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February 3, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

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

SUMMARY

We have analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced administrative review. As a result of our analysis, we have made changes from the preliminary results of review. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum.

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, 2005. See Stainless Steel Sheet and Strip in Coils From Taiwan; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 46137 (August 9, 2005) (Preliminary Results). The merchandise covered by this order is SSSS, as described in the "Scope of the Review" section of the accompanying Federal Register notice. The period of review (POR) is July 1, 2003, through June 30, 2004.

We invited interested parties to comment on our Preliminary Results. Petitioners[1] filed case briefs on September 8, 2005, and September 12, 2005. Chia Far filed case briefs on September

[1] Petitioners are Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., United Steelworks of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization (collectively, "petitioners").

12, 2005. YUSCO filed rebuttal briefs on September 13, 2005, while the petitioners and Chia Far filed rebuttal briefs on September 19, 2005.

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DISCUSSION OF THE ISSUES

A. Issues with Respect to Chia Far

Comment 1: Home Market Discounts

Petitioners argue that Chia Far misreported and overstated its home market early payment discounts because it (1) reported these discounts on a customer-specific, rather than an invoice-specific basis, as requested in the Department's questionnaire, and (2) reported discounts not related to POR sales. Petitioners also argue that the Department should not reduce Chia Far's home market prices by the reported early payment discounts because Chia Far's records allow it to report invoice-specific discounts, and Chia Far ignored the Department's request to exclude discounts unrelated to POR sales.

Chia Far claims that although it records early payment discounts on one particular invoice during each month, the discounts are given on a customer's entire outstanding accounts receivable balance to encourage early payment of the account (i.e., the discount is on all unpaid invoices with a credit term). Given these facts, Chia Far argues it is more accurate to allocate the discounts on a customer-specific basis, rather than an invoice-specific basis, and it was proper to allocate discounts issued during the POR to POR sales even when the discounts relate to pre-POR sales (a methodology followed by Chia Far in several administrative reviews).[2]

Further, Chia Far contends that the Department did not instruct it to revise the reported early payment discounts by excluding those discounts not related to POR sales. Rather, Chia Far claims the Department instructed it to exclude a particular discount with an early payment certificate dated before the POR. According to Chia Far, it explained that it was reasonable to include the discount in question given that the discount was confirmed and booked by Chia Far during the POR.

Department's Position:

We disagree with petitioners. Chia Far reported that it grants monthly early payment discounts on the outstanding accounts receivable balance of certain customers, not on specific sales invoices. According to Chia Far, the discounts are recorded on the first invoice issued in the month in which the discount was granted. Thus, it was appropriate for Chia Far to allocate early payment discounts over sales to a particular customer rather than reporting invoice-specific discounts. Moreover, the Department verified and accepted this reporting methodology in prior reviews, noting that "a customer-specific methodology is a closer reflection of how Chia Far records its early payment discount." See Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 5960, (February 9, 2004), and accompanying Issues and Decision Memorandum, at Comment 16 (also

[2] Chia Far claims it would understate discounts if it were to only allocate discounts on POR sales that were granted *during* the POR to all POR sales.

noting that "the method of calculation of early payment discounts was fully verified in the two previous reviews ..."). Consistent with this finding, we have continued to accept a customer-specific reporting methodology.

Moreover, we disagree with petitioners' claim that certain discounts do not relate to the reported home market sales. The examples of early payment discounts cited by petitioners (see petitioners' September 12, 2005, case brief at 16 and 17) relate to sales during the window period and thus it was proper for Chia Far to have reported these discounts. However, Chia Far incorrectly allocated one of the early payment discounts cited by petitioners, to all sales to the customer who received the discount, even though it reported that, in this case, the discount was specifically granted on one invoice. See Chia Far's July 15, 2005, supplemental questionnaire response (SQR) at 3. Thus, we revised the total discounts allocated to all of this customer's sales by excluding this discount.

Comment 2: Home Market Credit Expenses

Petitioners argue that Chia Far overstated its home market credit expenses because it calculated the average number of days a customer's balance was outstanding using both the customer's outstanding accounts receivable and outstanding notes receivable balances.[3] Petitioners argue that using both balances in the calculation double counts the balance due, overstates the number of days it was outstanding, and overstates home market credit expenses. Petitioners also argue that the Department should not reduce Chia Far's home market prices by the reported credit expenses because Chia Far failed to correct its calculation and the Department does not have the information to make the correction.

Chia Far urges the Department to reject petitioners' argument because, although it credits accounts receivable when the note is received (reduces accounts receivable by the amount of the note), it is not paid until the note matures. Chia Far claims that if it were to calculate credit expenses based only upon the time the accounts receivable balance is outstanding, it would miss part of the period during which it was not paid. As a result, Chia Far claims it has properly calculated its credit expenses.

Department's Position:

We disagree with petitioners. Credit expenses reported to the Department should capture the cost of credit extended to the customer between the time the merchandise is shipped and the time the respondent receives payment for the sale. See the Department's antidumping duty questionnaire at B-30. Thus, the credit period should include the period during which the promissory note is outstanding because Chia Far is not actually paid until the note matures. See Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty

[3] Consistent with the instructions in the questionnaire, since Chia Far could not readily access actual payment dates, it calculated home market credit expenses based on the average age of its accounts receivables.

Administrative Review, 55 FR 21061, 21065 (May 22, 1990) (Comment 26) (with respect to home market credit expenses the Department stated: "{w}e treat the maturity date of a promissory note as the date of payment because that is the date that money actually changes hands."). Furthermore, there is no double counting as alleged by petitioners. Record evidence indicates that Chia Far simultaneously reduces the accounts receivable balance, and increases the notes receivable balance, by the amount of the note promising to pay the receivable. See Chia Far's March 18, 2005, SQR at page 2 and Exhibit B-25. Finally, contrary to petitioners' claim, the Department did not instruct Chia Far to ignore notes receivables in calculating credit expenses. Rather, the Department provided Chia Far the opportunity to either explain its reporting methodology or revise it. See Chia Far's April 26, 2005, SQR at 3. Thus, we have accepted the reported home market credit expenses.

Comment 3: Export Sales Classified as Home Market Sales

Petitioners urge the Department to base Chia Far's dumping margin on adverse facts available (AFA) because Chia Far improperly classified certain export sales as home market sales. Petitioners note that sales of foreign like product to home market customers are classified as home market sales if the respondent knew, or had reason to know, at the time of the sale, that the merchandise would be consumed in the home market. See Tung Mung Development Co., Ltd. v. United States, 25 CIT 752, 783 (2001) (Tung Mung). According to petitioners, Chia Far had reason to know that the following sales in its home market sales file were sales of merchandise that would *not* be consumed in the home market (and thus these sales should not have been reported as home market sales): (1) sales of merchandise packed using packing materials typically used for exported merchandise, and (2) sales of merchandise that Chia Far placed in an ocean container, or shipped to a container yard, at the home market customer's request. Specifically, petitioners point out that in its home market database, Chia Far identified the sales of merchandise placed in an ocean container or shipped to a container yard as sales for the export market. Based on this knowledge, petitioners assert that Chia Far should have reported these sales as either U.S. or third-country sales. Furthermore, petitioners claim that home market customers' requests for export type packaging gave Chia Far constructive knowledge that the merchandise sold to those customers would not be consumed in the home market. Petitioners note that such packaging consists of water-proof paper and galvanized sheet which are only necessary for international shipping.

While Chia Far may have reported home market sales based on actual, rather than imputed knowledge of the destination of the merchandise sold, petitioners state that the CIT made clear that reliance on actual knowledge alone would allow a respondent to make self-serving statements. See Tung Mung, 25 CIT at 783-784. To avoid such self-serving statements in this review, petitioners request that the Department obtain documentation from Chia Far showing that the export sales that it mis-classified as home market sales were sales to third-countries and not to the United States. If Chia Far cannot identify and document the destination of the merchandise in question, petitioners contend the Department should find that Chia Far has failed to cooperate to the best of its ability, and base Chia Far's dumping margin on a total AFA rate of

36.44 %. Alternatively, petitioners argue that, at a minimum, the Department should consider the sales in question to be U.S. sales and, as partial AFA, assign these sales a dumping margin of 36.44 %.

Petitioners note that if the Department finds a response to be deficient after giving a respondent an opportunity to correct the deficiencies, the Department may disregard the response and rely upon facts otherwise available in reaching its determination. See section 776 of the Act. Further, the Department may employ adverse inferences in selecting from the facts otherwise available if it finds the respondent has not acted to the best of its ability to cooperate with a request for information. See Id. According to petitioners, the CIT concluded that the Department may find that a respondent has not acted to the best of its ability to cooperate with a request for information if the Department can demonstrate that: (1) a reasonable respondent would have known that the requested information was required to be kept under the antidumping law; and (2) the respondent was not fully responsive because it failed to keep the requested information or failed to put forth its maximum efforts to gather the requested information from its records. See Nippon Steel Corp. v. United States, 337 F. 3d 1373 (Fed. Cir. 2003) (Nippon Steel).

If Chia Far cannot identify and document the destination of the merchandise in question, petitioners argue that the Department should find that Chia Far failed to cooperate to the best of its ability. First, petitioners state that Chia Far understood what was required of it in this review given that the issue of proper sales classification based on actual and imputed knowledge has been raised in every segment of this proceeding and Chia Far has participated in each administrative review of the order. Second, petitioners claim that Chia Far must have the information required to properly classify the sales in question given that Chia Far needs this information to: (1) determine whether its Taiwanese customers are competing with it in Taiwan or an export market, (2) quote the proper price for merchandise that ultimately will be exported and (3) determine whether the merchandise is bound for the U.S. market which is covered by the dumping order under review here.

Petitioners conclude by noting that the sales at issue constitute a material portion of Chia Far's home market sales database. Thus, if Chia Far does not document the destination of the merchandise in question, the Department should not simply exclude sales of this merchandise from Chia Far's home market database. Rather, the Department should find Chia Far's databases to be unreliable and base Chia Far's dumping margin on AFA.

Chia Far claims that it properly reported its sales. Chia Far states that it suspected, but was not certain, that the containerized/container yard merchandise would be exported by its home market customers. Thus, according to Chia Far, it preferred to report and flag these sales in its home market database, disclose everything it knows about the sales, and allow the Department to determine whether these are home market sales. Chia Far notes that in the prior administrative review, as well as in the preliminary results in this review, the Department removed the containerized/container yard sales from Chia Far's home market database.

Furthermore, Chia Far states that there is no record evidence demonstrating that its sales of containerized/container yard merchandise are U.S. sales. Chia Far claims that the facts here are no different from those in the prior administrative review in which the Department's verifiers specifically noted that none of the documents they examined demonstrated that "Chia Far knew that the containerized merchandise that it sold to customers located in Taiwan was destined for the United States."[4]

Additionally, Chia Far claims the record evidence does not indicate it had reason to know that merchandise shipped to home market customers in export-type packaging would be exported. According to Chia Far, some home market customers request such packaging because it protects merchandise better than other types of packaging. Chia Far acknowledges that export-type packaging is more expensive than other types of packaging. However, Chia Far claims there is nothing on the record showing that domestic customers, who consume coils in Taiwan, would not view the added protection provided by this packaging as worthwhile. Thus, Chia Far contends the Department should dismiss petitioners' allegation regarding export-type packaging.

Department's Position:

We disagree with petitioners. Petitioners have not pointed to any evidence on the record to support their claim that Chia Far must possess documentation identifying the destination of the sales at issue. In fact, at the start of this review, Chia Far reported that it "was not informed of any exports by domestic resellers."[5] Moreover, with respect to the containerized/container yard sales, Chia Far reported that it "does not have documentation establishing conclusively that the products were exported."[6] Thus, the record indicates that Chia Far did not have any documentation proving that the sales in question were, in fact, sales of merchandise that would be exported, let alone documentation identifying the ultimate destination of the merchandise.

Moreover, there is nothing on the record that would cause the Department to believe that the containerized/container yard sales are U.S. sales. Chia Far's claim that it does not know the destination of the containerized/container yard merchandise (including whether the merchandise was ultimately shipped to the United States) is consistent with the Department's verification findings in the prior review. Specifically, in the prior review the Department's verifiers reported that: "Overall, excluding the sales to {customers identified in the U.S. sales file}, we found no

[4] See Chia Far's case brief citing the Department's verification report included in Chia Far's September 13, 2005, submission to the Department.

[5] See Chia Far's September 22, 2004, section A questionnaire response (AQR) at 16.

[6] See Chia Far's November 15, 2004, response to sections B through D of the Department's questionnaire at 2.

evidence that Chia Far knew that the sales of containerized merchandise were sales to the United States."[7]

The fact that Chia Far does not possess records documenting the destination of the sales at issue is not a reason to resort to AFA. 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 at 1383. Reasonable records would not include records that are inconsistent with the role that Chia Far played in selling containerized/container yard merchandise (i.e., Chia Far did not export or ship the containerized merchandise from Taiwan and thus it would not possess records regarding such shipments). 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.

Additionally, Chia Far did not mislead the Department with respect to the containerized/container yard sales. From the very beginning of this review Chia Far reported that it believed, but could not prove, that the containerized/container yard sales were sales of merchandise that was later exported by its home market customers.[8] Given that it could not prove that these were export sales, Chia Far stated that it included the sales in its home market database. However, Chia Far also stated that it "believes that the Department should remove these sales from the home market sales database prior to making its price comparisons ... ."[9]

Finally, Chia Far's explanation as to why some home market customers who consume SSSS might require export-type packaging is consistent with the Department's findings in the prior administrative review. In the prior review, the Department's verifiers examined examples of SSSS sold in the home market that was wrapped in film of the same thickness used for exported merchandise. The verifiers noted that "the type of packing film used does not necessarily indicate whether or not the merchandise will be exported."[10] There is nothing on the record of the instant review showing that the situation with respect to export packaging has changed from the prior review. Thus, Chia Far did not have reason to know, based on export-type packaging alone, that certain home market sales were actually sales of merchandise that would be exported

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[7] See Chia Far's September 13, 2005, submission to the Department at page 8 of the attached report.

[8] See Chia Far's November 15, 2004, response to sections B through D of the Department's questionnaire at 2.

[9] Id.

[10] See Chia Far's September 13, 2005, submission to the Department at page 7 of the attached report.

by the home market customer. Consequently, we have not excluded these sales from Chia Far's home market sales database.

Given the foregoing, we have not based Chia Far's dumping margin on AFA. Rather, we have relied upon the sales databases submitted by Chia Far, after excluding containerized/container yard sales from Chia Far's home market database.

Comment 4: U.S. Date of Sale

Chia Far maintains that, in the Preliminary Results, the Department incorrectly deviated from its past practice in this proceeding and used invoice date as the sale date for U.S. sales rather than order confirmation date. Chia Far notes that the Department's decision was based on changes in the shipped quantity in excess of the allowable variation in the order. According to Chia Far, at times, it shipped less than the ordered quantity to avoid overweight shipping, however, there were no changes to the quantity ordered or to any other material sales terms (Chia Far noted that changes to material sales terms after the initial agreement are rare). Moreover, Chia Far claims that it is an implied term of the sale that a customer will accept lesser quantities of merchandise to avoid it being overweight (in each case the lesser quantity was accepted by the customer). See Porcelain on Steel Cookware from Mexico, Final Results of Antidumping Duty Administrative Review, 62 FR 25908 (May 12, 1997) (Comment 2) (where the Department found the contract/order date to be the date of sale even though the quantity of the sale was not specified in the contract). Furthermore, Chia Far claims that the instant fact pattern existed in prior reviews in this proceeding and yet the Department used order confirmation date as the date of sale. Consequently, Chia Far argues that the Department should continue to use order confirmation date. Chia Far also suggests that if the Department does change its practice now, it should be applied to future reviews.[11] Because the terms of sale are fixed at the order confirmation date, Chia Far states that the Department should use order confirmation date as the date of sale for all U.S. sales.

Petitioners claim that Chia Far has not met its obligation to demonstrate that a date other than invoice date is the appropriate date of sale. Petitioners argue that invoice date is the presumptive date of sale unless another date is shown to better reflect the time at which the material terms of sale are established.[12] In fact, petitioners point out that Chia Far's list of U.S. sales for which sales terms changed after the order confirmation date shows that changes to the essential terms of sale were not extremely rare as claimed by Chia Far. See Chia Far's March 18, 2005, SQR at 5 and Exhibit C-21.

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[11] Anshan Iron & Steel Company v. United States, No. 2003-83, 2003 CIT LEXIS 109, at *19 (2003), citing Shikoku Chems. Corp. v. United States, 795 F. Supp. 417 (1992) (Shikoku Chems.).

[12] Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27349 (May 19, 1997).

Moreover, petitioners maintain that the Department did not err in changing the date of sale from the date used in prior segments of the proceeding. Contrary to the situation in Shikoku Chems, petitioners claim that the Department did not rely upon a new approach in deciding to use invoice date as the date of sale; rather it simply applied its normal date of sale methodology to the facts in this case and determined that invoice date is the appropriate date of sale. Moreover, petitioners argue that the Department is not bound by a prior reporting methodology if another methodology permits the Department to calculate a more accurate dumping margin, as is the case here.[13] Thus, petitioners submit that invoice date is the appropriate date of sale for Chia Far's U.S. sales.

Department's Position:

We disagree with Chia Far. The Department will use invoice date as the date of sale unless there is evidence indicating that the material terms of sale were established on another date.[14] Contrary to Chia Far's claim, the material terms of sale were not set on the order confirmation date because those terms could, and did change. Chia Far acknowledged that such changes, though rare, could occur when it noted that "changes in the material terms of sale after the initial agreement are rare ... ." See Chia Far's December 13, 2004, SQR at 6. Moreover, Chia Far identified certain U.S. sales during the POR for which the quantity ultimately purchased by the customer differed from the quantity ordered by more than the variance allowed. See Chia Far's March 18, 2005, SQR at 5 and Exhibit C-21. In cases where differences between the ordered and invoiced quantities exceeded the variance allowed, the Department has found invoice date to be the appropriate date of sale. See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578, 55588 (October 16, 1998), ("our analysis of the sample contract and corresponding invoices reveals that changes frequently were made beyond the agreed upon tolerance levels. Where such changes occur frequently after the contract date, we have relied upon a later date."). Here, the record shows that variances between the ordered and invoiced quantity occurred in a material number of orders. See Chia Far's March 18, 2005, SQR at Exhibit C-21. Furthermore, even if quantity changes were rare, as Chia Far claimed, the CIT has stated that "the existence of ... one sale beyond contractual tolerance levels suggests sufficient possibility of changes in material terms of sale so

[13] Hussy Copper, Ltd. v. United States, 834 F. Supp. 413, 425 (CIT 1993) citing Rhone Poulenc, Inc. v. United States, 899 F. 2d 1185, 1191 (1990).

[14] 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).

as to render Commerce's date of sale determination {use of invoice date} supported by substantial evidence."[15]

Although Chia Far claims that the quantity of merchandise ultimately accepted by the customer is an implied term of sale, there is no mechanism in the order confirmation for setting this quantity. Absent such a mechanism, there is no basis to consider this term set by the order confirmation. See General Electric Company v. United States,17 CIT 268 (April 21, 1993), ("even in situations where a material term is indefinite, the ITA will consider the date of sale to be the date of the contract if the contract provides a mechanism outside of the parties control which sets the indefinite term").

Finally, we note that the Department has the discretion to determine the date of sale based on the facts in each segment of a proceeding.[16] In this review, we applied the same date of sale methodology used by the Department in prior reviews but found that the facts on the record support using invoice date, rather than order confirmation date, as the date of sale for Chia Far's home market sales.

Comment 5: Home Market Warranty Expenses

Petitioners request that the Department reject Chia Far's reported home market warranty expenses because it (1) reported these expenses on either a customer-specific or invoice-specific basis, rather than a product-specific basis, as requested by the Department, and (2) reported warranty expenses not incurred during the POR. Given that Chia Far failed to abide by the Department's instructions and has not provided the information needed to adjusted the reported warranty expenses, the Department should not reduce normal value by the reported warranty expenses.

Chia Far claims it properly reported warranty expenses. Citing the questionnaire instruction to allocate expenses only when the expenses cannot be tied to specific sales, Chia Far states that it used a customer-specific allocation for POR warranty expenses relating to pre-POR sales (these expenses could not be tied to a specific POR sale) but reported POR warranty expenses relating to POR sales on an invoice-specific basis. Also, Chia Far states that it reported warranty expenses incurred outside the POR but within the window period. Chia Far asserts that the Department should adjust home market prices using all of the reported warranty expenses because these expenses equal the total warranty expenses incurred during the POR and window period. Finally, Chia Far notes that it explained that the reporting methodology used in this

[15] Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1091 (January 18, 2001).

[16] Certain Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review, 57 FR 19597-02 (May 7, 1992) (Flowers from Mexico) at Comment 2 ("{e}ach administrative review of the order represents a separate administrative proceeding and stands on its own.").

review was used in several prior reviews and it has continued to use this methodology for the sake of consistency. According to Chia Far, the Department did not then instruct Chia Far to change its reporting methodology.

Department's Position:

We disagree with petitioners, in part. At the time of sale, any potential warranty claim associated with a particular sales transaction cannot be known or quantified by the respondent. Warranty expenses are incurred only after a warranty claim has been made by the customer. Thus, we would expect that, in the normal course of business, sellers would include in their sales pricing, across products and/or markets, an allowance for expected warranty expenditures. Such an allowance would likely be based on a company's previous experience for a particular market or product line. Thus, a product-or market-specific allocation of warranty expenses that is in line with the company's experience is likely most reflective of a seller's pricing practices. In keeping with this approach, the Department requests that respondents report warranty expenses on the most product-specific basis possible and provide a schedule of warranty expenses incurred for the three most recently completed fiscal years. See the Department's antidumping questionnaire at pages B-31 and B-32.

While Chia Far did not report warranty expenses in its home market sales database in accordance with the Department's instructions, it did provide a schedule of warranty expenses that are specific to the foreign like product and that were incurred over the three most recently completed fiscal years. This schedule includes warranty expenses incurred during the POR and the window period. Given that the POR and window period warranty expenses in this schedule are consistent with Chia Far's historical warranty expenses (i.e., the warranty expenses reported for the three most recently completed fiscal years), we have used the POR and window period warranty expenses in calculating Chia Far's dumping margin. Specifically, we calculated an average per-unit warranty expense incurred on sales of foreign like product during the POR and window period, and allocated this per-unit expense to all reported home market sales. Because we have the information on the record to calculate an appropriate per-unit warranty expense, we have adjusted normal value for warranty expenses.

Comment 6: Home Market Inventory Carrying Costs

Petitioners request that the Department reject Chia Far's home market inventory carrying costs because these costs include post-sale expenses related to warehousing product at Chia Far's factory and were reported on a sale-specific basis. Petitioners note that the Department's questionnaire instructs respondents to report only warehousing expenses incurred at a distribution warehouse, not a warehouse located at the factory. Moreover, petitioners note that according to the Department's questionnaire, inventory carrying costs are opportunity costs incurred up until the time of sale. By including warehousing costs in the reported inventory carrying costs, petitioners claim Chia Far has incorrectly extended the carrying period up until the time of shipment from the warehouse. Further, petitioners contend that the Department's policy is to

base inventory carrying costs on the average number of days the merchandise is held in inventory, not the actual number of days in inventory for each sale.

Lastly, petitioners point out that the Department instructed Chia Far to correct the reported inventory carrying costs, noting that the reported costs improperly reflect the number of days during the post-sale warehousing period. Petitioners note that rather than revising its inventory carrying costs, Chia Far simply claimed that it only reported imputed inventory carrying costs, not warehousing costs. Given this reporting failure, petitioners argue that the Department should not deduct inventory carrying costs from normal value.

Chia Far argues that petitioners' claims are unfounded. First, Chia Far claims that its inventory carrying costs only include imputed costs, not actual warehousing costs (Chia Far claims it used the following formula to calculate inventory carrying costs: ((Unit Cost of Manufacturing x the number of days between end of production and shipment date)/365) x average short-term interest rate of loans (in New Taiwan dollars)). Second, Chia Far notes that the Department's questionnaire instructs respondents to calculate inventory carrying costs covering the period between the end of production and the date of shipment. Third, Chia Far claims that the reference to "the average length of time in inventory" in the Department's questionnaire does not preclude a respondent from calculating inventory carrying costs on a sale-specific basis. Moreover, Chia Far claims that it is more accurate to report inventory carrying costs on a sale-specific basis rather than an average basis.

Finally, Chia Far contends that the Department did not instruct it to revise the reported inventory carrying costs to exclude those costs associated with the post-sale warehousing period. Rather, the Department instructed Chia Far to exclude actual warehousing costs (i.e., rent, lighting, guards, and movement expenses) from its inventory carrying costs. Chia Far claims it responded fully to the Department by noting that it reported only *imputed* inventory carrying costs. Thus, Chia Far urges the Department to accept the reported inventory carrying costs.

Department's Position:

We disagree with petitioners. The Glossary of Terms in Appendix I of the Department's antidumping questionnaire defines inventory carrying costs as the "interest expenses incurred (or interest revenue foregone) between the time the merchandise leaves the production line at the factory to the time the goods are *shipped* to the first unaffiliated customer." Emphasis added. This definition is consistent with the Department's practice. See Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 67 FR 15531 (April 2, 2002) and accompanying Issues and Decision Memorandum at Comment 19 ("Once the merchandise is shipped to the customer, it is no longer in the company's inventory and therefore the inventory carrying period is over – and the credit period begins."). Additionally, although companies typically calculate inventory carrying costs using the average length of time products are held in inventory, the Department has accepted inventory carrying costs based on actual transaction-specific carrying periods. See

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 38417, 38422 (August 13, 1991) at Comment 18 ("Since FGL was able to provide the actual inventory period for each individual transaction, we used that {sic} data to determine FGL's U.S. inventory carrying cost.").

In addition, contrary to petitioners' claim, the Department never instructed Chia Far not to report inventory carrying costs associated with the post-sale warehousing period. Rather, the Department instructed Chia Far to exclude actual warehousing costs from its reported inventory carrying costs. See Chia Far's July 15, 2005, SQR at 3 (in question 6 the Department stated that "{t}he INVCARH field should contain only imputed inventory carrying costs (opportunity costs), not warehousing costs."). In response to the Department's instruction, Chia Far stated that it "reported only imputed inventory carrying costs, not warehousing costs." See Chia Far's July 15, 2005, SQR at 3. Lastly, we note that the methodology Chia Far used to report inventory carrying costs in the home market was verified and accepted by the Department in the previous administrative review. See Chia Far's September 13, 2005, submission, at page 20 of the Attachment. Given the foregoing, we have accepted the inventory carrying costs reported by Chia Far.[17]

Comment 7: U.S. Indirect Selling Expenses

Petitioners maintain that Chia Far's U.S. affiliate, Lucky Medsup Inc. (Lucky Medsup), under-reported its indirect selling expenses by treating a payment to its owner as a dividend rather than compensation. According to petitioners, the documents Chia Far submitted to the Department to show that the payment was a dividend contain nothing to support Chia Far's claim. Rather, petitioners assert that these documents contain numerous inconsistencies and should be rejected. Accordingly, petitioners request that the Department increase Lucky Medsup's reported indirect selling expenses by the unreported compensation.

Chia Far disagrees with petitioners. First, Chia Far notes that Lucky Medsup's financial statements identify the payment in question as a distribution from retained earnings, separate from the officer's salaries and wages. Chia Far adds that the amount of wages and salaries paid by Lucky Medsup during the year is consistent with the operation of an individually owned and operated business located within a residence and the company's total gross and net (before refunds) profit for the year. Chia Far asserts that the dividend payment was funded by prior years' retained earnings and a refund of duties. Second, Chia Far claims that Lucky Medup's bank register shows that the payment was considered to be a distribution of profit (notations for other entries in the check register refer to salary payments). See Exhibit 27 of Chia Far's April 26, 2005, SQR. Consequently, Chia Far states that the Department should not treat the dividend as an indirect selling expense.

[17] Although we have accepted the reported inventory carrying costs, we have not reduced normal value by these costs because these costs form part of the constructed export price offset which we did not grant in this review.

Department's Position:

We disagree with petitioners. The record shows that Lucky Medsup, and its owner, recorded the payment in question as a distribution of retained earnings, not a salary payment.[18]

Although the Department has, at times, considered distributions from retained earnings to be compensation, there is no basis to do so here. In Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom, 61 FR 51411, 51419 (October 2, 1996) at Comment 13, the Department noted that the owner of a closely-held company could issue dividends in lieu of salaries. In that case, the Department found that after the initiation of the antidumping duty investigation, the respondent changed its practice of not issuing dividends and reallocated "director's compensation to dividends." Thus, the Department reclassified the dividends as an expense. See id. This fact pattern does not exist in the instant review. An examination of Lucky Medsup's financial statements covering all, or a portion of, the instant and prior review periods in this proceeding does not indicate that money normally paid to the owner as a salary was reclassified as a distribution.[19] Therefore, we have continued to treat the payment as a distribution and have not adjusted U.S. indirect selling expenses.

Comment 8: Reimbursement of Dumping Duties

Petitioners request that the Department investigate whether Chia Far reimbursed Lucky Medsup for antidumping duties given the duty refund reported on Lucky Medsup's 2003 federal income tax return (see Chia Far's December 13, 2004, SQR at Exhibit A-31). If Chia Far was reimbursed, petitioners state that the Department should double the antidumping duties owed.

Chia Far claims that petitioners' request is untimely and based on speculation. Chia Far suggests that the source of the "other income - duty refund" entry in the 2003 financial statement most likely is the refund of excess antidumping duty cash deposits paid by Lucky Medsup during the 2000-2001 administrative review.

Department's Position:

We disagree with petitioners. The record evidence does not indicate that Chia Far reimbursed Lucky Medsup for antidumping duties. Furthermore, absent such evidence, there was no reason for the Department to reopen the record to pursue petitioners' allegation, which they made for the

[18] Lucky Medsup's fiscal year 2003 financial statement in Exhibit A-17 of Chia Far's September 22, 2004, AQR; Lucky Medsup's 2003 federal and state tax returns in Chia Far's December 13, 2004, SQR; and the copy of a check register on page 2 of Exhibit C-27 of Chia Far's April 26, 2005, SQR.

[19] Memorandum to the File from Melissa Blackledge, 2000 and 2001 Balance Sheets and Income Statements of Lucky Medsup, Inc., dated August 1, 2005; and Chia Far's AQR at Exhibit A-17.

first time in their case briefs. Thus, the Department has not made the adjustment requested by petitioners.

Comment 9: Affiliation with Lucky Medsup, Inc.

In the preliminary results of review, the Department, as it has done in prior reviews, considered Chia Far to be affiliated with one of its U.S. customers, Lucky Medsup. This decision was based on the fact that: (1) Chia Far could not provide any documents to demonstrate that its agency agreement with Lucky Medsup was terminated and the principal-agent relationship no longer exists, and (2) Chia Far's degree of involvement in Lucky Medsup's U.S. sales is similar to that found in prior reviews. Specifically, the Department noted that Chia Far played a role in the sales negotiation process with the end-customer (Chia Far was informed of the identity of the end-customers and the sales terms that they had requested before it set its price to Lucky Medsup), Lucky Medsup's sales order confirmation identifies Chia Far as the manufacturer, and Chia Far shipped the merchandise directly to end-customers and provided technical assistance directly to certain end-customers. Lastly, the Department pointed out that, as was true in prior segments of the proceeding, during the instant POR Lucky Medsup did not maintain inventory or further manufacture SSSS.

Chia Far disagrees with the Department's preliminary decision. First, Chia Far claims the record does not support the Department's finding that Chia Far knew the specific prices that Lucky Medsup charged its customers. Chia Far maintains the fact that Lucky Medsup is not limited to a set mark-up or commission indicates that Chia Far does not know the prices charged by Lucky Medsup. Second, the fact that Chia Far cannot produce the 10 year-old document that terminated the principal-agent relationship with Lucky Medsup should not lead the Department to assume that this relationship continues when there is no fresh evidence of such a relationship. In fact, Chia Far contends that a number of the aspects of its relationship with Lucky Medup that were cited by the Department in its decision are not unusual. Specifically, Chia Far claims the fact that Lucky Medsup's customers knew Chia Far was the producer of the merchandise they purchased is not unusual because they would want to ensure that they were dealing with a reliable supplier. Further, Chia Far claims it is not surprising that it knew certain terms of Lucky Medup's sales, namely quantity and the product specifications requested by the customer, given that it produced the merchandise to order. Third, Chia Far claims that Lucky Medsup absorbed certain transportation costs for its own account. Fourth, Chia Far points out that there are many importers who sell on a back-to-back basis (and thus do not maintain inventory) who are unaffiliated with the foreign producer/exporter. Thus, maintenance of inventory is not required in order to show that one is not affiliated with the foreign producer/exporter.

Lastly, Chia Far asserts that, apart from Lucky Medsup's activities as a reseller of SSSS produced by Chia Far, no other relationship exists between the two companies. Specifically, Chia Far asserts that: (1) there is no cross ownership between the two companies or sharing of officers or directors; (2) there is no consanguineal relationship between the owner of Lucky Medsup and the owners of Chia Far; (3) the owner of Lucky Medsup operates independently of

Chia Far and his transactions with Chia Far are at arm's length; (4) Chia Far has no contact with Lucky Medsup's U.S. customers and is unaware, at the time of sale, of the price negotiated between Lucky Medsup and its customers; and (5) no exclusive distribution contract exists between the two companies, as evidenced by Chia Far's sales to other U.S. customers, and Lucky Medsup's ability to purchase from alternative suppliers. According to Chia Far, the Department should not place undue weight on the cooperation between Chia Far and the owner of Lucky Medsup, based on previous antidumping duty administrative reviews.

Petitioners respond that the Department should continue to find Chia Far and Lucky Medsup affiliated through a principal/agent relationship. To support this contention, petitioners argue that the principal/agent agreement between Chia Far and Lucky Medsup, by its terms, does not have a termination date, and that no evidence of its termination has been produced. Moreover, petitioners argue that the Department should reject Chia Far's claims concerning the lack of any obligation on the part of Chia Far and Lucky Medsup to deal exclusively with one another because, in addition to being undocumented, such claims do not undercut a finding of affiliation. In determining whether a principal-agent relationship exists, petitioners assert that the Department considers: (1) the foreign producer's role in negotiating price and other terms of sale; (2) the extent of the foreign producer's interaction with the U.S. customer; (3) whether the agent/reseller maintains inventory; (4) whether the agent/reseller takes title to the merchandise and bears the risk of loss; (5) whether the agent/reseller further processes or otherwise adds value to the merchandise; (6) the means of marketing a product by the producer to the U.S. customer in the pre-sale period and; (7) whether the identity of the producer on sales documentation inferred such an agency relationship during the sales transaction (hereinafter, the "affiliation factor(s)").[20] Based on these criteria, petitioners contend, as explained below, that Chia Far is affiliated to Lucky Medsup

First, petitioners note that at the beginning of the negotiation process, Lucky Medsup identifies its customer to Chia Far and waits for pricing and availability information from Chia Far before it quotes a price to the U.S. customer. Second, petitioners point to certain proprietary information on the record which, according to petitioners, indicates that Chia Far controls the terms of Lucky Medsup's sales. Third, petitioners note that Lucky Medsup does not maintain any inventory in the United States. Petitioners state that while not individually determinative of affiliation, not maintaining an inventory weighs in favor of the Department finding affiliation. Fourth, petitioners claim that the manner in which the risk of loss is borne on the sales to Lucky Medsup and its downstream customers supports the Department's principal-agent determination. According to petitioners, the Department is not concerned with who bears transportation costs but with who bears the risk of loss. Fifth, petitioners state that Chia Far's response to section A of the antidumping questionnaire establishes that Lucky Medsup does not process or add value to the merchandise. Sixth, petitioners assert that documents on the record show that Lucky Medsup markets the merchandise on behalf of Chia Far. Finally, petitioners claim that the negotiation

[20] Final Results and Partial Rescission of Antidumping Duty Review of Stainless Steel Sheet and Strip in Coils from Taiwan, 67 FR 6682 (February 13, 2002) and accompanying Issues and Decision Memorandum, at Comment 23.

process noted above (whereby Lucky Medsup waits for pricing and availability information from Chia Far before quoting a price to the U.S. customer) coupled with the fact that Chia Far is identified in certain sales documentation, permits one to infer that an agency relationship exists.

Furthermore, petitioners argue that the Department's sales verification report covering the prior administrative review in this proceeding[21] does not detract from the Department's affiliation finding here. Petitioners assert the fact that Lucky Medsup's affiliation with Chia Far is not noted in the financial statements examined by the Department is irrelevant because there is no evidence that the definition of affiliated parties under Taiwanese GAAP is identical to that in the Act. Moreover, petitioners claim that the Department's finding that only one individual owned Lucky Medusp is irrelevant because the ownership structures of the principal and agent have no importance in finding affiliation based on agency. In addition, petitioners claim the sales process described in the verification report supports the existence of a principal/agent relationship. Specifically, petitioners claim the report shows that Chia Far controls the U.S. sale because the report notes that Lucky Medsup "first contacts its supplier, Chia Far, regarding price and availability and that "Lucky Medsup never provides a price quote to its customer without first confirming prices and availability with Chia Far."[22] Lastly, petitioners note that in the prior administrative review in this proceeding, the Department treated Lucky Medsup as an affiliated party in its duty absorption determination.

Department's Position:

Upon review of the administrative record, we continue to find that Chia Far and Lucky Medsup are affiliated, as in accordance with section 771(33) of the Act. We find the fact pattern in the instant review is unchanged from previous administrative reviews.[23] During the first administrative review in this proceeding, the Department found Chia Far and its U.S. reseller, Lucky Medsup, to be affiliated by way of a principal-agency relationship.[24] The Department based its finding on: (1) a document evidencing the existence of a principal-agent relationship; (2) Chia Far's degree of involvement in sales between Lucky Medsup and its customers; (3) evidence indicating Chia Far knew the identity of Lucky Medsup's customers, and the customers

[21] Chia Far placed the Department's 2002/2003 Verification report (for Chia Far) on the record in this review. See Chia Far's September 13, 2005, submission to the Department.

[22] See petitioners' rebuttal brief at 9 and 10 quoting the Department's verification report..

[23] See Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 7715 (February 15, 2005); and Amended Final Determination in Accordance with Court Decision of the Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils From Taiwan, 69 FR 67311 (November 17, 2004).

[24] Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 6682 (February 13, 2002); affirmed by Chia Far Industrial Factory Co. v. United States, 343 F. Supp. 2d 1344 (CIT 2004).

were aware of Chia Far; (4) Lucky Medsup's operations as a "go-through" who did not maintain any inventory or further manufacture products; and, (5) Chia Far's inability to provide any documents to support its claim that the document evidencing the principal-agent relationship was not valid during the POR.[25]

On August 1, 2005, the Department placed on the record a document originally submitted by petitioners in the first administrative review establishing the existence of a principal/agent relationship between Chia Far and Lucky Medsup. This document indicates a principal/agent relationship started at one point in time. Also, this document does not specify an effective ending date of the relationship. Therefore, the evidence indicates that Chia Far and Lucky Medsup continue to maintain a principal/agent relationship.

Furthermore, Chia Far's degree of involvement in Lucky Medsup's U.S. sales is similar to that found in prior reviews. Specifically, Chia Far played a role in the sales negotiation process with the end-customer. During the negotiation process, Chia Far was informed of the identity of the end-customers[26] and of certain sales terms that they had requested before it set its price to Lucky Medsup. Also, Lucky Medsup's sales order confirmation identifies Chia Far as the manufacturer. In addition, Chia Far shipped the merchandise directly to end-customers and provided technical assistance directly to certain end-customers. Finally, as was true in prior segments of this proceeding, during the instant POR Lucky Medsup did not maintain inventory or further manufacture SSSS.

Additionally, the Department determines that the record of this review does not contain evidence which supports Chia Far's claim that the document placed on the record by the Department was invalid during the POR. Throughout this administrative review, Chia Far had the opportunity to submit documents on the record evidencing the termination of the principal/agent relationship previously established. However, no such documents were ever submitted to the Department. The existence of a document which, on its face, indicates that the principal/agent relationship between Chia Far and Lucky Medsup exists, not only supports petitioners' allegation, but, in addition to the criteria listed above, distinguishes the relationship between Chia Far and Lucky Medsup from Chia Far's relationships with its other U.S. customers. Furthermore, we are unpersuaded by Chia Far's assertion that the absence of commission payments to Lucky Medsup proves that a principal/agent relationship did not exist during the POR. As stated in the Preliminary Results, the Department employs many criteria in analyzing whether a principal/agent relationship exists, none of which deal specifically or solely with commission payments. See Preliminary Results at 46141.

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[25] Id. and accompanying Issues and Decision Memorandum, at Comment 23.

[26] This does not appear to be the case when Chia Far sold SSSS to U.S. customers other than Lucky Medsup. See Chia Far's AQR at Exhibit A-12.

Thus, for the reasons noted above, the Department continues to find that Chia Far and Lucky Medsup are affiliated via a principal/agent relationship in accordance with section 771(33) of the Act.

Comment 10: Identifying the Producer

Chia Far identified itself as the manufacturer of the SSSS that it processed and sold in the home and U.S. markets. In the preliminary results, however, we determined that Chia Far was not the producer of certain coils sold in the home market and excluded these sales from Chia Far's home market sales file (these were not sales of merchandise produced by the same person as the merchandise sold to the United States and thus, pursuant to section 771(16) the Act, these were not sales of foreign like product). Specifically, we did not consider Chia Far to be the producer when it purchased "mother coils" from unaffiliated parties and performed insignificant processing on the coils before reselling them (e.g., annealing, slitting, surface finishing). Further, we did not consider Chia Far to be the producer of the cold-rolled coils it purchased even if Chia Far further cold rolled the coils (we noted that further cold-rolling does not appear to change the fundamental characteristics of a product that has already been cold-rolled).

Chia Far maintains that the Department erred in the preliminary results because it incorrectly interpreted the phrases "produced in the same country" and "produced by the same person," appearing in the statutory discussion of "foreign like product," as requiring that the foreign like product be substantially transformed by the respondent in order for that respondent to be the producer. According to Chia Far, identification of the producer and the country of origin are two separate inquiries as illustrated in Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 69 FR 74495 (December 14, 2004) and accompanying Issues and Decision Memorandum at Comment 4 (Stainless from Belgium). Chia Far states that Stainless from Belgium involved a Belgian producer but the Department found that the product was substantially transformed in Germany by a German toller, and thus it was a product of Germany. Therefore, Chia Far contends that the determination of who is the producer and which country is the country of origin is not co-terminus.

Rather than defining the producer based on substantial transformation, Chia Far believes that a respondent should be considered the producer when raw material inputs acquired by a respondent are subjected to significant processing that adds substantial value and changes the physical characteristics and end uses of the product. Under these criteria, Chia Far contends that it should be considered the producer of the coils it sold because it re-rolled most of the coils and added substantial value to them. Additionally, Chia Far notes that re-rolling requires a substantial capital investment and changes the fundamental physical characteristics of the product in order to achieve specifications required by the customer. Specifically, Chia Far maintains that it should be considered the producer of finished coils that it subjected to any one of the following processes: coil build up and cold-rolling, bright annealing, skin passing, or slitting.

Lastly, Chia Far proposes that the Department adopt the test employed by the International Trade Commission (ITC), to determine whether persons are domestic producers of the like product for injury determinations. Chia Far argues that the ITC's test is reasonably related to the plain meaning of the statutory term "producer" and it makes sense to define the term consistently in the statute. Chia Far asserts it satisfies the six factors of the ITC's test because: (1) it has significant capital invested in cold-rolling facilities; (2) it has substantial technical expertise in the field of producing the subject merchandise; (3) it adds substantial value to the products it re-rolls; (4) its employment level militates in favor of being determined a producer of the foreign like product; (5) it sources both hot-rolled and cold-rolled coils in Taiwan, as well as other countries; and, (6) it incurs all other costs and expenses related to re-rolling in Taiwan, and all production decisions are made there.

Petitioners maintain the Department was correct in preliminarily finding that Chia Far was not the producer of the coils it processed because (1) Chia Far performed only minor, insignificant processing on the coils, such as annealing, slitting and surface finishing, and (2) Chia Far was not the first party to cold-roll the coils (the first cold-rolling substantially transforms the coils and establishes the producer of the merchandise). Contrary to Chia Far's claim, petitioners argue that Stainless from Belgium supports the Department's preliminary decision because that case identifies minor processing as painting, slitting, finishing, pickling, oiling and annealing of coils and it indicates that the first party to cold-roll the coil substantially transforms it and becomes the producer. Petitioners argue that here, SSSS cannot be said to be produced by Chia Far unless Chia Far substantially transformed it. Citing the Department's preliminary finding that secondary cold-rolling does not change the fundamental character of the coil, petitioners argue Chia Far performed no such substantial transformation. Additionally, petitioners contend that the amount of value added to a product does not address the heart of the matter at hand, namely, whether the respondent has created a new product. Petitioners note that expensive packaging could add substantial value to a product but such a process does not result in a new product.

Finally, petitioners add that the Department should not jettison the substantial transformation test in favor of the test used by the ITC. Petitioners point out that the CIT has found it appropriate for the Department to rely upon the well-established substantial transformation test in determining the proper country of origin and producer. According to petitioners, the ITC's criteria offer little insight into the level of processing performed by the respondent. Further, petitioners note that the ITC uses its criteria to identify the U.S. industry for injury purposes, not to identify the producer of foreign like product.

Department's Position:

We considered the party who gave the product its fundamental characteristics (i.e., the basic characteristics which define the product) to be the producer of the product. Chia Far's annealing, slitting and surface finishing of stainless steel coils did not give the finished coils their fundamental characteristics (e.g., resistance to corrosion and oxidation in a wide range of service conditions, chemical composition, coil form and dimensions which distinguish the product from

plate, and, in the case of cold-rolled coils, the product characteristics which distinguish cold-rolled coils from hot-rolled coils (see below)). Rather, the "mother coils" that Chia Far purchased and annealed, slit, and/or further worked to improve the shape and/or surface quality, already possessed the fundamental characteristics of the finished product. Thus, we did not find Chia Far to be the producer of the stainless steel coils that it purchased and further processed using any of the following processes: coil build-up, bright annealing, skin pass processing, tension leveling, or slitting.

This same line of reasoning applies when Chia Far purchased stainless steel cold-rolled "mother coils" and further cold-rolled the coils. Stainless steel cold-rolled coils are distinguished from hot-rolled coils by their reduced thickness, tighter tolerances, better surface quality, and increased hardness which are achieved through cold-rolling. Chia Far's cold rolling of the cold-rolled coils that it purchased may have modified these characteristics to suit the needs of particular customers; however, it did not impart these defining characteristics to the finished coils.[27] Thus, we did not find Chia Far to be the producer of the cold-rolled stainless steel coils that it purchased and further processed using any of the following processes: coil build-up, cold-rolling, bright annealing, skin pass processing, tension leveling, or slitting.

Finally, the ITC criteria cited by Chia Far are used to identify parties whose level of involvement in activities related to the production of subject merchandise warranted their inclusion within the U.S. industry that produced subject merchandise. These criteria do not necessarily address the issue here, namely which party imparts the defining characteristics to the product. Thus, we have not employed these criteria.

B. Issue with Respect to YUSCO

Comment 11: Unreported Affiliates

Petitioners allege that YUSCO failed to disclose all of its affiliated parties and demonstrate that its relationships with these parties could not affect the production, pricing, or cost of subject merchandise. Specifically, petitioners claim YUSCO should have identified all of its affiliated parties, even those not directly involved with subject merchandise, and then demonstrated that its relationship with the affiliates did not have the potential to affect subject merchandise. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27298 (May 19, 1997) (noting that the Department will not ignore control relationships which directly relate to non-subject merchandise but which could affect subject merchandise). Given the importance of affiliations in calculating dumping margins and YUSCO's failure to properly report its affiliated parties, petitioners believe YUSCO's dumping margin should be based on total adverse facts available (AFA).

[27] On the other hand, Chia Far did impart these defining characteristics to the hot-rolled coils that it cold rolled. Therefore, we agree with Chia Far that it is the producer of such coils.

YUSCO contends that, as preliminarily determined by the Department, it is not affiliated to the parties identified by the petitioners. According to YUSCO, the petitioners have merely recycled arguments already rejected by the Department. Thus, YUSCO contends there is no basis for the Department to reverse its affiliation determinations in the final results of this review.

The parties' specific arguments regarding affiliation are summarized and addressed below.

A. Yieh Loong

Petitioners contend that YUSCO and one of its suppliers, Yieh Loong, are affiliated because YUSCO's chairman Mr. I-Shou Lin (I. S. Lin) is in a position to exercise restraint or direction (control) over both companies. In support of their position, petitioners note that one company associated with Mr. I. S. Lin, Lien Shou Investment and Development Co., Ltd. (Lien Shou), holds shares in YUSCO and is a member of YUSCO's and Yieh Loong's Board of Directors. Petitioners compare the instant situation to that found in the antidumping duty investigation of hot-rolled carbon steel flat products from Taiwan. In that case, respondent argued it was not affiliated with several companies because (1) its equity ownership in the companies (and vice versa) was less than five percent and (2) the board member it shared with these companies had neither the time nor the ability to direct the day-to-day operations of the companies.[28] Petitioners note that the Department rejected the respondent's arguments and found the respondent to be affiliated with these companies given the extensive power of the board (Taiwanese law indicates that a company's strategy and daily operations are decided by the Board of Directors) and the fact that the respondent shared a common Chairman of the Board with these companies. With respect to the instant review, petitioners assert that the Department wrongly focused on the lack of control because of Lien Shou's minority position on the board (Mr. Lin controls only one of three seats on Yieh Loong's Board of Directors) and the absence of any evidence of *actual* control. According to petitioners, the Department merely needs to find the potential to control in order to find affiliation and that minimum requirement is met here.[29]

In addition to not disclosing its affiliation with Yieh Loong, petitioners claim that YUSCO withheld information regarding the direct and indirect cross ownership that certain YUSCO affiliates have in YUSCO and Yieh Loong. Petitioners also state that YUSCO failed to demonstrate that the control relationships involving Yieh Loong and the companies with cross

[28] See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Taiwan, 66 FR 49618 (September 28, 2001) (Hot-Rolled Steel From Taiwan) and accompanying Issues and Decision Memorandum at Comment 2.

[29] See Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 70 FR 19418 (April 13, 2005), and accompanying Issues and Decision Memorandum at Comment 1 (where the Department stated that " . . . the Department focuses its analysis on one company's ability to control the other and does not require evidence of the actual exercise of control by one party over the another {sic}.").

ownership in YUSCO and Yieh Loong, do not have the potential to affect subject merchandise. See Preamble, 62 FR at 27297, 27298. Thus, petitioners argue that the Department should find YUSCO to be affiliated with Yieh Loong and the other companies having cross ownership in YUSCO and Yieh Loong.

YUSCO disagrees. According to YUSCO, Mr. I. S. Lin does not have the ability to control Yieh Loong given that he is not the company's Chairman, his indirect ownership interest in the company is not significant, and another entity controls two of the three seats on Yieh Loong's board of directors (thus nullifying Mr. Lin's ability to exercise restraint or direction through Lien Shou's membership on Yieh Loong's board).

YUSCO argues that the decision in Hot-Rolled Steel From Taiwan does not apply here.[30] YUSCO maintains that unlike the instant case, in Hot-Rolled Steel From Taiwan, there was evidence that (1) the common Chairman of the Board of the companies in question controlled those companies (in Hot-Rolled Steel From Taiwan the Department focused heavily on the role of the Chairman of the Board; however, YUSCO and Yieh Loong do not share a common Chairman), (2) the companies in question functioned and cooperated as affiliated companies,[31] and (3) the companies found to be affiliated were deemed affiliated under Taiwanese law.[32] Additionally, YUSCO notes that in Hot-Rolled Steel From Taiwan, the Department collapsed two respondents and determined that affiliates of either collapsed company are affiliates of the collapsed entity.[33] In this case, YUSCO points out, there is no basis to collapse any of YUSCO's affiliates with other parties.

Finally, YUSCO contends that, contrary to petitioners' claim, it identified the percentage of Yieh Loong owned by YUSCO affiliates. See Exhibit 6 of YUSCO's April 4, 2005, SQR. YUSCO notes that the cumulative ownership percentage is below the 5 percent affiliation threshold in the Act. Based on the foregoing, YUSCO concludes that the Department should reject petitioners' argument regarding YUSCO's affiliation with Yieh Loong.

Department's Position:

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[30] See Petitioners' case brief at 6, citing Antidumping Investigation of Certain Hot-Rolled Carbon Steel Flat Products from Taiwan - October 1,1999 through September 30, 2000 (Sept. 28, 2001) and accompanying Issues and Decision Memo at Comment 2 ("Hot-Rolled Decision Memorandum").

[31] Id. ("Moreover, we note that these companies hold themselves out to the world as affiliated, and originally reported themselves that way to the Department.")

[32] Id. ("{U}nder Taiwanese law the companies are still considered affiliates due to a common chairman.")

[33] Id.

We disagree with petitioners. While Lien Shuo, an investment company associated with Mr. Lin, held a seat on Yieh Loong's Board of Directors, this alone does not indicate that Mr. Lin is in a position to exercise restraint or direction over Yieh Loong. In some cases, a minority position on the Board of Directors, coupled with other indicia of control, may lead the Department to determine that one party is in a position to control another party. Here, however, there are no other indicia of control. Thus, we have determined that YUSCO and Yieh Loong are not affiliated under section 771(33)(F) and (G) of the Act.[34] Moreover, given that there is no evidence of a control relationship (i.e., evidence that one person is in a position to control both YUSCO and Yieh Loong), YUSCO did not have the burden to prove that its relationship with Yieh Loong could not affect the subject merchandise or foreign like product.

Petitioners' reliance on Hot-Rolled Steel From Taiwan is misplaced. In that case, the Department found certain companies to be affiliated because they had a common Chairman of the Board and the *Chairman*[35] had extensive powers under Taiwanese law. Specifically, the Department noted that under Taiwanese law, the "chairman of the board of directors shall internally preside at the meetings of shareholders, meetings of the board of directors, and meetings of the managing directors and shall externally represent the company." See Hot-Rolled Steel From Taiwan: Issues and Decision Memorandum at Comment 2. In the instant review, Lien Shou, an investment company associated with Mr. Lin, does not hold the Director's seat on YUSCO's board. Rather, Lien Shou's seat on Yieh Loong's Board of Directors simply allows it to cast one of three votes on resolutions before the board. Lien Shou cannot, on its own, make decisions affecting Yieh Loong. See YUSCO's July 22, 2005, SQR response to question 3a. Additionally, in Hot-Rolled Steel From Taiwan, the Department noted that the companies in question held themselves out as affiliates, were affiliated under Taiwanese law (companies with a common Chairman are affiliated), and originally reported to the Department that they were affiliates. None of these facts are present in the instant review.

Finally, we note that Exhibit 6 of YUSCO's April 4, 2005, SQR contains a list of the number and percentage of Yieh Loong's shares that are owned by YUSCO's affiliates. Also, YUSCO placed on the record these affiliates' financial statements which disclose the shareholdings that these companies have in other YUSCO affiliates as well as in Yieh Loong and YUSCO. This information allows one to calculate each of these affiliates' indirect ownership in YUSCO and Yieh Loong. Therefore, we disagree with petitioners' claim that YUSCO withheld information regarding these affiliates' direct and indirect holdings in YUSCO and Yieh Loong. Further,

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[34] Under section 771(33) (F) and (G) the following are persons considered to be "affiliated:" "(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person. (G) Any person who controls any other person and such other person. For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

[35] Contrary to petitioners' brief, in Hot-Rolled Steel From Taiwan the Department found common control because of the common Chairman and the extensive power of the *Chairman,* in particular, and not because of the extensive power of the overall board.

because there is no evidence of a control relationship between YUSCO and Yieh Loong involving YUSCO's affiliates, YUSCO did not have the burden to prove that its relationships with these companies could not affect the subject merchandise or foreign like product.

B. China Steel Corporation

Petitioners contend that YUSCO is affiliated with China Steel Corporation (CSC) under section 771(33)(F) and (G) of the Act because: (1) Mr. I. S. Lin, who serves as YUSCO's Chairman and holds a number of seats on YUSCO's Board of Directors, also holds, through Yieh Loong and an investment company with which he is associated, two seats on CSC's Board of Directors; and (2) Mr. I. S. Lin holds the third largest percentage of shares in CSC. In addition, while YUSCO, at the Department's request, provided financial statements for a number of its affiliates that have direct or indirect cross ownership in YUSCO and CSC, petitioners claim YUSCO withheld information regarding these direct and indirect holdings and, contrary to its obligation, has not demonstrated that these relationships did not have an actual or a potential impact on the production, pricing or cost of YUSCO's SSSS. See Preamble.

Lastly, petitioners argue that the Department erred in the Preliminary Results when it decided not to determine whether CSC was affiliated to YUSCO given that there were no transactions between these companies that involved subject merchandise. Petitioners state that this approach wrongly placed the burden on petitioners to demonstrate that any relationship between YUSCO and CSC could affect subject merchandise. According to petitioners, the Department should first determine whether CSC is affiliated to YUSCO and then leave it to YUSCO to demonstrate that its relationship with CSC did not affect subject merchandise. Here, petitioners claim YUSCO has not made such a demonstration.

YUSCO claims that the Department should reject petitioners' arguments. As an initial matter, YUSCO agrees with the Department's preliminary determination that there were no transactions between YUSCO and CSC related to subject merchandise and thus no potential for the relationship between these companies to affect production or pricing decisions regarding subject merchandise. YUSCO also maintains that there is no factual merit to petitioners' claims: (1) petitioners cannot point to any meaningful stock ownership (i.e., above 5 percent) in CSC by YUSCO or any of its affiliates, and (2) there is no evidence that YUSCO was able to exert any control over CSC. According to YUSCO, any connection it might have had to CSC's board of directors is irrelevant because it did not make any sales to the United States during the period that this connection existed. Thus, YUSCO concludes, it would not have been possible for this relationship to affect either sales to the United States or the dumping margin.[36] Finally, YUSCO states that, contrary to petitioners's claim, it provided a detailed disclosure of its affiliates' holdings.

Department's Position:

[36] See YUSCO's May 9, 2005, submission at 2-3 for additional discussion.

We disagree with petitioners' position that YUSCO and CSC are affiliated under sections 771(33)(F) and (G) of the Act. First, as explained above, Yieh Loong is not controlled by Mr. I. S. Lin nor is it affiliated with YUSCO. Thus, contrary to petitioners' claim, Mr. I. S. Lin does not hold a seat on CSC's Board of Directors through Yieh Loong. While one investment company associated with Mr. Lin does hold a seat on CSC's 11-member Board of Directors, this alone does not indicate that Mr. Lin is in a position to exercise restraint or direction over CSC. In some cases, a minority position on the Board of Directors, coupled with other indicia of control, may lead the Department to determine that one party is in a position to control another party. Here, the only other indication of control alleged by petitioners is their claim that Mr. I. S. Lin holds the third largest percentage of shares in CSC. The record, however, does not support this claim. Specifically, the record only shows the total of CSC's shares held by YUSCO and its affiliates, and the identity of CSC's board members including the number of shares each held.[37] Even though the information on the record allows us to determine Mr. Lin's indirect ownership in CSC (Mr. Lin does not directly own any shares in CSC), the record does not contain a list of CSC's top shareholders and thus does not allow one to identify Mr. Lin's position among CSC's shareholders. Hence, the record does not support petitioners' claim. Moreover, the portion of CSC's shares owned by Mr. Lin through other companies is not as significant as petitioners have indicated and does not establish control over CSC.[38] Therefore, we have determined that YUSCO and CSC are not affiliated under sections 771(33)(F) and (G) of the Act.

Finally, we note that Exhibit 7 of YUSCO's November 15, 2004, AQR contains a list of the number and percentage of CSC's shares owned by YUSCO and its affiliates. Also, YUSCO placed on the record these affiliates' financial statements which disclose the shareholdings that these companies have in other YUSCO affiliates as well as in CSC and YUSCO. This information allows one to calculate each of these affiliates' indirect ownership in YUSCO and CSC. Therefore, we disagree with petitioners' claim that YUSCO withheld information regarding these affiliates' direct and indirect holdings in YUSCO and CSC. Further, because there is no evidence of a control relationship between YUSCO and CSC involving YUSCO's affiliates, YUSCO did not have the burden to prove that its relationships with these companies could not affect the subject merchandise or foreign like product.

C. Investment and Development Companies Associated With Mr. Lin.

YUSCO's Chairman, Mr. I. S. Lin, and his family use a number of investment companies to hold ownership interests in other entities. Petitioners claim that when cross-ownership between these investment companies is taken into account, Mr. I. S. Lin's percentage of ownership in these investment companies is much greater than reported, and indicates that these companies are

[37] See YUSCO's November 15, 2004, section A questionnaire response (AQR), at Exhibit 7.

[38] See Id. and Exhibit 1 of YUSCO's July 28, 2005, SQR.

affiliated to YUSCO.[39] Additionally, petitioners claim that YUSCO did not identify the commercial activities of these investment companies nor has it demonstrated that the activities of these companies do not have the potential to affect subject merchandise. Petitioners cite record evidence of certain commercially atypical transactions between one investment company and other companies owned by Mr. I. S. Lin to illustrate the need for the Department to obtain information about the activities of the investment companies.[40]

YUSCO contends that cross-ownership between the investment companies is irrelevant because it acknowledged that it was affiliated with these companies and reported all of its transactions with these companies that involved subject merchandise. YUSCO argues that petitioners seek YUSCO to report all of the financial transactions between the various investment companies (rather than between YUSCO and the investment companies), such a request is not supported by any statutory or regulatory requirement. Therefore, YUSCO urges the Department to reject petitioners' argument.

Department's Position:

Given that both parties agree that YUSCO is affiliated with the investment companies, we turn to the question of reporting the commercial activities of the investment companies.[41] We agree with YUSCO that there is no requirement for the respondent to report transactions between its affiliates if it did not have a business relationship with those affiliates during the POR. In this case, YUSCO properly reported its business relationship with all of its affiliated parties.[42] YUSCO also properly submitted its financial statements which contain lists of transactions with affiliated parties as well as the names of the affiliated parties.[43] Thus, YUSCO disclosed its relationship and commercial activities with the investment companies. Moreover, the example of the atypical transaction cited by petitioners did not involve YUSCO and thus is not relevant.

D. Affiliation with E United Group

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[39] Specifically, petitioners state that when cross-ownership is taken into account "there is affiliation in all instances ..." The Department believes that "affiliation in all instances" means petitioners are claiming that YUSCO is affiliated with each of the investment companies.

[40] See Petitioners' Brief at 13 citing to YUSCO's May 6, 2005, SQR at Exhibit 4.

[41] Despite petitioners' claim, the Department is able to determine the Lin family's direct and indirect ownership in the investment companies (see YUSCO's November 15, 2004, AQR, April 4, 2005, SQR, May 6, 2005, SQR, July 28, 2005, SQR and YUSCO's financial statements). Additionally, the example petitioners rely upon to demonstrate that YUSCO under-reported the Lin families' ownership in the investment companies, incorrectly attributes all of the investment companies' holdings in a particular company to Mr. Lin and his family.

[42] See YUSCO's November 15, 2004, AQR, at Exhibit 3.

[43] See YUSCO's August 12, 2005, SQR, at Exhibit 3.

Petitioners claim that YUSCO failed to disclose the true nature of, and its affiliation with, the E United Group. YUSCO reported that the E United Group is not a legal entity with assigned personnel, but is a group of companies associated with Mr. I. S. Lin. However, petitioners note that a February 2005 newspaper article indicates that the E-United Group, one of Taiwan's integrated steel producers, plans to establish a steel mill in southern Taiwan and Australia. The article goes on to state that Mr. I. S. Lin serves as Chairman of the E United group and Mr. Wang serves as Chairman of the group's investment and development committee. Thus, petitioners maintain that YUSCO withheld information about one of its steel producing affiliates.

Moreover, petitioners question the Department's preliminarily determination that the E United Group is a group of companies, rather than one entity. First, petitioners note that this determination was based upon the Department's verification findings from the previous segment of this proceeding, rather than the recent newspaper article cited above. Second, petitioners state that while YUSCO's search for the name "E United" in the Corporation Registry Database of the Government of Taiwan yielded no such name, there is no record evidence that all corporations are recorded in this database or that some variation of the name "E United" is not in the database.

YUSCO rebuts petitioners' argument by referencing to its May 9, 2005, submission. YUSCO states that it has been responsive with respect to E United, identifying the E United Group and its member companies in its questionnaire response and responding to the Department's supplemental questions regarding the Group. In May 9, 2005, submission, YUSCO also explained that the E-United Group could be viewed as one of Taiwan's integrated steel producers (as noted in the newspaper article cited by petitioners) given that YUSCO is an integrated steel producer and a group member and other group members also produce steel products.

Further, YUSCO believes that in reaching its Preliminary Results in this review, the Department properly relied upon its 2002/2003 verification report and YUSCO's search of Taiwan's Corporation Registry Database. YUSCO contends that given a choice between similarly dated pieces of evidence regarding E United's status during the POR, December 2004 verification report and a February 2005 newspaper article, it was reasonable for the Department to rely upon its own findings in its verification report. Additionally, YUSCO maintains that while it is true that the Chinese characters for "E United" can be translated into English in several ways (e.g., literally, phonetically, alternative phonetic spellings, etc.), there is only one set of Chinese characters representing "E United" in Chinese. Thus, YUSCO concludes, petitioners' complaint regarding YUSCO's incomplete search is misplaced.

Lastly, YUSCO maintains that it does not understand how it could have "withheld its affiliation with the E United Group from the Department" if there is no person (legal or actual) to which YUSCO could have been affiliated. YUSCO claims that the Department should reject petitioners' argument regarding the E United Group.

Department's Position:

We disagree with petitioners. The weight of the evidence on the record supports YUSCO's claim that the E United Group is a group of companies rather than a single entity. Not only does our most recent verification in this proceeding support YUSCO's claim that the E United Group is not a legal entity,[44] but the investment research report on one of the E United Group companies that was placed on the record by petitioners confirms that E United is not a legal entity.[45] Moreover, while we noted in the preliminary results of review that there may be several different English translations of the Chinese name for the E United Group, there is nothing to suggest that there are several Chinese versions of the group's name. Thus, we disagree with petitioners claim that YUSCO's search of Taiwan's Corporate Registry Database, which is in Chinese, may have missed a variation of the name for E United. Therefore, we continue to find that the E United Group is a group of companies rather than a consolidated steel producer that is affiliated with YUSCO.

Comment 12: Unreliable Financial Statements

Petitioners contend that the Department cannot rely on YUSCO's financial statements because not all of YUSCO's affiliates (and its transactions with those affiliates) are identified under the related party disclosures in those statements.[46] Specifically, petitioners maintain that under Taiwanese law, companies with a common Chairman are affiliated and yet YUSCO's financial statements do not disclose, as related parties, all companies with the same Chairman as YUSCO. Petitioners name five companies that have the same Chairman as YUSCO but that are not identified as related parties in YUSCO's financial statements. Given this reporting failure, petitioners contend that YUSCO's financial statements cannot serve as a benchmark to check the accuracy of the reported data. Moreover, petitioners state that YUSCO's financial statements are inconsistent with the related party disclosure requirements under U.S. GAAP and possibly under Taiwanese GAAP (if the requirements are the same as U.S. GAAP). Even if the related party rules are not the same under both countries' GAAP, and YUSCO's financial statements comply with Taiwanese GAAP, petitioners contend that under 19 U.S.C. 1677(b)(f)(1) the Department should conclude that Taiwanese GAAP is unreasonable and reject YUSCO's financial statements.

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[44] See the Memorandum from Karine Gziryan and Magd Zalok to the file entitled "Verification of the Sales Questionnaire Responses of YUSCO in the 2002-2003 Antidumping Duty Administrative Review of SSSS from Taiwan," dated December 8, 2004 (2002-2003 Verification report (for YUSCO)), at pages 4 and 5.

[45] Page 4 of the August 26, 2004, report from GC Capital (Asia) Limited states that "E United is not a legal entity." See Petitioners' January 6, 2005, submission to the Department at Enclosure 2.

[46] Specifically, the Accountant's Handbook notes that the disclosure of related parties "should include a description of transactions between related parties." See Accountants' Handbook, Volume One: Financial Accounting and General Topics, D.R. Carmichael, Steven B. Lilien, and Martin Mellman, Ninth Ed., 1999, Chapter 6, Financial Statements: Form and Content, at 6.8.

YUSCO disagrees with petitioners' claims for the following reasons. First, YUSCO argues that its financial statements are consistent with both Taiwanese GAAP[47] and the accounting provision cited by petitioners. Specifically, YUSCO maintains that its statements contain a list of affiliated parties with whom YUSCO had financial transactions as well as descriptions of those transactions. YUSCO notes that Taiwanese GAAP and the cited accounting provision only require a description of the transactions between affiliated parties, rather than a list of all affiliated parties, including those with which the company did not have transactions. Moreover, YUSCO contends that there is no record evidence that any of its transactions with affiliated parties were omitted from its financial statements. Second, YUSCO points out that its financial statements were audited by a Certified Public Accountant and found to be in compliance with governmental regulations and Taiwanese GAAP. YUSCO asserts that it would be unprecedented for the Department to conclude that a country's GAAP is unreasonable, as suggested by petitioners, without explaining why the GAAP is distortive.

Third, YUSCO explains that the reason that only one of the five companies named by petitioners appears in its financial statements is that it did not have a business relationship with the other four companies. Nevertheless, YUSCO notes that it reported that all five of the companies named were parties to whom it was affiliated. See Exhibit 3 of YUSCO's AQR. Lastly, YUSCO submits that even if its financial statements could not be used to substantiate its reported affiliations, the statements can be used to verify the reported sales and cost information. Moreover, YUSCO points out that the Department does not solely rely on a respondent's financial statements in examining affiliation but relies upon other record information such as shareholders lists, the general ledger, long-term and short-term investments, etc. Given the foregoing, YUSCO urges the Department to reject petitioners' complaint regarding its financial statements and continue to rely on the reported data in the final results of the review.

Department's Position:

We disagree with petitioners. The related party disclosures in YUSCO's financial statements are consistent with Taiwanese GAAP, and the accounting provision cited by petitioners because they include the names of the related companies with which YUSCO had transactions and describe those transactions. The record evidence does not indicate, as suggested by petitioners, that YUSCO's financial statements should disclose the names of all affiliated parties, including those with which YUSCO did not have transactions during the reporting period.[48] Thus, the Department has continued to rely on YUSCO's financial statements for the final results of this review.

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[47] See YUSCO's April 4, 2005, SQR at Exhibit 21 (Republic of China Statements of Financial Accounting Standards No. 6: Disclosure of Related Party Transactions).

[48] See YUSCO's April 4, 2005, SQR at Exhibit 21
(1998 Republic of China Statements of Financial Accounting Standards No. 6: Disclosure of Related Party Transactions).

Comment 13: Misclassified Home Market Sales

According to petitioners, the Department's practice is to classify sales to home market customers as home market sales if the respondent knew, or had reason to know, at the time of the sale, that the merchandise would be consumed in the home market. Even if the respondent is aware, at the time of the sale to the home market customer, that the merchandise will ultimately be exported from the home market, petitioners state that such sales should be classified as home market sales if the respondent knew, or had reason to know, that the customer would convert the product into non-subject merchandise before exportation.

Petitioners contend that rather than correctly applying the foregoing "knowledge test," YUSCO continued to rely upon the same flawed system for reporting home market sales that it used in the 2001-2002 review. Specifically, petitioners claim that YUSCO's initial descriptions of the five databases used to report home market sales show that it failed to consider the issue of consumption in the home market. Those descriptions, according to petitioners, are as follows: HM1-sales to unaffiliated customers; HM2-sales to affiliated customers; HM3-sales to customers with bonded factories in Taiwan; HM4- sales to a home market affiliated customer who will export the SSSS but who may, or may not, further process the SSSS prior to exportation; HM5-sales of YUSCO's SSSS by its affiliate, Yieh Mau. Further, petitioners maintain that YUSCO's responses to the Department's supplemental questions regarding the issue of consumption in the home market failed to address this issue with respect to HM2, HM3 and HM4. Petitioners argue that YUSCO improperly substituted its knowledge, at the time of sale, regarding consumption in the home market with its knowledge regarding the undefined term "further processing." According to petitioners, further processing does not have the same meaning as consumption and can cover a range of processing, in addition to conversion into non-subject merchandise. Petitioners further argue that, contrary to the Department's statement in the Preliminary Results, YUSCO did not indicate in its April 4, 2005, response to the Department that customers of the sales in HM3 were planning to further process the SSSS into non-subject merchandise.

With respect to HM4, petitioners contend the Department also misunderstood the record when it stated, in the Preliminary Results, that "in its HM4 database YUSCO reported its sales to an affiliated home market customer, who has the ability to further process the SSSS into non-subject merchandise...." Petitioners contend that YUSCO did not discuss the "consumption" of SSSS in Taiwan with respect to HM4 sales, instead it again focused on the undefined term, "further processing." Thus, petitioners point out, the Department still does not know whether YUSCO knew or had reason to know at the time of the sales reported in HM4 whether its affiliated customer would consume the merchandise prior to exportation.

With regard to HM5, petitioners argue that this database includes a large number of sales of merchandise shipped to a seaport or a container yard indicating that these were sales of merchandise destined for exportation.[49] Thus, petitioners contend that the Department should

[49] See YUSCO's November 22, 2004, BQR, Yieh Mau database.

conclude that YUSCO has misclassified and erroneously reported export sales as home market sales in HM5.

In summary, petitioners maintain the Department should find that YUSCO, an experienced respondent who is aware of the Department's "knowledge test," chose to withhold vital information regarding "consumption" in Taiwan, has been uncooperative, and has misreported sales in HM2, HM3, HM4, and HM5.

YUSCO contends that, contrary to petitioners' allegation, it did not rely on the same flawed system for sales classification that was used in the 2001-2002 administrative review, but relied on an amended and improved methodology that was used in the 2002-2003 administrative review. YUSCO notes that in the 2002-2003 administrative review, the Department verified YUSCO's amended system and did not note any discrepancies.[50] YUSCO further notes that in the final results of the 2002-2003 administrative review the Department concluded that YUSCO's amended home market sales reporting methodology was appropriate.[51] YUSCO claims that it continued to apply this amended methodology for classifying home market sales in the present review, therefore petitioners' argument has to be rejected.

Moreover, YUSCO maintains that petitioners' factual assertions regarding this issue are based on misrepresentations of its responses. With respect to HM2, YUSCO points out that it directly addressed the issue of consumption and did not base its response on "the undefined term of further processing."[52] Thus, YUSCO claims, there is no basis for the petitioners' complaint regarding HM2.

With respect to HM3 (sales to a bonded factory), YUSCO points out that it clarified in its response that the bonded factory further processes the SSSS into non-subject merchandise. In addition, at the time of sale, YUSCO believed that SSSS sold to this factory would be converted into non-subject merchandise before exportation to foreign countries.[53] Thus, YUSCO claims there is no basis for the petitioners' complaint regarding HM3.

With respect HM4 (sales of SSSS delivered to an affiliate's processing plant), YUSCO points out that it not only emphasized the fact that the affiliate is capable of further manufacturing SSSS into non-subject merchandise prior to exportation,[54] but also provided the percentage of SSSS the

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[50] See 2002-2003 Verification report (for YUSCO) at 12-16.

[51] See Stainless Steel Sheet and Strip in Coils from Taiwan, 70 FR 7715 (February 15, 2005) and accompanying Issues and Decision Memorandum at Comment 9.

[52] See Petitioners' case brief at 21.

[53] Id. at 11-12.

[54] See YUSCO's May 9, 2005, Submission at 9-10, quoting YUSCO's November 22, 2004, section B-C QR at 2-3.

affiliate would convert into non-subject merchandise. Thus, YUSCO asserts, it acted to the best of its ability to provide all information requested by the Department and there is no basis for petitioners' claim regarding HM 4. Therefore, YUSCO requests that the Department reject petitioners' arguments and continue to rely on the reported home market sales in the final results of review.

Department's Position:

We disagree with petitioners. In the final results of the 2002-2003 administrative review the Department accepted YUSCO's amended home market sales reporting methodology and, contrary to petitioners' arguments, YUSCO has continued to apply this amended reporting methodology in the instant review.[55]

Furthermore, we disagree with petitioners' claims that YUSCO failed to address the issue of consumption in the home market. YUSCO addressed the consumption issue with respect to sales reported in HM2 in the same submission, in the same paragraph, and in the same manner as it addressed it for HM1.[56] Furthermore, YUSCO did not base its response on the undefined term "further processing," nor did the Department, in the Preliminary Results, consider this term to mean consumption. While petitioners claim that "YUSCO did not state ... that HM3 customers were planning to further process the SSSS into non-subject merchandise,"[57] YUSCO did, in fact, state that HM3 customers were planning to further process SSSS into non-subject merchandise in its April 4, 2005, response at page 12. Moreover, YUSCO even identified the non-subject merchandise that was to be produced. Therefore, the Department, in its Preliminary Results, correctly addressed YUSCO's knowledge of consumption (i.e., knowledge regarding conversion of SSSS into non-subject merchandise), at the time of sale, with respect to the sales reported in HM3.

With respect to HM4, we also disagree with petitioners' claim that YUSCO relied upon the undefined term, "further processing," instead of discussing consumption. YUSCO emphasized the ability of its affiliated customer to further manufacture SSSS into non-subject merchandise prior to exportation.[58] YUSCO reported these sales as home market sales because the affiliate's factory was capable of further processing the merchandise into non-subject merchandise. It was reasonable for YUSCO to have presumed, at the time of sale, that such processing could take place since the merchandise was delivered to the factory, rather than directly to a seaport.

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[55] See Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 7715 (February 15, 2005) ("Final Results").

[56] See YUSCO's April 4, 2005, SQR at 11.

[57] See Petitioners' case brief at 22.

[58] See YUSCO's May 9, 2005, Submission at 9-10, quoting YUSCO's November 22, 2004, section B-C QR at 2-3.

Moreover, during the course of this review, YUSCO determined that a significant percentage of the merchandise delivered to the affiliate's factory was either sold in the home market or further manufactured into non-subject merchandise before exportation. Thus, it was reasonable for YUSCO to have presumed, at the time of sale, that this merchandise would be consumed in the home market and for YUSCO to have reported these sales as home market sales.

With respect to HM5, we note that although the HM5 database (downstream sales by Yieh Mau) submitted on November 22, 2004, indeed contains data regarding export sales (sales of merchandise delivered to seaports with order numbers starting with the letter "F"),[59] we did not rely upon this database in the Preliminary Results. Instead, we relied upon the revised HM5 database submitted by YUSCO on April 4, 2005 which did not include sales with order numbers starting with the letter "F." However, this revised database also contains data regarding a limited number of sales of merchandise delivered to a seaport, we believe these data were inadvertently left in the database because of a clerical error involving the order number for the transactions (these transactions have order numbers starting with the letter "D" rather than "F"; the letter "F" is typically assigned to orders involving merchandise that will be exported by the customer).[60] Given that these few remaining sales at issue were of merchandise delivered to a seaport, for the final results of review we have excluded these sales from HM5.

Because YUSCO has not withheld information regarding "consumption" in the home market or used a reporting methodology that would cause the Department to call into question the reported home market sales, for the final results of review, we have continued to rely upon YUSCO's home market databases.

Comment 14: Use of Total Adverse Facts Available for YUSCO

Petitioners urge the Department to base YUSCO's dumping margin on total adverse facts available (AFA) because YUSCO's failure to cooperate with the Department to the best of its ability has resulted in major deficiencies in the record with respect to a number of core issues. Specifically, petitioners claim YUSCO has 1) not disclosed all of its affiliated parties and whether its relationships with these parties could effect the production, pricing, or cost of subject merchandise; 2) provided inadequate financial statements that do not meet the fundamental accounting requirement for broad disclosure of all of YUSCO's related parties; and 3) failed to properly classify its sales (based on its knowledge of where the merchandise would be consumed). Petitioners claim it is evident that YUSCO failed to put forth its maximum effort to cure the reporting failures noted above given that its records most certainly contain the needed information and it has long known what information the Department requires to correct these deficiencies. Given these deficiencies and the CIT's ruling in Nippon Steel, petitioners claim

[59] Although petitioners also claim that HM5 contains data regarding export sales of merchandise that went to container yards, they provided no evidence supporting this claim.

[60] See Stainless Steel Sheet and Strip in Coils from Taiwan, 70 FR 7715 (February 15, 2005) and accompanying Issues and Decision Memorandum at Comment 9.

that YUSCO's behavior evinces a failure to cooperate. See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) ("Nippon Steel") (the Department may find that a respondent failed to cooperate to the best of its ability where (1) the respondent should have known that the requested information was required to be kept, and (2) the respondent failed to promptly and fully respond to a request because it failed to maintain the requested information or failed to put forth its maximum efforts to obtain the information from its records).

Petitioners liken the instant situation to that found in Shanghai Taoen where the Department resorted to total AFA because the respondent deliberately provided false information. See Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339 (CIT 2005) ("Shanghai Taoen"). Here, petitioners claim that YUSCO made statements regarding its affiliates that conflict with statements in the public domain and prior submissions by YUSCO. Also, petitioners claim that YUSCO undermined the reliability of its data by: (1) providing inadequate financial statements that do not acknowledge its related parties; (2) mis-classifying its sales; and (3) ignoring or not completely responding to the Department's instructions on other specific issues. Given that the record in this review is extremely deficient, and the affiliation and sales classification issues are core, rather than tangential issues, petitioners assert that partial adverse facts available are not appropriate and thus the Department should base YUSCO's dumping margin on total AFA.

YUSCO did not comment on the application of AFA in the instant review.

Department's Position:

We disagree with petitioners. As discussed in our position on issues 11 through 13 above, we have not found the record to be deficient, as alleged by petitioners. Thus, we have not resorted to adverse facts available.

Comment 15: U.S. Direct Selling Expenses

Petitioners note, that after reviewing sample documentation for a U.S. sale, the Department requested that YUSCO demonstrate how it reported certain expenses listed on one document.[61] Petitioners claim that YUSCO failed to explain how it reported the interest expenses identified on the document. Given that YUSCO withheld the requested information, petitioners urge the Department to find that YUSCO failed to report this type of interest expense for all of its U.S. sales. Since there is no information on the record regarding the interest expenses incurred on other U.S. sales, petitioners request that the Department reduce each reported U.S. gross unit price by the per-unit interest expense incurred on the U.S. sale in question.

According to YUSCO, it explained the nature of the interest expenses in question, as well as how it calculated and treated those expenses. Specifically, YUSCO claims that it demonstrated that

[61] See YUSCO's January 6, 2005, SQR at Exhibit 26-2.

the interest expenses in question were not attributable to the U.S. sale, but were general short-term loan interest expenses.[62] Therefore, YUSCO argues that the Department should reject petitioners' argument as unsupported by the record.

Department's Position:

YUSCO received payment on its U.S. sales from its local bank before the bank received the customers' payment. The bank charged YUSCO interest on the money it advanced. Contrary to petitioners' claim, YUSCO did not omit how it accounted for these expenses in its questionnaire response. Rather, YUSCO indicated that these expenses were not reported as U.S. direct selling expenses (see YUSCO's July 22, 2005, SQR at 1 ("the interest expenses were not attributable to the U.S. sale, but were general short term loan interest expenses")). However, we disagree with YUSCO's treatment of these expenses. Given that the interest expenses are directly related to the reported U.S. sales, for the final results of this review, the Department has treated the interest expenses in question as direct selling expenses.[63] Further, these expenses do not relate to the period covered by the reported imputed credit expenses. The imputed credit expense covered the period between shipment date and the date YUSCO received payment from the bank. The interest expenses charged by the bank covered the period between the date the bank paid YUSCO and the date the bank received the customer's payment. Contrary to petitioners' argument, the Department has the necessary information on the record to determine the amount of these interest expenses for every U.S. sales observation.

Comment 16: Home Market Rebates

Petitioners note that YUSCO, and its home market affiliate Yieh Mau (whose sales were reported to the Department), allocated the value of rebates granted to a particular customer in a given month to all sales to that customer during the month. Petitioners claim that this allocation methodology is at odds with the way YUSCO and Yieh Mau granted the rebates and recorded them in sales documents. Specifically, petitioners contend that YUSCO did not rely upon the companies' monthly "Rebate Certificate,"[64] which lists rebates on an invoice-specific basis, but

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[62] See YUSCO's July 22, 2005, SQR at 1 ("YUSCO entered the interest charged into its interest expenses account as identified in the May 2004, general ledger... submitted in Exhibit 26-2 of YUSCO January 6, 2005 response.")

[63] See Notice of Final Determination of Sales at Less Than Fair Vaule: Structural Steel Beams from Taiwan, 67 FR 35484 (May 20, 2002) and accompanying Issues and Decision Memorandum at Comment 9 ("The negotiated interest expense is an actual credit expense incurred by Kuei Yi to cover the period between when Kuei Yi received payment from its Taiwanese bank and when that bank was reimbursed by the U.S. bank issuing the letter of credit...Therefore, for the final determination, we imputed credit for all U.S. sales, and treated the negotiated interest expense as a direct selling expense.")

[64] See YUSCO's January 6, 2005, SQR at Exhibit 23.

erroneously allocated rebates to all sales to a customer during the month even if the rebates were not granted on some of those sales. Furthermore, petitioners state that YUSCO ignored the Department's instruction to revise its allocation methodology;[65] consequently, the Department does not have the necessary information on the record to properly allocate YUSCO's home market rebates. Thus, petitioners argue, the Department should reject YUSCO's home market rebates for the final results of review.

YUSCO contends that the petitioners are incorrect. First, YUSCO argues, that the Department called into question Yieh Mau's rebates, not YUSCO's rebates.[66] Therefore, even if petitioners are correct, the Department should limit any adjustments it might make to Yieh Mau's rebates. Second, YUSCO claims that Yieh Mau adequately explained, in its April 4, 2005, SQR, why the methodology it used to report rebates was appropriate. According to YUSCO, petitioners would have Yieh Mau follow the Department's instructions even if those instructions were based on the Department's misinterpretation of Yieh Mau's accounting practices and reporting methodology. Thus, YUSCO maintains, the Department should not reject Yieh Mau's rebates.

Department's Position:

We disagree with petitioners. For three of the four types of home market rebates granted by YUSCO, the company allocated the rebates to those sales that generated the rebates. For example, YUSCO granted quantity and contract honoring rebates to a customer if the customer purchased a minimum quantity of a product in a given month. On a product-specific basis, YUSCO evenly allocated the total monthly rebate over all sales during the month that enabled the customer to obtain the rebate. Thus, with one exception, YUSCO did not, as claimed by petitioners, allocate these rebates to sales on which it did not grant the rebates.[67] The one exception is the further-manufacturing/export rebate. YUSCO granted this rebate on sales of products that a customer further manufactured and exported. While YUSCO knew the amount and type of product that was going to be further manufactured and exported by the customer, it did not know which of its sales made up this amount. Since YUSCO could not tie the further-manufacturing rebate to particular sales, it allocated the monthly rebate to all sales to the customer that were (1) made during the month and (2) sales of the type of product that was going to be further manufactured and exported by the customer.[68] Given this fact pattern, we find that YUSCO's reporting methodology is reasonable,[69] and in accordance with section 351.401(g) of the Department's regulations. The Department verified and accepted this same reporting

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[65] See YUSCO's April 4, 2005, SQR at 17.

[66] Id.

[67] See the Monthly Sales Rebate Instruction forms in Exhibits 8 and 23 of YUSCO's January 6, 2005, response.

[68] See YUSCO's April 4, 2005, SQR at 13-14.

[69] Contrary to petitioners' claim, the Department did not instruct YUSCO to revise the methodology its used to allocate rebates to sales.

methodology in the prior segment of this proceeding. See 2002-2003 Verification report (for YUSCO) at pages 18 and 19.

With respect to Yieh Mau's rebates, the record does not indicate that Yieh Mau's reporting methodology is at odds with its accounting practices. In its accounting records, Yieh Mau calculated and granted rebates for early payments without listing each of the invoices that were being paid early.[70] The information provided in the "Rebate Instruction" form[71] supports YUSCO's statement that the invoice number listed on the "Rebate Certificate" was randomly selected as a representative invoice and was not the only invoice on which the rebate was granted.[72] Specifically, the "Rebate Instruction" form[73] shows that Yieh Mau calculated the early payment discount on payments in excess of the value of the invoice listed on the instruction form (see home market database for the invoice value). Therefore, we have not rejected the rebates reported for Yieh Mau.

Comment 17: Under-Reported Production Cost

Petitioners state that YUSCO's cost reconciliation shows the total manufacturing costs recorded in the company's financial records is higher than the total manufacturing costs reported to the Department. According to petitioners, the Department should increase YUSCO's total reported manufacturing costs to account for the difference.

YUSCO claims that it provided a detailed explanation of the difference noted by petitioners, and thus the Department should accept the reported costs.[74] YUSCO notes that petitioners raised the same issue in the 2001-2002 administrative review in this proceeding where the Department found YUSCO's explanation of the unreconciled difference to be reasonable and made no adjustment to the reported costs. Therefore, YUSCO concludes, in light of the Department's past practice in prior segments of this proceeding and the company's detailed explanation of the cost difference at issue, the Department should accept YUSCO's reported costs without the adjustment requested by petitioners.

Department's Position:

We agree with petitioners. Section 773(f)(1)(A) of the Act directs the Department to rely upon a respondent's normal books and records where those records are prepared in accordance with the home country's GAAP and reasonably reflect the costs of producing the subject merchandise. The record contains no evidence to indicate that the costs recorded in YUSCO's books do not

[70] See YUSCO's April 4, 2005, SQR at 17-18.

[71] See YUSCO's of January 6, 2005, SQR at Ex. 9.

[72] See YUSCO's April 4, 2005, SQR, at 18.

[73] See YUSCO's November 18, 2005, SQR.

[74] See YUSCO's January 18, 2005, Supplemental Section D response, pages 8-11.

reasonably reflect the company's cost of production. Therefore, as required by the statute, we relied upon the costs recorded in the company's audited financial statements, and adjusted YUSCO's reported costs for the unreconciled difference. Although YUSCO argues that the Department has accepted its explanation of the unreconciled cost difference in certain prior reviews, each administrative review of the order represents a separate administrative proceeding and stands on its own (see Flowers from Mexico at Comment 2). In this review YUSCO's explanation of the unreconciled difference is not persuasive, because regardless of the cost calculation methodology used for reporting purposes, the total costs reported to the Department should reconcile to the total costs recorded in the company's books.

Comment 18: General and Administrative Expenses (G&A)

Petitioners urge the Department to deny YUSCO's claimed offset to G&A expenses for "other income items" because YUSCO has not demonstrated that these income items relate to the merchandise under review. Specifically, petitioners claim that the rental income, certain other income, and revenue from sales of scrap recovered during production do not qualify as offsets to G&A expenses. Also, petitioners claim that YUSCO already accounted for scrap sales in the reported direct costs.[75]

YUSCO disagrees, noting that G&A expenses are general expenses, not directly related to the merchandise under review, and thus revenue related to general items should be used to offset G&A expenses (see section D of the Department's questionnaire (Field 24.0) which states that "G&A expenses are those period expenses which relate directly to the general operations of the company rather than directly to the production process"). Additionally, YUSCO remarks that the scrap offset to direct costs is for recyclable scrap that was generated during production while the scrap revenue at issue is from scrap that was sold rather than recycled.

Department's Position:

We agree with YUSCO. The Department's practice is to calculate the G&A expense ratio using income and expenses relating to the general operations of the company. See Notice of Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil, 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 10. The "other income" items at issue relate to the general operations of the company, and as such, should be reflected in the G&A expense ratio. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada, 70 FR 12181 (March 11, 2005) and accompanying Issues and Decision Memorandum at Comment 62 (where the Department found that rental income should be allowed as an offset to the G&A expenses).

We also agree with YUSCO that the scrap revenue used as an offset to the G&A expenses is different from the scrap offset used in the cost of manufacturing calculation. The scrap revenue

[75] See YUSCO's November 23, 2004, Section D response at page 16.

offset to the G&A expenses was recorded as "Other income" on the company's financial statements,[76] while the recycled scrap offset to the cost of manufacturing is a part of the company's cost of goods sold. Therefore, for the final results we allowed the offsets to the G&A expenses for "Other Income."

Comment 19: Yieh Mau's Packing Expenses

Petitioners claim that YUSCO should not have reported a single cost of packing for its home market affiliate, Yieh Mau, given that Yieh Mau reported that its customers request special types of packing which causes it to incur more packing expenses.[77] Petitioners urge the Department to reject the packing cost reported by Yieh Mau for the final results because YUSCO failed to explain why Yieh Mau submitted a single packing cost instead of reporting a packing cost for each packing form.

YUSCO claims that Yieh Mau properly reported different packing costs for different products (e.g., steel coils, cut-to-length steel). Further, YUSCO points out that the passage relied upon by petitioners was from YUSCO's response to the Department's question regarding the differences between YUSCO's packing costs and Yieh Mau's packing costs.[78] The passage reads in part "Yieh Mau uses more types of packing materials than YUSCO does. Yieh Mau's customers also instruct Yieh Mau for special packing type/ways for packing their purchases which causes Yieh Mau to incur more packing expenses." Lastly, YUSCO notes, the Department verified YUSCO's packing cost in the prior administrative review without noting any discrepancies.

Department's Position:

We agree with YUSCO. The methodology used to calculate Yieh Mau's packing expenses in this review was verified and accepted by the Department in the prior review. See 2002-2003 Verification report (for YUSCO) at page 21 and Exhibit VE S-14. In addition, there is nothing on the record to support petitioners' claim that Yieh Mau used different types of packing for foreign like product. The sentence cited by petitioners was part of YUSCO's explanation as to why YUSCO's and Yieh Mau's packing expenses differed.[79] Thus, for these final results, we have accepted the packing costs reported by Yieh Mau.

Comment 20: Commercial Quantities

Petitioners urge the Department to state, in its Final Results of this review, that YUCSO did not ship "commercial quantities" of subject merchandise during the POR or, at a minimum, state the

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[76] See YUSCO's January 18, 2005, SQR, at 7 and Exhibit 9.

[77] See YUSCO's April 4, 2005, SQR at 17.

[78] Id.

[79] Id.

ranged volume (within +/- 10 percent) of YUSCO's sales during the POR. Petitioners claim this information may be required should YUSCO request that the order be revoked with respect to its sales.

According to YUSCO, the Department's practice is to reject such "commercial quantity" requests as premature. YUSCO points out that in the 1999-2000 administrative review in this proceeding the Department rejected a nearly identical request from petitioners.[80]

Department's Position:

We agree with YUSCO. Revocation is not under consideration in this review. Therefore, we have not made a determination as to whether YUSCO made sales of subject merchandise in commercial quantities.

C. Issues with Respect to Other Respondents

Comment 21: Investigating No-Shipments Claims

In the preliminary results of review, the Department noted that record evidence (which includes CBP information obtained by the Department) supports the no-shipments claims made by various companies named as respondents in this review. See Preliminary Results 70 FR 46137, 46139. Petitioners contend that the Department cannot confirm the no-shipments claims made in this review because none of the companies that made those claims identified their affiliates (including those companies which stated that the no-shipments claim also applied to their affiliates). Citing the discovery of subject merchandise sales through a foreign affiliate of a company claiming no shipments in another administrative review, petitioners claim that the identity of respondents' U.S. and foreign affiliated parties is necessary to prevent subject merchandise from entering the United States without being reviewed and assessed antidumping duties. Petitioners request that the Department develop the record in a manner that results in the accurate substantiation of each respondent's no-shipments claim.

Additionally, petitioners request and that the Department place on the record the customs query and the selected entry documents from CBP, and any other evidence relied upon by the Department in determining the accuracy of respondents' no-shipments claims. Petitioners note that 19 CFR § 351.104(a)(1) requires the Department to include in the official record all factual information presented to or obtained by the Department during the course of a proceeding that pertains to the proceeding.

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[80] See Stainless Steel Sheet and Strip in Coils from Taiwan, 67 Fed Reg. 6682 (February 13, 2002) and accompanying Issues and Decision Memorandum, at Comment 17.

Department's Position:

Based on the facts on the record, we do not find it necessary to obtain information regarding the affiliates of the companies claiming no shipments. The Department queried the CBP database and obtained entry documents from CBP which support the companies' no shipment claims. The Department placed the entry documents and query relating to the no shipment claims on the record and gave interested parties the opportunity to comment.[81] Petitioners have placed no information on the record of this review that would cause the Department to doubt the no shipment claims. Contrary to petitioners' claim, it is not necessary to investigate whether affiliates of the named respondents shipped subject merchandise to the United States because these affiliates were not named as respondents (see Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review, 68 FR 63067-01 (November 7, 2003) and accompanying Issues and Decision Memorandum, at Comment 3 ("a request to review one company does not automatically cover all affiliated parties."). Although petitioners included the phrase "and their various affiliates" after the list of companies for which they requested a review, the Department does not accept requests to review unnamed companies (the party requesting an administrative review "must bear the relatively small burden imposed on it by the regulation to name names" of the appropriate respondent in its review request). See Floral Trade Council of Davis, California v. United States, et al., 1993 WL 534598 (December 22, 1993). Absent entries from the named respondents, there is no reason for the Department to inquire as to the identity of the respondents' affiliates. If petitioners believe other parties potentially affiliated with the named respondents are exporting subject merchandise to the United States, then petitioners should request a review of those companies in subsequent periods.

Comment 22: Reviewing the Emerdex Companies and Their Affiliates

Based on petitioners' request, the Department initiated the instant review covering 16 companies, including Emerdex Stainless Flat-Roll Products, Inc. (Emerdex Flat Rolled), Emerdex Stainless Steel, Inc., and Emerdex Group (hereafter referred to as Emerdex companies). After initiating the requested review, the Department was unable to locate any company in Taiwan named "Emerdex" or with "Emerdex" as part of its name. Subsequently, the Department learned that the Emerdex companies are U.S. corporations located in California. In the preliminary results of this review, the Department rescinded the review with respect to the Emerdex companies because these companies are not Taiwanese exporters or producers covered by the order.

Petitioners continue to urge the Department to conduct a full review of the Emerdex companies and their affiliates in Taiwan. Petitioners suggest that the Department proceed by reissuing the standard questionnaire to Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), a known affiliate of the Emerdex companies, and instructing Ta Chen/Emerdex to submit a consolidated questionnaire

[81] Memorandum to the File From Melissa Blackledge, Data Query Results and Entry Packages, dated January 12, 2006.

response which identifies all affiliated parties. In continuing to request this review, petitioners point to record evidence of the Emerdex companies' involvement with the subject merchandise and their association with a Taiwanese affiliate. Specifically, petitioners state that record evidence indicates Emerdex Flat Rolled: (1) is a major supplier of SSSS to Ta Chen, (2) operates blast furnaces or steel mills specializing in the manufacture of stainless steel and (3) is at least 25 percent owned by an unnamed Taiwanese company. See Petitioners' November 5, 2004, submission to the Department.

In the alternative, petitioners contend that the Department should issue its antidumping questionnaire to the Emerdex companies' Taiwanese affiliate after obtaining its name and address from the Emerdex companies in California. While petitioners acknowledge that Floral Trade indicates the Department is not obligated to conduct an investigation into the identity of foreign producers or exporters, petitioners claim that such an investigation into the Emerdex companies is far more manageable than the task faced by the Department in Floral Trade. Furthermore, although the Department is not obligated to conduct such an investigation, petitioners contend that it may do so if it chooses (in fact, petitioners note that the Department already undertook certain activities in this review to determine the identify of the Emerdex companies' Taiwanese affiliate). Based on the foregoing, petitioners urge the Department to conduct an administrative review of the Emerdex companies.

Department's Position:

On October 27, 2004, the Department notified petitioners that it intended to rescind the review with respect to the Emerdex companies because they were U.S. companies located in California and not Taiwanese producers/exporters of subject merchandise. See letter to Collier Shannon Scott, PLC regarding the 5th Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan dated October 27, 2004. Petitioners placed information and arguments on the record regarding the intended rescission prior to issuance of the preliminary results. After considering petitioners' comments, the Department made its decision to rescind this review with respect to the Emerdex companies and announced this decision in the Preliminary Results notice. That notice makes it clear that this was not a preliminary decision (see Preliminary Results 70 FR 46137, 46140 (under the heading "Partial Final Rescission of Review" the Department stated: "{a}ccordingly, the Department is rescinding the instant review with respect to the Emerdex companies."). Thus, the Department has already rescinded this review with respect to the Emerdex companies. Nevertheless, we note that since the Department issued the preliminary results of review, the petitioners presented no new information or arguments to warrant the Department's reexamination of this issue. Therefore, for the reasons stated in the Preliminary Results, it was appropriate for the Department to have rescinded this review with respect to the Emerdex companies.

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_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

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Date