information regarding its knowledge or imputed knowledge regarding consumption of the merchandise in the home market, because only YUSCO has this information. Accordingly, petitioners argue that YUSCO has to be held accountable for its refusal to cooperate to the best of its ability. Thus, petitioners argue that YUSCO's dumping margin should be based on a total AFA rate of 34.95 percent ad valorem.

With respect to the sales reported in HM 4, YUSCO argues that it went to great lengths to clarify its knowledge regarding this merchandise at the time of sale. For example, YUSCO notes that in its April 19, 2004 submission, it provided detailed, ultimately verified, customer-specific information regarding

its specific knowledge at the time of its HM 4 sales.[9] YUSCO also notes that in its April 19, 2004 submission, it reported details regarding its involvement in the shipping of this merchandise, provided information from certain customers regarding these sales, and identified the destination of the shipments, which indicate its knowledge, at the time of sale, as to what would happen to the merchandise. YUSCO points out that the petitioners ignore the fact that it changed its shipping terms for indirect export sales (terms which indicate its knowledge) from the terms that were used in prior administrative reviews. Further, YUSCO notes that, at verification, the Department did not find any discrepancies with respect to YUSCO's classification of its HM 4 sales. See YUSCO's Sales Verification Report, at 12-16. Accordingly, YUSCO contends that the Department should continue to accept its classification of HM 4 sales.

With respect to HM 3 sales, YUSCO maintains that it demonstrated that these were sales of merchandise sent to a bonded warehouse, and placed documents on the record showing that the bonded warehouse is a processing facility for purposes of exportation under Taiwanese law. See Exhibits 3 and 4 of YUSCO's July 21, 2004, submission containing the Certificate of Registry of Bonded Factory and the Regulation Governing Customs Bonded Factory in Taiwan. Also, YUSCO maintains that the record contains evidence demonstrating that the HM 3 sale that petitioners alleged was a U.S. sale, entered the United States only after it was further processed into non-subject merchandise. In light of these considerations, YUSCO asserts, the Department should continue to accept the classification of its HM 3 sales.

With respect to HM 5 sales, YUSCO points out that Yieh Mau reconciled its reported sales to its financial statements and, at verification, the Department found no discrepancies or missing Yieh Mau sales. See YUSCO's Sales Verification Report at 11-12 and Exhibit S-5A. In addition, with respect to the "F" sales in question, YUSCO notes that it reported that these sales have order numbers that start with "F" (not customer codes with "F", as the Department inadvertently stated in its verification report). Finally, YUSCO claims that it explained fully how Yieh Mau classified its sales based on its order confirmation numbers. For the foregoing reasons, YUSCO requests that the Department reject petitioners' speculation regarding the HM 5 sales database.

Given the foregoing, YUSCO urges the Department to reject petitioners' demand that it resort to total AFA. According to YUSCO, the record demonstrates that it fully responded to the Department's questions regarding its home market sales and provided detailed documentation and information on this issue. YUSCO claims that petitioners have based their demand on what appears to be either a misinterpretation or a misrepresentation of the record before the Department. Because the Department has before it a complete and verified record which confirms the accuracy of the preliminary results, YUSCO requests that the Department reject petitioners' arguments and continue to rely on the

[9] Also see, YUSCO's June 10, 2004, supplemental questionnaire response at 7-12 and 14-16; July 2, 2004, supplemental questionnaire response, at 4-5; July 15, 2004, supplemental questionnaire response at 2; and September 7, 2004, supplemental questionnaire response at 3.

reported data in the final results or review.

Department's Position: We disagree with petitioners' allegation that YUSCO's HM 3, HM 4, and HM 5 sales databases are flawed. YUSCO included all sales (except direct export sales to third countries) which the Department could possibly consider to be home market sales in these databases and provided the Department with sufficient information to determine whether these sales should remain in the home market sales files. Specifically, YUSCO provided the Department with information regarding its knowledge, at the time of sale, as to whether the merchandise sold would be consumed in the home market (e.g., used to manufacture non-subject merchandise).

The Department considers sales that are ultimately exported as non-subject merchandise, to be home market sales if a respondent knew, or had reason to know, at the time of the sale, that the merchandise would be consumed in the home market (i.e., manufactured into non-subject merchandise) prior to exportation. With regard to the HM 3 sales (sales delivered to a bonded warehouse), YUSCO stated that at the time of sale, it believed that the customer with the bonded warehouse would further processes the SSSS into non-subject merchandise. YUSCO noted that, "in particular, {it} believes that the bonded warehouse slit and/or further manufactured all the SSSS purchased from YUSCO into {non-subject merchandise} during the POR." See YUSCO's April 19, 2004, supplemental questionnaire response at 5. Moreover, at verification, YUSCO's sales personnel confirmed the company's knowledge, at the time of sale, that the customer with the bonded warehouse purchased the foreign-like product for consumption. See YUSCO's Sales Verification Report at p. 16. Furthermore, YUSCO provided evidence establishing that the legal purpose of a bonded warehouse is to further process, then export merchandise. See the Certificate of Registry of Bonded Factory in Exhibit 4 of YUSCO's July 21, 2004, supplemental questionnaire response and pages 4 and 5 of that response where YUSCO indicated that the bonded warehouse in question is classified as a Customs Bonded Factory; see also Articles 4 and 5 of the Regulations Governing Customs Bonded Factory (Regulations) in Exhibit 3 of YUSCO's July 21, 2004, supplemental questionnaire response, noting that a customs bonded factory is indeed a production facility and "the products of the factory are entirely for export." Further, at verification, we found no evidence that YUSCO had mis-classified its HM 3 sales as home market sales or that the database contained any U.S. sales of subject merchandise. See Proprietary Memorandum. Thus, contrary to petitioners' claim, YUSCO did not, for the first time at verification, indicate to the Department that the sales in HM 3 are home market sales.

Regarding its HM 4 sales, YUSCO reported that it knew that these sales were 1) sales of merchandise to certain affiliated parties that would either be exported to third countries without further manufacturing,[10] delivered to a factory in the home market to be processed into non-subject merchandise, or delivered to a seaport or container yard without further manufacturing prior to

[10] With respect to sales to Yieh Trading (YUSCO's affiliate), see YUSCO's Sales Verification Report at pages 13 and 15, as well as YUSCO's March 3, 2004, submission at pages 7 and 8.

exportation;[11] and 2) sales of merchandise to unaffiliated parties that would be delivered to a seaport or container yard without further manufacturing prior to exportation. Thus, contrary to petitioners' claim, YUSCO did report its knowledge as to whether the merchandise would be consumed in the home market. For example, with respect to its sales to one of its home market affiliates, YUSCO reported that it has an agreement with this party that the merchandise would be processed into non-subject merchandise prior to being exported. See YUSCO's June 10, 2004, supplemental questionnaire response at 9. With respect to its sales to unaffiliated home market customers, YUSCO reported that it makes arrangements under international shipping terms, and/or delivers the merchandise directly to the seaport or container yard; thus, it believes that these sales were destined for export and should be treated as third country sales and removed from the HM 4 database.[12]

Furthermore, in responding to the Department's questions regarding YUSCO's knowledge at the time of its sales to seven of its unaffiliated home market customers, YUSCO repeatedly stated that each unaffiliated customer ". . . did not consume any SSSS sold to it by YUSCO during the POR."[13] With respect to its sales to unaffiliated home market customers, YUSCO went on to note that it "believes that none of the merchandise would be further processed, as YUSCO made shipment arrangements for those customers and had the merchandise delivered directly to the assigned foreign seaports or delivered the merchandise along ship."[14] At verification, the Department did not find any errors or discrepancies with respect to YUSCO's classification of its HM 4 sales. See YUSCO's Sales Verification Report at pp. 15, 16, and 17. Although YUSCO initially thought that certain HM 4 sales to Taiwanese customers who exported the merchandise should be considered export sales (see YUSCO's October 31, 2003, Questionnaire response at B-2), it noted that it reported "…all sales that the Department may find relevant, in light of the Department's final determination in the original investigation, and the {CIT} decision in Allegheny Ludlum v. United Sates, 215 F. Supp. 2d. 1322 (December 28, 2000)." See YUSCO's October 31, 2003, Questionnaire response at B-3. YUSCO then provided information that allowed the Department to determine whether it had properly reported its home market sales. See YUSCO's April 19, 2003, supplemental questionnaire response at 3. Where YUSCO knew, or should have known, at the time of sale, that the merchandise sold to home market customers was delivered to a port or container yard without additional processing, we excluded these sales from HM 4, as was done in the Preliminary Results. See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From Taiwan, 64 FR 56308, 56325 (October 19, 1999), where the

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[11] With respect to sales to Yieh Mau (YUSCO's affiliate), see YUSCO's Sales Verification Report at pages 13, 14 and 17, as well as YUSCO's June 10, 2004, submission at pages 7, 9, and 11.

[12] With respect to sales to unaffiliated customers, see YUSCO's April 19, 2004, submission, at page 3.

[13] With respect to sales to unaffiliated customers, see YUSCO's April 19, 2004, submission, at pages 5, 6, and 7.

[14] With respect to sales to unaffiliated customers, see YUSCO's June 10, 2004, submission at page 12.

Department excluded from the calculation of normal value those sales of merchandise where Vanguard knew, or should have known, at the time of sale, that the merchandise was ultimately destined, without further processing, for customers in third countries.

Finally, the record does not show that the HM 5 database is flawed. We agree with YUSCO that, in the Verification Report, the Department inadvertently used the term "customer code" instead of "order code (order number)" when referring to certain Yieh Mau sales reported in HM 5. Sales for order codes starting with the letter "F" are not missing from the HM 5 database. Hence, the record does not indicate that this database is incomplete, as petitioners argued. Moreover, company officials explained that the merchandise sold to customers whose order code starts with the letter "F" is delivered to the port or container yard and that Yieh Mau knew at the time of sale that these sales were indirect export sales. See YUSCO's September 7, 2004, submission, at page 4. Yieh Mau's officials stated that the company believes that these sales are properly classified as export sales and the sales documentation for Yieh Mau's preselected sales that were examined at verification supports the company officials' explanation. Also, we note that the Department has verified the accuracy and completeness of Yieh Mau's downstream sales reported in the HM 5 database. See YUSCO's Sales Verification Report at pp. 10 and 17. Given the above, as well as the lack of any evidence on the record showing that the merchandise delivered to the port or to the container yard was consumed in the home market before exportation, we have excluded from HM 5 Yieh Mau's sales of foreign like product delivered to the seaport or the container yard.

Because the Department was able to determine that YUSCO properly reported its home market sales and verified the accuracy and completeness of YUSCO's home market databases, we have not rejected YUSCO's home market data and applied total AFA.

RECOMMENDATION

Based upon our analysis of the comments received, we recommend adopting the above positions. We will publish the final results of review and the final weighted-average dumping margin for the reviewed firms in the Federal Register.

AGREE_____ DISAGREE_____

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date