

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

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for AD/CVD Operations

SUBJECT: Issues and Decision Memorandum for the Administrative Review
of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan;
Final Results of Antidumping Duty Administrative Review

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings (“SSBWPFs”) from Taiwan for the period June 1, 2005, through May 31, 2006. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this review for which we received comments and rebuttal comments by parties:

1. Reliability of Ta Chen’s Financial Statements & Reported Affiliations
2. CEP Offset
3. LOT Adjustment
4. CEP Profit Calculation

Background

On July 2, 2007, the Department of Commerce (“the Department”) published the preliminary results of this administrative review in the Federal Register. See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 72 FR 35970 (July 2, 2007) (“Preliminary Results”). The period of review (“POR”) is June 1, 2005, through May 31, 2006.

This review covers sales of certain SSBWPFs made by one manufacturer/exporter, Ta Chen Stainless Pipe Co., Ltd. (“Ta Chen”), and its U.S. affiliate, Ta Chen International (CA) Corp. (“TCI”). We invited parties to comment on our Preliminary Results. We received case briefs from Markovitz Enterprises, Inc. (Flowline Division), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc., (collectively, “petitioners”) on September 10, 2007 (“Petitioners’ Brief”) and from Ta Chen on September 11, 2007 (“Ta Chen’s Brief”). We received rebuttal briefs from petitioners and Ta Chen on September 18, 2007 (“Petitioners’ Rebuttal Brief” and “Ta Chen’s Rebuttal Brief,” respectively). Petitioners requested a hearing, which was conducted on September 20, 2007.

Discussion of the Issues

Comment 1: Reliability of Ta Chen’s Financial Statements and Reported Affiliations

Petitioners argue that Ta Chen has not been a cooperative respondent by not acting to the best of its ability, and that total adverse facts available (“AFA”) of 76.20 percent ad valorem should be applied as its dumping margin. Specifically, petitioners claim that: 1) Ta Chen has not provided accurate and reliable financial statements for Ta Chen and its U.S. affiliate, TCI, in accordance with the U.S. generally accepted accounting principles (“U.S. GAAP”); 2) that Ta Chen withheld from the Department the identities of a significant number of companies documented as Ta Chen affiliates, but not acknowledged as such by Ta Chen; and 3) that Ta Chen withheld critical information about its acknowledged affiliates. See Petitioners’ Brief at 1-2.

A) Reliability of Ta Chen’s Financial Statements

Petitioners state the financial statements of a respondent and all of its affiliates, whether directly or indirectly involved with the subject merchandise, are critical in antidumping proceedings. Petitioners stress that financial statements serve as a benchmark for the Department to accurately calculate dumping margins. Therefore, according to petitioners, the financial statements must be accurate and complete. See id. at 2-3.

Petitioners contend that TCI’s and Ta Chen’s consolidated financial statements are not accurate and complete, and cannot serve as a reliable benchmark for the Department’s dumping analysis, as the financial statements are not compliant with U.S. GAAP. Petitioners contend that under the U.S. GAAP, Statement of Financial Accounting Standards number 57 (“SFAS 57”), a company is required to disclose in its financial statements all related party transactions during the period of review. Petitioners state that a related party is defined as any company with the ability to influence the financial transactions of another company. Petitioners claim that Ta Chen has not abided by these requirements by not reporting all of TCI’s related parties in TCI’s financial statements. See id. at 3-4.

Petitioners request that the Department confer with the American Institute of Certified Public Accountants (“AICPA”) to confirm the current application of SFAS No. 57 of the U.S. GAAP. Petitioners believe that, according to the AICPA, current U.S. accounting practice is interpreted and applied (a) as requiring more, rather than less, disclosure of related-party relationships, so that the reader is alert to the existence of these relationships, and (b) as having set the level of materiality for the purpose of reporting what are significant related-party transactions effectively at zero. See id. at 4.

Petitioners identified numerous companies that they believe had significant related-party transactions with TCI, and which they claim have not been disclosed in accordance with U.S. GAAP in TCI’s financial statements. Petitioners argue that the Department should find that TCI’s financial statements are not in adherence with U.S. GAAP, and that this renders the financial statements inaccurate and unreliable. Furthermore, petitioners contend that, by extension, Ta Chen’s consolidated financial statements likewise should be found inaccurate and unreliable as a benchmark, because those financial statements incorporated wholesale, TCI’s financial statements. See id. at 5-6.

B) Reported Affiliations

Petitioners allege that Ta Chen has not cooperated to the best of its ability with the Department regarding its affiliated parties. Petitioners claim that successful identification and consideration of affiliated relationships is integral to the Department’s dumping analysis, as affiliated parties have the potential to manipulate prices and costs of transactions. See id. at 6.

Petitioners contend that when examining the question of a respondent’s affiliated parties, the Department must undertake a series of steps or protocol, as follows: (1) a respondent must disclose all of its affiliated parties at the outset of the investigation or review, regardless of their level of involvement with the subject merchandise or foreign like product; (2) the Department is then obligated to make a finding of affiliation for each disclosed company, regardless of their level of involvement with the merchandise under consideration; and (3) for those companies found by the Department to be affiliated with the respondent, petitioners continue, the respondent is then required either to report (a) the affiliate’s potential to affect or its actual effect on the production, pricing, or cost of the subject merchandise or foreign like product for the Department to consider in its dumping analysis or to demonstrate (b) that the relationship did not affect and did not have the potential to affect the production, pricing, or cost of the merchandise concerned and so has no relevance for the Department’s dumping analysis. See id. at 6-7.

Petitioners state that the first step of its suggested protocol is a timely and thorough response by a respondent to the Department’s Section A questionnaire, which petitioners allege Ta Chen has not done. Petitioners state that the Department made repeated requests of Ta Chen to provide a list of all of its affiliated parties, regardless of those companies’ involvement with the subject merchandise. Despite these numerous requests, petitioners allege that Ta Chen continues to withhold the identities of a significant number of its affiliated parties from the Department, as

well as critical information regarding Ta Chen's acknowledged affiliated parties. Petitioners state Ta Chen's deficient reporting has prevented the Department from fulfilling its investigatory obligations of petitioners' proposed protocol. In addition, petitioners continue, Ta Chen's uncooperative behavior puts the Department in the position of not knowing all of Ta Chen's affiliations and their actual or potential effect on the merchandise under review and its impact on Ta Chen's reported U.S. sales, home market sales, and cost of production. See id. at 7-8.

Petitioners claim that the following companies are affiliated with Ta Chen under 19 U.S.C. 1677(33), but are unacknowledged as such by Ta Chen: the Shieh Family Trust, AMS California; Dragon Stainless, Inc.; LPJR Investment, LLC; Estrela Steel; DNC Metals Inc.; South Star Corp.; Billion Stainless Inc.; Emerdex Stainless Flat Rolled Products, Inc.; LHPJ International; Stainless Express Inc.; Millennium Stainless, Inc.; AMS Specialty Steel LLC; South Coast Stainless, Inc.; Emerdex Stainless Steel, Inc.; Emerdex Group, Inc.; Emerdex-Shutters; Estrela, LLC; TCI Estrela International; Estrela International; Estrela International Corporation; Estrela International, Inc; Becmen, LLC; Becmen Specialty Steel, Inc.; Becmen Trading International; KSI Steel, Inc.; K. Sabert, Inc.; Sabert Investments; AMS Steel Corporation; NASTA International; QDII; QFII; JK Industries W.H. Inc.; Niosteel LLC; SouthStar Real Estate L.L.C.; Ta Chen Enterprise; and G.M.T.S. International Co., Ltd. See id. at 9.

Petitioners claim that they have demonstrated in their comments submitted during this review that many of Ta Chen's unacknowledged affiliated companies had business relationships (either directly or indirectly) with Ta Chen. Petitioners state that Ta Chen has withheld from the Department the following information regarding undisclosed affiliates:

- Ta Chen's unacknowledged affiliation with the Shieh Family Trust.
- Ta Chen's unacknowledged affiliation with AMS California and the various integrated business relationships that Ta Chen had with this unacknowledged affiliate.
- The identities of a multitude of unacknowledged affiliated parties, as defined by the statute under 19 U.S.C. § 1677(33), and the involvement of those affiliates with the subject merchandise and foreign like product. (Petitioners cite their August 10, 2007, Comments ("Petitioners' August 10, 2007 Comments") to Ta Chen's July 27, 2007 Supplemental Questionnaire Affiliations Response ("Ta Chen's July 27, 2007 Affiliations Response"), at 3-5; and their September 4, 2007, comments at 4-6.)
- The identities of Ta Chen's unacknowledged affiliates. (See Petitioners' September 4, 2007, Comments at 4-6.)
- Documentation regarding loans to TCI and the guarantors of such loans. (See Petitioners' September 4, 2007, Comments at enclosure 3.)
- Essential documentation for Robert Shieh's guarantee of AMS California's October 3, 2000, line of credit and the impact of this relationship on TCI's costs for U.S. sales. (See Petitioners' September 4, 2007, Comments at enclosure 3.)
- The information submitted by Ta Chen in its August 21, 2007, letter, which was available to Ta Chen when it submitted its September 8, 2006, Section A Questionnaire Response.

- All information requested by the Department in its original Section A Questionnaire on Ta Chen's unacknowledged affiliated parties, including the financial statements, organizational chart, an explanation and documentation on the operational and business relationships between Ta Chen and its unacknowledged affiliated parties, the involvement of each of these companies with the merchandise under consideration, including the names of the officers, directors, and managers of each company.
- The exact monetary impact of each of these relationships on the Department's dumping margin analysis.

See Petitioners' Brief at 10-12.

As noted above, petitioners allege that Ta Chen has not cooperated with the Department on the issue of its disclosed affiliated parties. Petitioners list many entities it alleges Ta Chen disclosed as affiliates, but withheld crucial information from the Department, pertinent to the Department's analysis. Specifically, petitioners identify these entities as: Ta Chen (BVI) Holdings Ltd.; Ta Chen Steel Investment Co., Ltd.; Banner Fastener Inc.; Tension Control Bolting Inc.; Shiziazhuang Jitai Precision Casting Co., Ltd.; Ta Chen Baoding Precision Casting Co., Ltd.; Ta Chen (Changsu) Machinery Co.; Robert Shieh; Ta-Ji Investment Co., Ltd.; Ta Ever Investment Co. Ltd.; Ta Chen (Shanghai) Co. and Ta Ying Chen (Shanghai) Consultant; Oboha; Ok-Land; Bo Ke Lai; Ta Ying Chen Investment; and LPJR. See id. at 13-14.

Moreover, petitioners argue that since Ta Chen's submission of its Section A questionnaire response dated September 8, 2006, and Ta Chen's July 27, 2007, Affiliations Response, the number of companies Ta Chen acknowledged as affiliates has changed from nine to sixteen. Petitioners point out that Ta Chen's reported affiliates in its July 27, 2007, Affiliations Response include all but one of the nine originally reported in its Section A Questionnaire Response dated September 11, 2006 ("Ta Chen's Section A Response"). In addition, it included five companies petitioners reported were included in Ta Chen's financial statements as related parties, but not reported as Ta Chen affiliates in their submissions, and three new affiliated parties. Petitioners describe Ta Chen's responses to the Department's affiliation questions as piecemeal as they fail to disclose the involvement of its affiliates regarding subject merchandise. See id. at 13-14.

Petitioners claim that, based on the record, the Department should find that Ta Chen is affiliated with each of petitioners' alleged unacknowledged affiliated parties under 19 U.S.C. § 1677(33). Further, petitioners add, the Department should find that by not acknowledging its affiliation with the numerous companies mentioned above, Ta Chen has prevented the Department from considering the impact of these relationships on Ta Chen's reported U.S. sales, home market sales, and costs. See id. at 15-16.

C) Use of Total Adverse Facts Available

Petitioners state that under 19 U.S.C. § 1677e(a)(1) and (2), the Department must consider whether necessary information is not available on the record or whether an interested party has:

(i) withheld requested information, (ii) untimely submitted requested information or submitted such information but not in the form and manner requested, subject to 19 U.S.C. § 1677m(c)(1) and (e), (iii) significantly impeded the Department's process, or (iv) provided the requested information, but the information cannot be verified. Furthermore, petitioners state that under the statute's provisions on facts available, if the administrative record is deficient in that the Department finds a response to its request for information does not comply with the Department's request, the Department is obliged by 19 U.S.C. § 1677m(d) to so inform the party that has submitted the response and, to the extent practicable, allow that party an opportunity to remedy or explain the deficiency within the time limits established for the investigation or review. See Petitioners' Brief at 17.

Petitioners argue that the Department should disregard all of Ta Chen's original and subsequent responses, and conclude that Ta Chen's information on its affiliations and the U.S. GAAP related-party issue: (a) were not timely submitted, (b) could not be verified, (c) were incomplete and could not reliably serve as a basis for reaching the applicable determination, and (d) the information that has been provided cannot be used without undue difficulties. Moreover, petitioners contend that Ta Chen did not demonstrate that it acted to the best of its ability in providing the information requested by the Department and in meeting the Department's requirements. Accordingly, petitioners assert that the Department should not rely upon any of Ta Chen's information. See Petitioners' Brief at 17.

Petitioners state that under these circumstances, the statute stipulates at 19 U.S.C. § 1677e(a) that, in the event a respondent's submissions are deemed deficient and are to be disregarded by the Department notwithstanding 19 U.S.C. § 1677m, the Department "shall" use the facts otherwise available in reaching its determination. See Petitioners' Brief at 18.

Petitioners cite Nippon Steel Corp. v. United States, 337 F.3d 1373, 1373, 1382 (Fed. Cir. 2003) ("Nippon Steel") and NSK, Ltd. V. United States, 481 F.3d 1355, 1361 (Fed. Cir. 2007), stating that the United States Court of Appeals for the Federal Circuit ("Federal Circuit") held that the statutory mandate that a respondent act to the best of its ability means that a respondent is required to do "the maximum it is able to do." Petitioners continue by stating that this criterion does not require perfection, but it also does not condone inattentiveness, carelessness, or inadequate record keeping. See Petitioners' Brief at 18.

Petitioners further argue that in order for the Department to conclude that a respondent has been uncooperative, the Department (a) must objectively demonstrate that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statute, rules, and regulations, and (b) must subjectively demonstrate that the respondent undergoing the review both failed promptly to produce requested information and was not fully responsive due to the respondent's lack of cooperation either by failing to keep and maintain the requested information or by failing to put forth its maximum efforts to investigate and obtain the requested information from its records. See Nippon Steel, 337 F.3d at 1382-83. Petitioners state that an adverse inference may not be drawn solely from a

failure to respond, but only when the circumstances present reasonably lead the Department to expect that more forthcoming responses should have been made. See Petitioners' Brief at 18.

Petitioners conclude their affiliations comment by stating that substantial evidence exists on the record to support the conclusion that Ta Chen has not cooperated to the best of its ability and has not done the maximum it could do to answer the Department's questions on Ta Chen's affiliations and U.S. GAAP related-party issues. Therefore, petitioners state that under the circumstances in this review, petitioners submit that Ta Chen should be assigned total adverse facts available at the rate of 76.20 percent ad valorem. See id. at 19.

Respondent's Rebuttal:

Ta Chen rebuts petitioners' arguments by stating that its financial statements are reliable and that the Department correctly found it to be sufficiently cooperative as to reporting its affiliates. Therefore, according to Ta Chen, petitioners' request that the Department apply total AFA is unwarranted. With regard to its financial statements, Ta Chen states that petitioners have failed to quote from the U.S. GAAP any explicit statements to support their argument that a company is required to disclose in its financial statements all related parties, regardless of whether there have been any related-party transactions during the reporting period. With respect to petitioners' arguments concerning the AICPA and SFAS No. 57, Ta Chen states that petitioners are merely speculating that the AICPA may or may not provide guidance according to petitioners' claims. Ta Chen continues by stating that the fact that petitioners have not obtained a statement from the AICPA indicating such language should lead the Department to believe that the AICPA would not issue such guidance, and the petitioners are not forthcoming in their argument. See Ta Chen's Rebuttal Brief at 2.

Ta Chen contends that it has cooperated with the Department as to proper disclosure of its affiliates. Ta Chen states that petitioners have not supported their allegation that Ta Chen did not properly disclose all of its affiliates. Ta Chen contends that petitioners have submitted a list of previously undisclosed companies, that they alleged were affiliated with Ta Chen. However, Ta Chen states that petitioners' brief fails to provide an explanation or support as to why or how the companies are affiliated with Ta Chen. Ta Chen argues that, without a fully developed argument in the case brief addressing petitioners' allegation, petitioners in effect have waived their argument. Ta Chen claims that the Department has rejected petitioners' alleged related parties and affiliations arguments many times before in prior reviews. In addition, Ta Chen argues that in each instance that petitioners have commented on affiliations during the proceeding, Ta Chen has supplied an immediate rebuttal defending itself, and denying petitioners' unwarranted allegations. See id. at 3-4.

Ta Chen specifically addresses petitioners' claim that it did not acknowledge the Shieh Family Trust as an affiliate, whose assets were used as collateral for a TCI loan. Ta Chen states that the Shieh Family Trust was disclosed from the start of the review in Ta Chen's financial statements. Ta Chen explains that, as in prior reviews, when TCI received a bank loan, it was required to

provide as collateral the personal assets of the TCI officers, which in this case was the Shieh Family Trust, belonging to Robert Shieh, president of Ta Chen. Ta Chen claims that this is a standard banking practice, and that it is unaware of the Department making an adjustment for such a common banking practice in a dumping case. See id. at 3-4.

Ta Chen also rebuts petitioners' argument that Ta Chen was affiliated with AMS California during the POR by stating that the Department has already found that Ta Chen's affiliation to AMS California ended well before this or other recent PORs, and that petitioners have provided no new information to support their argument. See id. at 4.

Ta Chen states that petitioners' argument that Ta Chen should have provided financial statements for other alleged affiliates fails to identify which specific alleged affiliates, and also fails to provide a basis for petitioners' alleged affiliation claims. In addition, Ta Chen states that petitioners' argument does not consider the Department's past rejection of petitioners' affiliation claims, and the fact that the Department's questionnaire requests only financial statements of those companies involved with subject merchandise. See id. at 4.

Department's Position

We determine, based on the evidence on the record, that Ta Chen has been a cooperative respondent, and that application of total AFA of 76.20 percent ad valorem is not warranted with respect to Ta Chen. We believe that Ta Chen provided accurate and reliable financial statements, covering the current POR, for Ta Chen and its U.S. affiliate, TCI, in accordance with U.S. GAAP. In addition, we find that Ta Chen accurately reported its affiliated parties as defined under section 771(33) of the Tariff Act of 1930, as amended ("the Act") (or 19 U.S.C. § 1677(33)).

On May 30, 2007, the United States Court of International Trade ("CIT") issued a decision and remand with respect to a number of identical issues raised by petitioners for the 2002-2003 administrative review of stainless steel butt-weld pipe fittings from Taiwan. See Ta Chen Stainless Steel Pipe Co., Ltd. v. United States, Consol. Court No. 05-00094, Slip Op. 07-87 (CIT May 30, 2007) ("Ta Chen v. United States 2007"). Many of the issues addressed in the CIT's decision are identical to the issues raised by petitioners; therefore, the Department believes that reference to that decision for this administrative review is relevant.

In determining whether entities are affiliated with a respondent, the Department is bound by the statute, and its regulations. Specifically, 19 U.S.C. § 1677(33) provides that the following "shall be considered to be 'affiliated' or 'affiliated persons':"

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

19 U.S.C. § 1677(33).

The Department's regulations, in part, further define affiliated persons and affiliated parties as follows:

"Affiliated persons" and "affiliated parties" have the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.

19 C.F.R. § 351.102(b).

The Uruguay Round Agreements Act Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1 (1994) ("SAA") addresses the relevance of affiliation and provides guidance. The SAA states in part:

The question of affiliation is relevant to a number of price and cost issues in an antidumping investigation or review. One example is the special rule for major inputs in existing section 773(e)(3), a provision added to the law in 1988 to address diversionary input dumping by authorizing Commerce to inquire whether the transfer between "related" persons (*i.e.*, "affiliated" persons under section 773(f)(3)) of such an input is at a price below the input's production cost. H. Rep.

576, 100th Cong., 2d Sess. 595 (1988). Under the amended definition of “affiliated persons,” Commerce may examine such transactions when the purchaser of the major input is in a position to exercise restraint or direction over the input supplier (or vice versa).

SAA at 838. With respect to the issue of control, the SAA states in part:

Consistent with the Agreement, “control” exists if one person is legally or operationally in a position to exercise restraint or direction over another person. The Administration believes that including control in the definition of “affiliated” will permit a more sophisticated analysis which better reflects the realities of the marketplace.

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another even in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.

Id.

Petitioners’ proposed “legal protocol” generally follows the Department’s established affiliations practice, as reflected in the standard antidumping questionnaire, which asks a number of questions regarding a respondent’s potential affiliations and their relationship with the production, pricing, or cost of the subject merchandise or foreign like product. For example, the main body of Question 2 of the Section A questionnaire states that “for the purposes of the following questions, a ‘person’ includes any company, organization, individual, partnership, or group.” Question 2c asks that respondents “provide an organization chart and description of your company’s legal structure. Include any parent companies and subsidiaries of your company and all other persons affiliated with your company and provide a description of all such persons.” Question 2e cites sections 771(33)(F) and (G) of the Act, as well as 19 C.F.R. § 351.102(b), and requests detailed information from respondents regarding affiliated parties and other business and operational relationships affecting the development, production, sale or distribution of the merchandise under review. Questions 2g and 2h specifically request information involving affiliated parties and “any supplier, (sub)contractor, lender, exporter, distributor, reseller, and any other person involved in the development, production, sale or distribution of the merchandise under review which the Department may also consider affiliated with your company.” Question 2i requests that respondents “identify all business transactions that may directly or indirectly affect the development, production, sale or distribution of the merchandise under review which your company has or had with any affiliate.”

After a respondent provides the initial response to the Department's questionnaire, the Department may issue supplemental questionnaires to collect additional information or clarify questions regarding the existing information on the record. Interested parties are afforded an opportunity to comment, and provide information regarding affiliated parties that a respondent may not have provided. The Department must then make a determination of which persons and/or parties are affiliated under 19 U.S.C. § 1677(33). In considering whether affiliation exists as a result of a control relationship under subsections 1677(33)(F) or (G), the Department must find that control exists only if "the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." 19 C.F.R. 351.102(b). Finally, if the Department finds affiliation under any subsection of 1677(33), it must then consider the impact of that affiliation on the dumping margin, consistent with the SAA.

The Department does not agree that it must follow the exact protocol proposed by petitioners, which would require the Department to first make a finding of affiliation for each company reported to be an affiliate (regardless of its involvement with the merchandise under consideration) before inquiring as to the affiliation's potential to effect (or the actual effect) on the production, pricing or cost of the subject merchandise or foreign like product. See Petitioners' Brief at 6-7. As the various affiliation relationships vary from case to case, even from administrative review to administrative review of the same respondent companies, the Department cannot predict what information will be provided by the respondents, their affiliates, and when. As the factual circumstances may vary, the Department may depart from the sequence of collecting information contemplated in the questionnaire. Petitioners have cited no authority that requires the Department to depart from its affiliations practice.

The Department has followed this practice in determining questions of affiliation in this review, as further discussed below.

A) Reliability of Financial Statements

TCI's 2005 financial statements were audited by an independent accounting and auditing firm that issued an opinion on the statements. Specifically, the audit report states that the financial statements in the auditors' opinion "present fairly in all material respects the financial position of Ta Chen International (CA) Corp. as of December 31, 2005, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America." See Ta Chen's September 11, 2006, Section A Questionnaire Response ("Ta Chen's Section A Questionnaire Response") at Exhibit 16. Implicit in this opinion is the auditors' attestation that proper disclosure of related parties and related party transactions has been made.

An independent auditing firm whose business it is to express an opinion on whether financial statements are fairly presented according to the appropriate country's GAAP (in this case, the United States), who has direct access to the records and management of the respondent, and who has not otherwise been demonstrated to be in other than good standing, is in an appropriate

position to judge these financial statements. Therefore, in order for the Department to reject the independent auditors' opinion and discredit the financial statements, the Department would need to have compelling evidence to the contrary. We have not found such evidence in this case. The auditors' report on TCI's financial statements states: "an audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements." See id. This means that by testing evidence related to disclosures, including those involving related parties, the auditors document that they did not blindly accept information provided by Ta Chen, but rather, that the auditors have the responsibility to question the information and to perform due diligence in an audit if the information provided by the company to the auditors is incorrect or incomplete.

The SFAS 57, which is the U.S. GAAP that governs disclosure requirements of related parties, states, in paragraph 2, that "{f}inancial statements shall include disclosures of material related party transactions." Paragraph 4 states that even in the absence of material transactions, "{i}f the reporting enterprise and one or more other enterprises are under common ownership or management control, and the existence of that control could result in operating results or financial position of the reporting enterprise significantly different from those that would have been obtained if the enterprise were autonomous, the nature of the control relationship shall be disclosed even though there are no transactions between the enterprises." See U.S. Financial Accounting Standards Board Statement No. 57, Related Party Disclosures (March 1982). Further, paragraph 21 of SFAS 57 notes that a requirement to disclose all control relationships "would be burdensome particularly for closely held enterprises that might have numerous relationships with owners and their families, lenders, and possibly others that might be deemed to be 'control'" and that the "Board agreed that requiring disclosure of all control relationships might be of limited usefulness." Id.

Thus, inherent in SFAS 57 is a judgment element and that the company does not need to disclose every relationship. When disclosing transactions between related parties, the auditor must conclude both that the parties are related according to SFAS 57 and that any transactions between them were material (i.e., their omission or incorrect statement would have affected a reasonable reader's opinion about the company). When deciding to disclose a party as being related when no transactions have occurred, the auditor must conclude that a control relationship exists, and that this control relationship has the potential to cause the reporting enterprise's operating results or financial position to be significantly different from what would have been obtained if the enterprise were autonomous. Therefore, it is appropriate for the Department to give weight to the independent auditor's opinion in the absence of contrary record evidence.

The Department notes that there has been little or no evidence of transactions between Ta Chen and those entities alleged by petitioners to be undisclosed affiliates. We note that although petitioners have given limited evidence that the parties in question may have business or social relationships with TCI, they have not demonstrated influence between TCI and those companies to the point where that influence could have resulted in operating results or the financial position of TCI to be significantly different from what would have been obtained absent the influence.

Regarding petitioners' request that the Department confer with the AICPA, we note that the AICPA technical hotline provides non-authoritative advice on accounting, auditing, attestation, and standard for accounting and review services. The AICPA's own website states that the technical hotline staff's responses reflect only the staff's opinions in light of the particular circumstances described by the inquirer and should not be viewed as an official position of the AICPA. The site further states that application of generally accepted accounting principles is the responsibility of a company's management.¹ Therefore, the Department would not be able to rely on an opinion expressed on limited factual information by an AICPA hotline. Finally, we note that the Department's regulation regarding affiliations is not governed by the AICPA, but rather 19 U.S.C. § 1677(33).

In addition, the Department believes that the question of whether TCI's financial statements are in conformance with U.S. GAAP, with respect to affiliated persons, is not necessarily relevant to whether the Department will find persons to be affiliated under 19 U.S.C. § 1677(33). In the 2002-2003 administrative review, the Department addressed this issue by stating:

The Department notes that its affiliation definition is not necessarily consistent with Taiwan or U.S. {GAAP} definitions of related parties. As such, a finding of affiliation by the Department does not necessarily mean that such an affiliation should be reflected in Ta Chen's financial statements.

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 70 FR 1870 (January 11, 2005), and accompanying Issues and Decision Memorandum, Comment 1. The CIT upheld the Department's position, stating in part:

Because the antidumping laws, along with agency implementing regulations, alone establish the criteria for determining whether parties are affiliated, their resemblance to, or possible overlap with, U.S. or foreign GAAP standards are not of conclusive moment. As the ITA succinctly stated in Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 Fed.Reg. 38,756, 38,769 (July 1999),

the similarity between the Brazilian GAAP's definition of a "related party" and the Act's definition of an "affiliated party" is irrelevant. A similarity in the definition of the two words does not necessarily give them the same meaning, especially when applied in different circumstances.

¹ <http://www.aicpa.org/Professional+Resources/Accounting+and+Auditing/Accounting+and+Auditing+Technical+Help>

In concurring therewith, this court cannot disagree with the ITA's conclusion in the review at bar The agency properly determined that those financial statements' failure to list affiliated entities as "related parties" does not render them inherently unreliable.

See Ta Chen v. United States 2007 at 35 - 36. Therefore, the Department finds no reason or evidence on the record to rely on U.S. GAAP standards, or whether a company is in conformance with U.S. or foreign GAAP standards, in determining questions of affiliation under 19 U.S.C. § 1677(33).

B) Analysis of Affiliated Party Claims

In examining the evidence on the record with respect to questions of affiliation, the Department has followed its standard affiliation analysis set forth above. In making this evaluation, the Department is aware of petitioners' claims with respect to the accuracy of respondent's financial statements (specifically with respect to TCI) and claims that respondent Ta Chen has withheld information regarding alleged affiliates. With respect to the accuracy of financial statements, the Department notes that even if we were to find that TCI's financial statements had omitted certain related party information, we would not necessarily disregard Ta Chen's responses entirely. The relevance of the omitted information to the information relied upon by the Department in making affiliation determinations would have to be examined. Likewise, if affiliated parties as defined in 19 U.S.C. § 1677(33) were discovered, the relevance of the omitted information to the overall dumping analysis would have to be determined. After reviewing the case specific facts, the Department would then determine whether total or partial use of facts available was warranted. The Department would require evidence that there were transactions or data relevant to the dumping analysis that the respondent failed or refused to provide.

Petitioners make numerous claims of undisclosed related parties, which the Department has evaluated based on the evidence on the record of this proceeding. In making this evaluation, the Department notes that the issue of Ta Chen's affiliations has been examined repeatedly in the past several reviews. Therefore, we find it appropriate to reference for the current POR findings, the 2002-2003 Issues and Decision Memorandum, 2003-2004 Affiliations Memorandum, and the 2004-2005 Issues and Decision Memorandum of these past reviews as follows:

- The Department's 2002-2003 POR Issues and Decision Memorandum for the Administrative Review of SSBWPFs from Taiwan dated January 3, 2005 ("2002-2003 Issues and Decision Memorandum"), put on the current record by petitioners in its Section A Comments ("Petitioners' Section A Comments") submission at Enclosure 2A, dated September 27, 2006.
- The Department's 2003-2004 POR Affiliations Memorandum for the Administrative Review of SSBWPFs from Taiwan dated June 30, 2005 ("2003-2004 Affiliations

Memorandum”), put on the current record of this proceeding by petitioners in its Sections A through D Comments, at 4, submitted on March 2, 2007.

- The Department’s 2004-2005 POR Issues and Decision Memorandum for the Administrative Review of SSBWPFs from Taiwan dated November 20, 2006 (“2004-2005 Issues and Decision Memorandum”).

Based upon information on the record, and consistent with our affiliation analysis above, the Department has analyzed all of the entities reported by Ta Chen as affiliates, as well as those entities alleged by petitioners to be affiliated with Ta Chen. Our results are stated below.

Affiliates Disclosed by Ta Chen

Ta Chen International (CA) Corporation, d/b/a NASTA International, also d/b/a Sunland Shutters

Petitioners allege that Ta Chen is affiliated with NASTA International. See Petitioners’ Section A Comments at 6. Ta Chen identified NASTA as a “doing business as” (“d/b/a”) name of its U.S. affiliate, Ta Chen International (CA) Corporation, noted above as TCI. Ta Chen states that TCI is the wholly-owned U.S. subsidiary of Ta Chen, and therefore is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). TCI is Ta Chen’s master distributor of Ta Chen’s products in the United States, inclusive of SSBWPFs. See Ta Chen’s Section A Response at 8.

Based upon our review of record evidence, the Department finds that TCI, d/b/a NASTA International, also d/b/a Sunland Shutters, as a wholly-owned subsidiary of Ta Chen, is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). As there is evidence on the record that TCI’s relationship with Ta Chen has the “potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product,” in accordance with 19 C.F.R. § 351.102(b), the Department will make a finding concerning control under 19 U.S.C. § 1677(33)(F) and (G). Based upon record information, the Department determines that TCI d/b/a NASTA International, also d/b/a Sunland Shutters, is controlled by Ta Chen, and therefore is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(G).

Ta Chen (BVI) Holdings Ltd. (“Ta Chen (BVI) Holdings”)

Evidence on the record indicates that Ta Chen’s 2005 financial statements disclose Ta Chen (BVI) Holdings as a related party. See Ta Chen’s Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Ta Chen (BVI) Holdings is an investment company, wholly-owned by Ta Chen, and is therefore affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). Ta Chen disclosed the companies of which Ta Chen (BVI) Holdings held an ownership interest during the POR. The Department notes that each of Ta Chen (BVI) Holdings were listed as related parties

in Ta Chen's 2005 financial statements.² See id. and Ta Chen's July 27, 2007, Affiliations Response at 2. Ta Chen states that aside from the ownership relationship, Ta Chen did not have any business relationship with Ta Chen (BVI) Holdings in regards to SSBWPFs during the POR.

Petitioners state that Ta Chen withheld crucial information about its affiliate Ta Chen (BVI) Holdings during the current administrative review. See Petitioners' Brief at 14, and Petitioners' Section A Comments at 4. However, petitioners do not define "crucial" information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Ta Chen (BVI) Holdings that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Ta Chen (BVI) Holdings is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that Ta Chen (BVI) Holdings had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Ta Chen Steel Investment Co., Ltd. a/k/a Ta Chen Stainless Steel Investment Co., Ltd. ("Ta Chen Steel")

Evidence on the record indicates that Ta Chen's 2005 financial statements disclose Ta Chen Steel as a related party. See Ta Chen's Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Ta Chen Steel is an investment company, 99.98% owned by Ta Chen, and is therefore affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). See Ta Chen's July 27, 2007, Affiliations Response at 2. Ta Chen states that aside from the ownership relationship, Ta Chen Steel is an owner of Ta Chen stock, and holds stock under the same terms as any other stockholder. Ta Chen states that it did not have any business relationship with Ta Chen Steel with regard to SSBWPFs during the POR. See id. at 6.

Petitioners state that Ta Chen withheld crucial information about its affiliate Ta Chen Steel during the current administrative review. See Petitioners' Brief at 14, and Petitioners' Section A Comments at 4. However, petitioners do not define "crucial" information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Ta Chen Steel that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Ta Chen Steel is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that

² Ta Chen (BVI) Holdings had ownership interest in Tension Control Bolting Inc., Banner Fastener Inc., Ta Chen Baoding, Shijiazhuang Ta Chen Jitai Precision Casting Co., Ltd, Ta Chen Changsu Machinery Co., Ltd., and Ta Ying Chen (Shanghai) Consultant Co., Ltd. These companies are disclosed in Ta Chen's 2005 Financial Statements.

Ta Chen Steel had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Banner Fasteners Inc. (“Banner Fasteners”)

Evidence on the record indicates that Ta Chen’s 2005 financial statements disclose Banner Fasteners as a related party. See Ta Chen’s Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Banner Fasteners is wholly-owned by its affiliate Ta Chen (BVI) Holdings, and is therefore affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). See Ta Chen’s July 27, 2007, Affiliations Response at 3. Ta Chen states that aside from the ownership relationship, it purchased inputs from Banner Fasteners during the POR that Ta Chen used to produce steel valves and stainless steel screwed pipe fitting blanks. Ta Chen states that it had no transactions with Banner Fasteners with regards to SSBWPFs during the POR. See id. at 7.

Petitioners state that Ta Chen withheld crucial information about its affiliate Banner Fasteners during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Banner Fasteners that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Banner Fasteners is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that Banner Fasteners had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Tension Control Bolting Inc. (“Tension Control Bolting”)

Evidence on the record indicates that Ta Chen’s 2005 financial statements disclose Tension Control Bolting as a related party. See Ta Chen’s Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Tension Control Bolting is 60% owned by its affiliate Ta Chen (BVI) Holdings, and is therefore affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). See Ta Chen’s July 27, 2007, Affiliations Response at 3. Ta Chen states that aside from the ownership relationship, it had no transactions with Tension Control Bolting with regards to SSBWPFs during the POR. See id. at 7.

Petitioners state that Ta Chen withheld crucial information about its affiliate Tension Control Bolting during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Tension Control Bolting that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Tension Control Bolting is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that Tension Control Bolting had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Shiziazhuang Jitai Precision Casting Co., Ltd. (“Shiziazhuang”)

Evidence on the record indicates that Ta Chen’s 2005 financial statements disclose Shiziazhuang as a related party. See Ta Chen’s Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Shiziazhuang is 88.2% owned by its affiliate Ta Chen (BVI) Holdings, and is therefore affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). See Ta Chen’s July 27, 2007, Affiliations Response at 3. Ta Chen states that aside from the ownership relationship, it purchased and sold to Shiziazhuang blanks that are used to produce steel valves, and stainless steel screwed pipe fitting blanks during the POR. Ta Chen states that it did not have any transactions with Shiziazhuang with regard to SSBWPFs during the POR. See id. at 7.

Petitioners state that Ta Chen withheld crucial information about its affiliate Shiziazhuang during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Shiziazhuang that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Shiziazhuang is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that Shiziazhuang had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Ta Chen Baoding Precision Casting Co., Ltd. (“Ta Chen Baoding”)

Evidence on the record indicates that Ta Chen’s 2005 financial statements disclose Ta Chen Baoding as a related party. See Ta Chen’s Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Ta Chen Baoding is 100% owned by its affiliate Ta Chen (BVI) Holdings, and is therefore affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). See Ta Chen’s July 27, 2007, Affiliations Response 4. Ta Chen states that aside from the ownership relationship, it purchased from Ta Chen Baoding inputs that are used to produce steel valves during the POR. Ta Chen states that it did not have any transactions with Ta Chen Baoding with regard to SSBWPFs during the POR. See id. at 8.

Petitioners state that Ta Chen withheld crucial information about its affiliate Ta Chen Baoding during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen

withheld information about Ta Chen Baoding that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Ta Chen Baoding is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that Ta Chen Baoding had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Ta Chen (Changsu) Machinery Co. (“Changsu”)

Evidence on the record indicates that Ta Chen’s 2005 financial statements disclose Changsu as a related party. See Ta Chen’s Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Changsu is 100% owned by its affiliate Ta Chen (BVI) Holdings, and is therefore affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). See Ta Chen’s July 27, 2007, Affiliations Response at 4. Ta Chen states that aside from the ownership relationship, it purchased and sold from Changsu inputs that are used to produce steel valves. Ta Chen states that it did not have any transactions with Changsu with regard to SSBWPFs during the POR. See id. at 8.

Petitioners state that Ta Chen withheld crucial information about its affiliate Changsu during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Changsu that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Changsu is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that Changsu had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Robert Shieh

Petitioners state that Ta Chen withheld crucial information about Robert Shieh from the Department during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, we cannot ascertain the information purportedly withheld by Ta Chen with respect to Robert Shieh. Petitioners have stated repeatedly throughout the POR that Robert Shieh is President of Ta Chen, TCI, and several of TCI’s affiliates. Without more detailed argument supporting its allegation, the Department cannot make a determination that Ta Chen withheld information about Robert Shieh, and the impact such undisclosed information would have on Ta Chen’s margin calculation. Based upon record evidence, the Department finds that Robert Shieh owns Ta Chen and is therefore affiliated with Ta Chen under 19 U.S.C. § 1677(33)(B) and (E). As president and owner of Ta Chen, Robert

Shieh has the potential to impact decisions concerning the production, pricing, or cost of SSBWPFs. Therefore, the Department also finds that Robert Shieh has the ability to control Ta Chen under 19 U.S.C. § 1677(33)(G).

Ta-Ji Investment Co., Ltd. (“Ta Ji Investment”)

Evidence on the record indicates that Ta Chen’s 2005 financial statements disclose Ta Ji Investment as a related party. See Ta Chen’s Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Ta Ji Investment was 99.94% owned by Ta Chen until December 2005, when it merged completely into Ta Chen. Therefore, for part of the POR, Ta Ji Investment was affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). See Ta Chen’s July 27, 2007, Affiliations Response at 2. Ta Chen states that aside from the ownership relationship, it obtained an interest-free loan from Ta Ji Investment to fund its operating expenses during the POR. Ta Chen states that the loan was paid off in its entirety on December 27, 2005. See id. at 5. Ta Chen further states that Ta Ji Investment was an investment company that invested in Ta Chen’s stock on the Taiwan Stock Exchange, and held Ta Chen stock under the same terms as any other stockholder. Ta Chen states that Ta Ji Investment was not involved in the production, distribution, or sales of SSBWPFs during the POR.

Petitioners state that Ta Chen withheld crucial information about its affiliate Ta Ji Investment during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Ta Ji Investment that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Ta Ji Investment was affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that Ta Ji Investment had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Ta Ever Investment Co. Ltd. (“Ta Ever Investment”)

Evidence on the record indicates that Ta Chen’s 2005 financial statements disclose Ta Ever Investment as a related party. See Ta Chen’s Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Ta Ever Investment was 89.1% owned by Ta Chen until December 2005, when it merged completely into Ta Chen. Therefore, for part of the POR Ta Ever Investment was affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). See Ta Chen’s July 27, 2007, Affiliations Response at 2. Ta Chen states that aside from the ownership relationship, it took out an interest-free loan from Ta Ever Investment to fund its operating expenses during the POR. Ta Chen states that the loan was paid off in its entirety on December 27, 2005. See id. at 5-6. Ta Chen further states that Ta Ever Investment was an investment company that invested in Ta Chen’s stock on the Taiwan Stock Exchange, and held Ta Chen stock under the same terms as

any other stockholder. Ta Chen states that Ta Ever Investment was not involved in the production, distribution, or sales of SSBWPFs during the POR.

Petitioners state that Ta Chen withheld crucial information about its affiliate Ta Ever Investment during the current administrative review. See Petitioners' Brief at 14, and Petitioners' Section A Comments at 4. However, petitioners do not define "crucial" information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Ta Ever Investment that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Ta Ever Investment was affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that Ta Ever had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Ta Ying Chen (Shanghai) Consultant Co., a/k/a Ta Ying Chen Investment, a/k/a Ta Chen (Shanghai) Co. ("Ta Chen Shanghai")

Evidence on the record indicates that Ta Chen's 2005 financial statements discloses Ta Chen Shanghai as a related party. See Ta Chen's Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that Ta Chen Shanghai was 100% owned by its affiliate Ta Chen (BVI) Holdings, but Ta Chen states that Ta Chen Shanghai closed in December of 2005. Therefore, Ta Chen Shanghai was affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). See Ta Chen's July 27, 2007, Affiliations Response at 4. Ta Chen states that Ta Chen Shanghai was engaged in market investigation and finance consulting unrelated to SSBWPFs during the POR. Ta Chen states that aside from the ownership relationship, Ta Chen Shanghai did not have any transactions with Ta Chen with regard to SSBWPFs during the POR. See id. at 8.

Petitioners state that Ta Chen withheld crucial information about its affiliate Ta Chen Shanghai during the current administrative review. See Petitioners' Brief at 14, and Petitioners' Section A Comments at 4. However, petitioners do not define "crucial" information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Ta Chen Shanghai that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that Ta Chen Shanghai was affiliated with Ta Chen under 19 U.S.C. § 1677(33)(E). However, there is no evidence on the record that Ta Chen Shanghai had any involvement with the subject merchandise during the POR. Therefore, this affiliation has no impact on the dumping margin.

Oboha Co. Ltd. (“Oboha”)

Evidence on the record indicates that Ta Chen’s 2005 financial statements disclose Oboha as a related party. See Ta Chen’s Section A Questionnaire Response at Exhibit 15 at 33. Ta Chen states that the president of Oboha is married to the president of Ta Chen and TCI (Robert Shieh). See Ta Chen’s July 27, 2007 Affiliations Response at 3. Ta Chen states that Oboha leased a building to Ta Chen during the POR, and provided documentation detailing the lease agreement, and Oboha’s 2005 financial statements. See id. at 3, and Ta Chen’s January 17, 2007 Affiliations Response at 1-2, and Exhibit D, and Ta Chen’s Affiliations Response at Exhibit 25.

Petitioners state that Ta Chen withheld crucial information about its affiliate Oboha during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Oboha that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that the president of Oboha is affiliated with Robert Shieh under 19 U.S.C. § 1677(33)(A), because of their spousal relationship. However, we do not find affiliation between Oboha and Ta Chen absent evidence of control of Oboha by the Shieh family grouping consisting of Robert Shieh and his wife. Specifically, 19 C.F.R. § 351.102(b) indicates that the Department “will not find that control exists . . . unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” Therefore, as there is no evidence on the record that Oboha’s relationship with Ta Chen has the “potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product,” the Department will not make a finding of affiliation between Ta Chen and Oboha under 19 U.S.C. § 1677(33).

Ok-Land Investment Co., Ltd. (“Ok Land”)

Ta Chen states that the president of Ok Land is married to the president of Ta Chen and TCI (Robert Shieh), and therefore, is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(A). See Ta Chen’s July 27, 2007, Affiliations Response at 3. Ta Chen explains that Ok Land is an investment company, and that it was not involved with the production, distribution, or sales of any products, let alone SSBWPFs during the POR. See id. at 10. Ta Chen submitted Ok Land’s 2005 financial statements. See Ta Chen’s August 22, 2007, Affiliations Response at Exhibit 28.

Petitioners state that Ta Chen withheld crucial information about its affiliate Ok Land during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen

withheld information about Ok Land that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that the president of Ok Land is affiliated with Robert Shieh under 19 U.S.C. § 1677(33)(A), because of their spousal relationship. However, we do not find affiliation between Ok Land and Ta Chen absent evidence of control of Ok Land by the Shieh family grouping consisting of Robert Shieh and his wife. Specifically, 19 C.F.R. § 351.102(b) indicates that the Department “will not find that control exists . . . unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” Therefore, as there is no evidence on the record that Ok Land’s relationship with Ta Chen has the “potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product,” the Department will not make a finding of affiliation between Ta Chen and Ok Land under 19 U.S.C. § 1677(33).

Bo Ke Lai Investment Co. Ltd. (“Bo Ke Lai”)

Ta Chen states that the president of Bo Ke Lai is married to the president of Ta Chen and TCI (Robert Shieh), and therefore, is affiliated with Ta Chen under 19 U.S.C. § 1677(33)(A). See Ta Chen’s July 27, 2007 Affiliations Response at 3. Ta Chen explains that Bo Ke Lai is an investment company, and that it was not involved with the production, distribution, or sales of any products, let alone SSBWPFs during the POR. See id. at 10. See also Ta Chen’s August 22, 2007, Affiliations Response at Exhibit 27 for a copy of Bo Ke Lai’s 2005 financial statements.

Petitioners state that Ta Chen withheld crucial information about its affiliate Bo Ke Lai during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about Bo Ke Lai that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that the president of Bo Ke Lai is affiliated with Robert Shieh under 19 U.S.C. § 1677(33)(A), because of their spousal relationship. However, we do not find affiliation between Bo Kei Lai and Ta Chen absent evidence of control of Bo Ke Lai by the Shieh family grouping consisting of Robert Shieh and his wife. Specifically, 19 C.F.R. § 351.102(b) indicates that the Department “will not find that control exists . . . unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” Therefore, as there is no evidence on the record that Bo Ke Lai’s relationship with Ta Chen has the “potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product,” the Department will not make a finding of affiliation between Ta Chen and Bo Ke Lai under 19 U.S.C. § 1677(33).

LPJR Investment LLC (“LPJR”)

Ta Chen states that Robert Shieh (president of Ta Chen) is part owner of LPJR, along with his wife, son, and daughter. Therefore, Ta Chen is affiliated with LPJR under 19 U.S.C. § 1677(33)(A). See Ta Chen’s July 27, 2007, Affiliations Response at 4. Ta Chen states that LPJR is a real estate investment company, and that during the POR, it had no assets or transactions with any companies involved with the production, distribution, or sales of SSBWPFs. See id. at 10-11.

Petitioners state that Ta Chen withheld crucial information about its affiliate LPJR during the current administrative review. See Petitioners’ Brief at 14, and Petitioners’ Section A Comments at 4. However, petitioners do not define “crucial” information, nor do they provide any substantive information or documentation to lead the Department to believe that Ta Chen withheld information about LPJR that would affect its affiliation analysis, or dumping calculation for the current POR.

Based upon our review of record evidence, the Department finds that the members of LPJR are affiliated with Robert Shieh under 19 U.S.C. § 1677(33)(A), because of their familial relationship. However, we do not find affiliation between LPJR and Ta Chen absent evidence of control of LPJR by the Shieh family grouping consisting of Robert Shieh, his wife, and children. Specifically, 19 C.F.R. § 351.102(b) indicates that the Department “will not find that control exists . . . unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” Therefore, as there is no evidence on the record that LPRJ’s relationship with Ta Chen has the “potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product,” the Department will not make a finding of affiliation between Ta Chen and LPJR under 19 U.S.C. § 1677(33).

Companies Alleged by Petitioners to be Affiliated with Ta Chen

The Shieh Family Trust

Petitioners allege that the Shieh Family Trust is an affiliate of Ta Chen based upon current and past common familial or management relationships. Petitioners allege that Ta Chen is withholding information regarding real estate holdings by the Shieh Family Trust that are benefitting TCI and Ta Chen. In addition, petitioners state that the Shieh Family Trust guaranteed a loan to TCI. See Petitioners’ Brief at 9, and Petitioners’ August 10, 2007 Comments at pages 3-5.

Ta Chen argues that the Shieh Family Trust is not a corporation, company, or any other type of business entity, but rather, a trust fund created by Robert Shieh and his wife for the benefit of their children. Ta Chen states that the Shieh Family Trust fund holds the Shiehs’ personal financial holdings. Ta Chen asserts that the Shiehs have invested the funds of this trust in real

estate properties unrelated to Ta Chen. Ta Chen states that Robert Shieh, CEO of Ta Chen, used the Shieh Family Trust fund as a guarantee of a loan for TCI. Ta Chen notes that the guarantee of personal assets for a loan is normal business practice, and a common requirement of banks. See Ta Chen's August 22, 2007, Affiliations Response at 1-3.

Based upon record evidence, the Shieh Family Trust appears to be a family investment. According to SFAS 57, paragraph 21, of the GAAP, a family investment need not be disclosed as an affiliate in a company's financial statements. 19 C.F.R. § 351.102(b) defines "person" in regards to affiliation as: "any interested party as well as any other individual, enterprise, or entity, as appropriate." However, because the trust consists of real estate properties and the Department found no evidence to conclude that the Shieh Family Trust's business activities were related to the subject merchandise or had the potential to impact production or pricing decisions of subject merchandise, the Department determines that the Shieh Family Trust is not an entity, as defined by 19 C.F.R. § 351.102(b). Accordingly, the Department need not perform an affiliation analysis for the Shieh Family Trust because 19 U.S.C. § 1677(33) is inapplicable.

AMS Speciality Steel, Inc. ("AMS California"); AMS Specialty Steel, LLC SOLID #442293 ("AMS North Carolina 1"); AMS Speciality Steel, LLC SOLID #0654511 ("AMS North Carolina 2"); AMS Steel Corporation ("AMS Corp") collectively, ("AMS Companies")

Petitioners allege that TCI was related to AMS California because of common management and material transactions between the two companies during the POR. Specifically, petitioners contend that Robert Shieh (Ta Chen's president) was a guarantor of a loan given by Preferred Bank to AMS California. Petitioners contend that this loan was the subject of Preferred Bank's November 20, 2000, UCC financing statement, and a July 14, 2005, UCC financing statement, which does not expire until November 21, 2010. See Petitioners' Brief at 9, Petitioners' August 10, 2007 Comments at 5, and Petitioners' Section A Comments at Enclosures 2B and 2H.

Ta Chen states that during the POR, Ta Chen was not affiliated with any of the AMS Companies pursuant to 19 U.S.C. § 1677(33). Ta Chen states that other than arm's-length purchases and sale transactions, all affiliated connections between Ta Chen, its officers, directors, affiliates and the AMS companies ended as of December 13, 2002, prior to the current POR. See Ta Chen's July 27, 2007, Affiliations Response at 12-13, and Ta Chen's August 22, 2007, Affiliations Response at 3-8, in which Ta Chen provides a list of all of TCI's transactions with AMS during the POR. None of these transactions are related to subject merchandise. See id. at 8 and Exhibit 29.

To further support its statements, Ta Chen had requested that AMS provide the following documentation: the March 7, 2003, Election of S-Corp Status for AMS Specialty Steel Inc., that requires the signature of all shareholders of AMS Specialty Steel Inc; the Shareholders Agreement of AMS Specialty Steel Inc; the Partial 2003 California Income Tax Return of AMS, which states it includes K-1 statements for all shareholders; and the Partial 2004 California Income Tax Return of AMS, which states that it includes K-1 statements for all shareholders. The Department notes that no Ta Chen entity, or Robert Shieh's signature are on any of these

documents. See Ta Chen's August 22, 2007, Affiliations Response at 7 and Exhibits 15, 16, 17, and 18.

Ta Chen states that Preferred Bank's July 14, 2005 UCC financing statement (submitted by petitioners) was filed in error by Preferred Bank. Ta Chen submitted a letter and documentation from Preferred Bank explaining the filing error, demonstrating that the error had been corrected, and confirmation that the AMS line of credit guaranteed by Robert Shieh was paid off satisfactorily on December 13, 2002. See Ta Chen's August 22, 2007, Affiliations Response at 8 and Exhibits 19, 20, and 21.

Based upon its review of the record evidence, the Department determines that there is no evidence to conclude that Ta Chen or any of its related parties were affiliated with any of the AMS Companies during the POR. Under 19 U.S.C. § 1677(33), the Department finds no affiliation between Ta Chen, AMS California, or any of the AMS Companies during the POR.

Dragon Stainless Steel, Inc. ("Dragon Stainless")

Petitioners allege in the current review that Dragon Stainless is affiliated with Ta Chen. See Petitioners' Brief at 9. Petitioners state that in the 2002-2003 period of review, the Department found that a key employee worked at both Dragon Stainless and Ta Chen. Specifically, the Department found that William Kenneth Mayes ("Mr. Mayes") was employed as a vice-president of TCI, and president of Dragon Stainless during the 2002-2003 POR. In addition, the Department found that Ta Chen had an abnormal degree of control and access to Dragon Stainless's business information and bank accounts. Therefore, for the 2002-2003 POR, the Department found Ta Chen affiliated with Dragon Stainless pursuant to 19 U.S.C. § 1677(33)(F) and (G). See the Department's 2002-2003 Issue and Decision Memorandum at Comment 2. Based upon the Department's findings in the 2002-2003 POR, petitioners believe that Ta Chen continues to be affiliated with Dragon Stainless in the current 2005-2006 POR. See Petitioners' Section A Comments at 8 and Enclosure 2E.

In the instant proceeding, the Department asked Ta Chen to review the Department's 2003-2004 Issues and Decision Memo, and explain its current business relationship with Dragon Stainless. See the Department's Supplemental Questionnaire regarding affiliations dated July 11, 2007 at 5. Ta Chen states that it did not have any transactions of SSBWPFs with Dragon Stainless during the POR. Ta Chen further states that during the POR, TCI purchased non-subject merchandise, specifically plate flanges from Dragon Stainless. See Ta Chen's July 27, 2007, Affiliations Response at 16.

Ta Chen states that it is not affiliated with Dragon Stainless pursuant to 19 U.S.C. § 1677(33). Ta Chen explains that until May 5, 2004, Mr. Mayes was President and Donna Ritchey ("Ms. Ritchey") the Vice-President of Dragon Stainless. Ta Chen states that since May 5, 2004, Mr. Mayes has been the President, Secretary and Treasurer of Dragon Stainless, and Ms. Ritchey has not been an officer in any capacity. See Ta Chen's July 27, 2007, Affiliations Response at 14.

Regardless, Ta Chen states that for the current POR, Mr. Mayes was not an employee, or officer of TCI, but rather an independently paid consultant. In addition, Ta Chen states that Ms. Ritchey was employed as the manager of the shutter division of TCI's Tampa facility until March 17, 2006. See Ta Chen's July 27, 2007, Affiliations Response at 14-15. The Department notes that the issue of affiliation between Ta Chen and Dragon Stainless based upon Mr. Mayes's position as a consultant of TCI was examined in the 2003-2004 review period. In the 2003-2004 review, the Department did not find Ta Chen and Dragon Stainless to be affiliated based upon Mr. Mayes's consultant status. See the Department's 2003-2004 Affiliations Memo at 6-8. For the current review, the Department finds that there is no indication that Mr. Mayes is an employee of Ta Chen, and therefore, affiliated with Ta Chen under 19 U.S.C. § 1677(33)(D).

Based upon the evidence on the record, the Department determines, for the current POR, there is no evidence to find Ta Chen affiliated with Dragon Stainless under 19 U.S.C. § 1677(33).

Millennium Stainless, Inc., ("Millennium Stainless")

Petitioners allege that Ta Chen is affiliated with Millennium Stainless by means of a shared officer, specifically Mr. Mayes. Petitioners submitted the Florida Department of State Division of Corporation online inquiry, which indicates Mr. Mayes as President, Secretary, and Treasurer of Millennium Stainless for the years of 2003, 2004, and 2005. In addition, petitioners provide Millennium Stainless's 2005 For Profit Corporation Annual Report and Articles of Incorporation dated September 18, 1998. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 8 and Enclosure 2F.

In the instant proceeding, the Department asked Ta Chen to review the Department's 2003-2004 Issues and Decision Memo, and explain its current business relationship with Millennium Stainless. See the Department's Supplemental Questionnaire regarding affiliations dated July 11, 2007 at 5. In response to the Department's request, Ta Chen stated that it made no sales to Millennium Stainless during the POR of either subject, or non-subject merchandise. See Ta Chen's July 27, 2007, Affiliations Response at 14-15.

Ta Chen states that until May 5, 2004, Mr. Mayes was President and Donna Ritchey the Vice-President of Millennium Stainless. Ta Chen notes that since May 5, 2004, Mr. Mayes has been the President, Secretary and Treasurer of Millennium Stainless, and Ms. Ritchey has not been an officer in any capacity. See Ta Chen's July 27, 2007 Affiliations Response at 14-16. In any case, Ta Chen explains that for the current POR, Kenneth Mayes was not an employee, or officer of TCI, but rather an independently paid consultant. See Ta Chen's July 27, 2007, Affiliations Response at 14. Ta Chen states that it is not affiliated with Millennium Stainless pursuant to 19 U.S.C. § 1677(33).

The Department notes that the issue of affiliation between Ta Chen and Millennium Stainless based upon Mr. Mayes's position as a consultant of TCI was examined in the 2003-2004 review period. In the 2003-2004 review, the Department did not find Ta Chen and Millennium Stainless

to be affiliated based upon Mr. Mayes's consultant status. See the Department's 2003-2004 Affiliations Memo at 6-8. For the current review, the Department finds that there is no indication that Mr. Mayes is an employee of Ta Chen, and therefore, affiliated with Ta Chen under 19 U.S.C. § 1677(33)(D).

Based upon the evidence on the record, the Department determines, that for the current POR, there is no evidence to find Ta Chen affiliated with Millennium Stainless under 19 U.S.C. § 1677(33).

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

Petitioners allege that Ta Chen is affiliated with South Coast by means of a shared officer, specifically Mr. Mayes. Petitioners provide the Florida Department of State Division of Corporation online inquiry, which indicates Mr. Mayes as President, Secretary, and Treasurer of South Coast for the years 2003, 2004, and 2005. In addition, petitioners provide South Coast's 2005 For Profit Corporation Annual Report, and Articles of Incorporation dated August 14, 2001. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 8 and Enclosure 2G.

In the instant proceeding, the Department asked Ta Chen to review the Department's 2003-2004 Affiliations Memorandum, which included affiliation analyses of several identical entities that petitioners alleged for the current review, including South Coast. The Department requested Ta Chen to explain its current business relationship with the entities analyzed in the 2003-2004 Affiliations Memorandum. See the Department's Supplemental Questionnaire regarding affiliations dated July 11, 2007 at 5. In its response, Ta Chen stated that it made no sales to South Coast during the POR of either subject, or non-subject merchandise. See Ta Chen's July 27, 2007, Affiliations Response at 14-16.

Ta Chen states that it is not affiliated with South Coast pursuant to 19 U.S.C. § 1677(33). Ta Chen states that South Coast was formed for the purpose of eventually merging Dragon Stainless and Millennium Stainless into one company. Ta Chen explains that South Coast was commercially inactive throughout the POR, and that Mr. Mayes has been the President, Secretary, and Treasurer as of May 5, 2004. Ta Chen notes that for the current POR, Kenneth Mayes was not an employee, or officer of TCI, but rather an independently paid consultant. See Ta Chen's July 27, 2007, Affiliations Response at 14.

The Department notes that the issue of affiliation between Ta Chen and South Coast based upon Mr. Mayes position as a consultant of TCI was examined in the 2003-2004 review period. In the 2003-2004 review, the Department did not find Ta Chen and South Coast to be affiliated based upon Mr. Mayes's consultant status. See the Department's 2003-2004 Affiliations Memo at 6-8. For the current review, the Department finds that there is no indication that Mr. Mayes is an employee of Ta Chen, and therefore, affiliated with Ta Chen under 19 U.S.C. § 1677(33)(D).

Based upon the evidence on the record, the Department determines that, for the current POR, there is no evidence to find Ta Chen affiliated with South Coast under 19 U.S.C. § 1677(33).

Southstar Steel Corporation/South Star Corp. (“Southstar”); Estrela Specialty Steel, Inc. (“Estrela 1”); Estrela, LLC (“Estrela 2”); Estrela International Corporation (“Estrela 3”); Estrela International, Inc. (“Estrela 4”), and TCI Estrela International Co., Ltd. (“TCI Estrela”); collectively (“Estrela Companies”)

Petitioners allege that Ta Chen is affiliated with Estrela 1 because Robert Shieh (president of Ta Chen) provided financing for Estrela 1. See Petitioners’ Brief at 9, and Petitioners’ Section A Comments 8.

Ta Chen argues that it is not affiliated with Estrela 1 or any of the Estrela Companies under any subsection of 19 U.S.C. § 1677(33). Ta Chen states that Estrela 1, Estrela 2, Estrela 3, and Estrela 4 were dissolved prior to the current POR. See Ta Chen’s July 27, 2007, Affiliations Response at 19. To support its statement, Ta Chen submitted a copy of Estrela 1’s Certificate of Dissolution dated June 12, 2003, Estrela 2’s Certificate of Dissolution dated April 5, 2005, Estrela 3’s corporate record stating its status as dissolved as of April 5, 2005, and Estrela 4’s corporate record stating its status as dissolved as of September 7, 1990. See id. at 19, and Exhibits 6, 7, 8 and 9. Ta Chen stated that TCI Estrela has a suspended status as a corporation with the California Secretary of State as of June 20, 1999. See id. at 19 and Exhibit 10.

The Department notes that petitioners’ allegations were reviewed in the 2003-2004 review period in which the Department did not find affiliation between Ta Chen and any of the Estrela Companies. See 2003-2004 Affiliations Memorandum at 14-15. Based upon the evidence on the record, the Department determines that none of the Estrela Companies were active during the POR. In addition, the evidence on the record does not support petitioners’ allegations that Ta Chen is affiliated with Estrela 1 or any of the Estrela Companies.

Based upon the information on the record of the current POR, the Department does not find affiliation or control between Ta Chen and any of the Estrela Companies pursuant to 19 U.S.C. § 1677(33).

DNC Metals Inc.

Petitioners allege Ta Chen is affiliated with DNC Metals Inc. because of familial operational control. See Petitioners’ Brief at 9, and Petitioners’ Section A Comments at 8. Ta Chen states that the President of DNC Metals Inc., Roger Tsai, is related to Robert Shieh, President of Ta Chen via a marriage between the two families. Ta Chen provided a family chart identifying Robert Shieh’s son as being married to Roger Tsai’s sister. See Ta Chen’s July 27, 2007, Affiliations Response at 17-18. The Department notes that it examined the familial status of Roger Tsai in regards to affiliation with Ta Chen during the 2003-2004 POR and determined that affiliations through familial relations under 19 U.S.C. § 1677(33)(A) did not exist because Roger

Tsai and Robert Shieh were not descendants of a common progenitor. See 2003-2004 Affiliations Memorandum at 8-9. The Department continues to find that affiliation between Ta Chen and DNC Metals Inc. based upon 19 U.S.C. § 1677(33)(A) does not exist. Moreover, during the current 2005-2006 POR, Ta Chen stated that neither it nor TCI had any transactions with DNC Metals Inc. See Ta Chen's July 27, 2007, Affiliations Response at 18.

Based upon the information on the record of the current POR, the Department does not find affiliation or control between Ta Chen and DNC Metals Inc. pursuant to 19 U.S.C. § 1677(33).

Billion Stainless Inc. ("Billion Stainless")

Petitioners allege that Ta Chen is affiliated with Billion Stainless Inc. because of familial operational control between the two companies. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 8. Ta Chen states that Billion Stainless was dissolved prior to the POR on August 31, 2002. Ta Chen submitted a copy of Billion Stainless's Certificate of Dissolution dated August 31, 2002. See Ta Chen's July 27, 2007, Affiliations Response at 18 and Exhibit 3. Ta Chen explains that Billion Stainless is listed on TCI's customer list because of purchases Billion Stainless made prior to the POR, and that it is TCI's business practice not to delete companies from its customer list. See id. at 18.

Based upon evidence on the record, it appears that Billion Stainless was dissolved prior to the POR. Petitioners have not provided sufficient information to find affiliation. Therefore, the Department finds that affiliation between Ta Chen and Billion Stainless does not exist under 19 U.S.C. § 1677(33).

Emerdex Stainless Flat Rolled Products, Inc. (Emerdex 1), Emerdex Stainless Steel Inc. (Emerdex 2), Emerdex Group, Inc. (Emerdex 3), and Emerdex Shutters (Emerdex 4), collectively, ("Emerdex Companies")

Petitioners allege that Ta Chen is affiliated with the Emerdex Companies via operational control. Specifically, petitioners allege that Emerdex 1 is affiliated with Ta Chen via Robert Shieh's sibling, and that Emerdex 2, Emerdex 3, and Emerdex 4 operated as single entities with Emerdex 1. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 8. Petitioners submitted documentation on the Emerdex Companies which indicate that Robert Shieh's brother, Jung Yao Shieh, was involved with Emerdex 1 during the years 2002 and 2003. Specifically, petitioners submitted a Dunn and Bradstreet Business Information Report dated January 7, 2003, Emerdex 1's State of California Statement of Information dated January 31, 2003, and Emerdex 1's U.S. Corporation Income Tax Return for 2002. See id. at Enclosure 2C.

Ta Chen argues that it is not affiliated with any of the Emerdex Companies under any subsection of 19 U.S.C. § 1677(33). Ta Chen notes that it found information on the California Secretary of State Corporation website identifying Emerdex 1, Emerdex 2, and Emerdex 3 as active California Corporations as of July 18, 2007. Ta Chen states that it could not find any

information about Emerdex 4. See Ta Chen's July 27, 2007, Affiliations Response at 13-14. Ta Chen explains that Emerdex 1 is engaged in the buying and selling of non-subject merchandise, (i.e., stainless steel strip, casting, and special processing equipment). Ta Chen states that during the POR, Emerdex 1 purchased only non-subject merchandise from TCI. Ta Chen explains that it monitors aspects of Emerdex 1's business operations, in particular, inventory and accounts receivable, to insure payment of non-subject merchandise by Emerdex 1 for sales made by Ta Chen to Emerdex 1.

Ta Chen submitted a diagram of the Shieh family tree, which indicates J.Y. Shieh is the brother of Ta Chen's President, Robert Shieh. See Ta Chen's Affiliation Response dated November 30, 2007, at 17. The Department notes that Jung Yao Shieh is listed as the registered agent on Emerdex 1's U.S. State of California Statement of Information dated January 31, 2003. However, for the current 2005-2006 POR, there is no evidence on the record indicating that Jung Yao Shieh is involved with any of the Emerdex Companies. In addition, there is no evidence on the record demonstrating that transactions of subject merchandise were made between Ta Chen and any of the Emerdex Companies during the POR.

We note that the Department analyzed in extensive detail the relationship between the Emerdex Companies and Ta Chen during the 2003-2004 administrative review, and found that affiliation did not exist. See the Department's 2003-2004 Affiliations Memorandum at 3-8. Based upon information on the record of this proceeding, the Department again concludes that affiliation did not exist during the POR between Ta Chen and the Emerdex Companies under 19 U.S.C. § 1677(33).

LHPJ International

Petitioners allege that Ta Chen was affiliated with LHPJ International during the POR based on familial operational control. See Petitioners' Brief at 9, and Petitioners Section A Comments at 8. Ta Chen states that LHPJ International became an active company in October 2003. Ta Chen notes that James Chang, a TCI vice president, was the owner and sole officer, director, secretary, CEO, and CFO of LHPJ International. Ta Chen submitted a California Business Search Report identifying LHPJ International as a dissolved company as of January 1, 2005. See Ta Chen's July 27, 2007, Affiliations Response at 21.

Based upon the information on the record, there is no evidence that LHPJ International existed during the POR. Therefore, the Department finds that affiliation between LHPJ International and Ta Chen did not exist during the POR under 19 U.S.C. § 1677(33).

Stainless Express, Inc. and Stainless Express Products, Inc.

Petitioners claim that Ta Chen is affiliated with Stainless Express, Inc. However, petitioners do not provide evidence for the alleged affiliation during the current POR. See Petitioners' Brief at 9, and Petitioners' April 24, 2007 Comments at 5. Ta Chen states that Stainless Express, Inc.,

and Stainless Express Products, Inc. were both dissolved prior to the POR. Ta Chen submitted the Florida Department of State Division of Corporations public filings identifying Stainless Express Inc., being dissolved as of October 4, 2002, and Stainless Express Products, Inc., being dissolved as of October 1, 2004. See Ta Chen's July 27, 2007, Affiliations Response at 19 and Exhibits 4 and 5.

Based upon the information on the record, the Department finds that Stainless Express, Inc. and Stainless Express Products, Inc. were dissolved prior to the POR. Therefore, the Department does not find Stainless Express Inc. or Stainless Express Products, Inc. affiliated with Ta Chen during the POR under any subsections of 19 U.S.C. § 1677(33).

Becmen Specialty Steels, Inc., Becmen LLC, Becmen Corporation and Becmen Trading International, Inc. (collectively the "Becmen Companies")

Petitioners allege that Ta Chen is affiliated with the Becman Companies. Petitioners submitted public corporate documents for the Becmen Companies, but failed to explain their reason for alleging affiliation between the Becman Companies and Ta Chen. See Petitioners' Brief at 9, and Petitioners' Section A Comments dated September 2, 2007, at 6 and Enclosure 2K. Ta Chen stated that it is not affiliated with any of the Becmen entities under any subsection of 19 U.S.C. § 1677(33). See Ta Chen's July 27, 2007, Affiliations Response at 20.

Ta Chen states that Becmen LLC, was formed in North Carolina in November of 1995 by Mark Menzies and Klaus Becker. Ta Chen states that Becmen Specialty Steels, Inc. was formed in 1986 and dissolved in February 14, 2005, prior to the POR. Ta Chen submitted corporate documents supporting its statements. See Ta Chen's July 27, 2007, Affiliations Response at 20 and Exhibit 11.

The Department analyzed the Becmen Companies in the 2003-2004 administrative review and found no connection with Ta Chen or the subject merchandise. See 2003-2004 Affiliations Memorandum at 15-16. Based upon information on the record in the current POR, there is no evidence to find Ta Chen affiliated with any of the Becmen companies under any subsections under 19 U.S.C. § 1677(33).

KSI Steel, Inc. (KSI), K. Sabert, Inc. (K. Sabert), and Sabert Investments (collectively the "Sabert Companies")

Petitioners allege that the Sabert Companies were affiliated with Ta Chen during the POR. Petitioners submitted public corporate documents for the Sabert Companies, but failed to explain their reason for alleging affiliation between the Sabert Companies and Ta Chen. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 6 and Enclosure 2L.

Ta Chen denies being affiliated with any of the Sabert Companies under any subsection of 19 U.S.C. § 1677(33) during the POR or prior to the POR. The Department analyzed the Sabert

Companies in the 2003-2004 administrative review and found no connection with Ta Chen or the subject merchandise. See 2003-2004 Affiliations Memorandum at 15. Based upon information on the record in the current POR, there continues to be no evidence to find Ta Chen affiliated with any of the Sabert companies under 19 U.S.C. § 1677(33).

QDII and QFII

Petitioners state that Ta Chen is affiliated with QDII and QFII, but fail to explain their affiliation allegation. Moreover, petitioners provide no explanation of QDII and QFII as to whether they are companies, entities, or how they believe they are affiliated to Ta Chen during the current POR. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 6. Ta Chen did not comment on QDII or QFII.

Although petitioners did not provide an explanation of QDII and QFII, the Department found that the general meaning of these two terms are "Qualified Domestic Institutional Investor" ("QDII") and "Qualified Foreign Institutional Investor" ("QFII").³ The Department reviewed QDII and QFII in the 2004-2005 review and found that QDII and QFII were not considered Ta Chen affiliates. See the Department's 2004-2005 Issues and Decision Memorandum at 2-6. Therefore, the Department concludes that there is no evidence on the record to find Ta Chen affiliated with QDII or QFII under 19 U.S.C. § 1677(33).

JK Industries W.H. Inc. ("JK Industries")

In the current review, petitioners state that Ta Chen is affiliated with JK Industries, but fail to provide an explanation for their allegation. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 6. Petitioners submitted public corporate documents for JK Industries, filed prior to the POR on April 20, 2005. Mr. Mayes is listed as a President of JK Industries in the corporate documents. The Department notes that the issue of affiliation between Ta Chen and other companies based upon Mr. Mayes's position as a consultant of TCI was examined in the 2003-2004 review period. In the 2003-2004 review, the Department did not find Ta Chen and other companies to be affiliated based upon Mr. Mayes' consultant status. See the Department's 2003-2004 Affiliations Memo at 6-8. For the current review, the Department finds that there is no indication that Mr. Mayes is an employee of Ta Chen, and therefore, affiliated with Ta Chen under 19 U.S.C. § 1677(33)(D).

³ QDII and QFII are generally defined as "Qualified Domestic Institutional Investor," ("QDII") and "Qualified Foreign Institutional Investor" ("QFII"), as noted by several website sources. Including, the China Daily newspaper at http://www.chinadaily.com.cn/bizchina/2006-09/26/content_696730.htm, Wikipedia.org at http://en.wikipedia.org/wiki/Qualified_Domestic_Institutional_Investor, and Fund China at <http://www.fundcn.org/knowledge/what-is-the-qdii-and-qfii/>

Therefore, based upon the information on the record, the Department concludes that no affiliation between Ta Chen and J.K. Industries existed during the POR pursuant to any subsections under U.S.C. § 1677(33).

Nirosteel LLC

In the current review, petitioners allege that Ta Chen is affiliated with Nirosteel LLC, but fail to provide an explanation for their allegation. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 6. Petitioners submitted Nirosteel LLC's public North Carolina corporate documents filed on June 23, 2005, and the company's articles of incorporation, filed from May 2, 2000 through October 2, 2002. See Petitioners' Section A Comments at Enclosure 2O. The Department found no potential connection between the information reported on Nirosteel LLC's corporate documents and Ta Chen. The Department notes that petitioners alleged affiliation between Nirosteel LLC and Ta Chen during the 2004-2005 review. During the 2004-2005 review the Department reviewed the affiliation potential between Ta Chen and Nirosteel LLC, and found no connection between the two companies. See the Department's 2004-2005 Issues and Decision Memorandum at 1-6. Based upon the information on the record the Department continues to find no evidence of affiliation between Nirosteel LLC and Ta Chen during the POR, pursuant to U.S.C. § 1677(33).

South Star Real Estate, LLC ("South Star Real Estate")

In the current review, petitioners allege that Ta Chen is affiliated with South Star Real Estate, but fail to provide an explanation for their allegation. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 6. Petitioners submitted South Star Real Estate's corporate documents filed on July 11, 2005, and the company's annual reports, which were filed prior to the POR, from November 13, 1997, through December 31, 2002. See Petitioners' Section A Comments at Enclosure 2P. The Department found no potential connection between the information reported on these documents and Ta Chen. The Department notes that petitioners alleged affiliation between South Star Real Estate and Ta Chen during the 2004-2005 review. During the 2004-2005 review the Department reviewed the affiliation potential between Ta Chen and South Star Real Estate, and found no connection between the two companies. See the Department's 2004-2005 Issues and Decision Memorandum at 1-6. Based upon the information on the record the Department finds continues to find no evidence of affiliation between South Star Real Estate and Ta Chen during the POR, pursuant to any subsections under U.S.C. § 1677(33).

Ta Chen Enterprise

In the current review, petitioners allege that Ta Chen is affiliated with Ta Chen Enterprise, but fail to provide an explanation for their allegation. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 6. Petitioners submitted Ta Chen Enterprise's corporate documents filed on January 1, 1982. See Petitioners' Section A Comments at Enclosure 2Q. The Department found no potential connection between the information reported on this document that would

lead it to believe that Ta Chen was affiliated with Ta Chen Enterprise during the current POR. The Department notes that petitioners alleged affiliation between Ta Chen Enterprise and Ta Chen during the 2004-2005 review. During the 2004-2005 review the Department reviewed the affiliation potential between Ta Chen and Ta Chen Enterprise, and found no connection between the two companies. See the Department's 2004-2005 Issues and Decision Memorandum at 1-6. Based upon the information on the record the Department continues to find no evidence of affiliation between Ta Chen Enterprise and Ta Chen during the POR, pursuant to 19 U.S.C. § 1677(33).

G.M.T.S. International Co., Ltd. ("GMTS International")

In the current review, petitioners allege that Ta Chen is affiliated with GMTS International, but fail to provide an explanation for their allegation. See Petitioners' Brief at 9, and Petitioners' Section A Comments at 6. Petitioners submitted GMTS International's corporate documents, filed prior to the POR, on March 19, 1981, which report the company is in suspended status. See Petitioners' Section A Comments at Enclosure 2R. The Department found no potential connection between the information reported on this document that would lead it to believe that Ta Chen was affiliated with GMTS International during the current POR. Based upon the information on the record, the Department finds no evidence of affiliation between Ta Chen and GMTS International during the POR under U.S.C. § 1677(33).

Comment 2: CEP Offset

Petitioners argue that the Department should deny Ta Chen's request for a downward constructed export price ("CEP") offset adjustment to normal value. See Petitioners' Brief at 20-22.

First, petitioners assert that in the Preliminary Results, the Department inaccurately granted Ta Chen a CEP offset based upon an analysis of Ta Chen's selling functions to its U.S. affiliate, TCI, rather than to its first U.S. unaffiliated customer. Petitioners cite 19 U.S.C. § 1677b(a)(7)(B), 19 C.F.R. § 351.412(f)(1)(ii), and the SAA, claiming that the Department's statute and regulations require that a respondent seeking a downward CEP offset adjustment to normal value must demonstrate that its home market sales were at a more advanced level of trade than its U.S. CEP sales. Petitioners also cite 19 U.S.C. § 1677a(b) and (d); and 19 C.F.R. § 351.412(c)(1)(ii), stating that the Department will find that a home market sale is at a more advanced level of trade than a U.S. sale if the respondent provides more selling activities to its home market customer than it provides on its sales to its first unaffiliated U.S. customer. Petitioners believe that a CEP offset analysis of Ta Chen's selling activities based upon sales to its first unaffiliated U.S. customers would provide a more reliable arm's-length U.S. price, inclusive of all selling expenses incurred with bringing the subject merchandise to the time of U.S. entry, but exclusive of those selling expenses incurred thereafter in the United States. Petitioners cite to their letter submitted on October 30, 2006, at 9-11, and state that for Ta Chen's U.S. sales the Department examined pricing and marketing support, freight and delivery, inventory maintenance and warranty, and technical service. However, petitioners argue that the

Department failed to consider certain of Ta Chen's U.S. selling functions, including the provision of Taiwanese insurance, Taiwanese brokerage, marine insurance, Taiwanese banking expenses, risk of payment, extension of payment terms, and packaging services. Petitioners state that the Department's failure to consider all selling activities performed by Ta Chen for its unaffiliated customers led it to unjustifiably grant Ta Chen a downward CEP offset for Ta Chen. See Petitioners' Brief at 22.

Second, petitioners argue that in the Preliminary Results the Department overstated the selling activities provided by Ta Chen to its home market customers and understated the selling activities provided by Ta Chen Taiwan to its first unaffiliated U.S. customers. Petitioners argue that the Department's action led it to improperly accept certain home market selling activities that were not actually performed by Ta Chen as evidence that Ta Chen's home market sales were at a more advanced level of trade than Ta Chen's U.S. sales. Petitioners contend that the Department's Preliminary Results improperly concluded that Ta Chen provided sales pricing/marketing support; freight and delivery; inventory maintenance/warranty; and warranty/technical services for its home market sales. Petitioners argue that, according to the record, Ta Chen did not actually perform activities related to freight and delivery, warranty expenses, and technical assistance for its home market sales. See Petitioners' Brief at 23.

Petitioners further argue that the Department improperly concluded that certain selling activities which were provided for both home market and unaffiliated U.S. customers were provided at a higher level of effort by Ta Chen on its home market sales than on its U.S. sales. Specifically, petitioners state that Ta Chen provided more processing and marketing support for U.S. sales than it did for home market sales because Ta Chen has 15 employees to service U.S. sales, but only two employees to service its home market sales. In addition, petitioners claim that there is no record evidence showing that Ta Chen provided more selling activities for processing and marketing support and inventory maintenance to its home market customers than to its U.S. customers. See Petitioners' Brief at 24.

Finally, petitioners state that if the Department's changes its CEP offset analysis, the Department will find that Ta Chen provided fewer selling activities and at a less advanced state of distribution in the home market than Ta Chen U.S. CEP sales to its first unaffiliated customer. Therefore, petitioners argue that a CEP offset adjustment to normal value is not warranted. See Petitioners' Brief at 25-26.

Ta Chen argues that the Department correctly granted it a CEP offset adjustment, and that petitioners' argument with respect to the Department's long established LOT analysis methodology lacks support. Ta Chen states that, should the Department have considered Taiwanese insurance, brokerage, marine insurance, banking costs, credit costs, and packing in its CEP adjustment calculation, the result would be double counting and incorrect, as all such costs are already separately accounted for in the Department's margin calculations. See Ta Chen's Rebuttal Brief at 4-6. For each home market and U.S. selling function reported by Ta Chen in its original questionnaire response, the Department requested that Ta Chen identify the expense

fields of its home market and U.S. databases that captured the related selling function expense. See the Department's Supplemental Questionnaire to Ta Chen dated January 16, 2007 at 3. Ta Chen replied to the Department's request in its supplemental questionnaire response, and was able to identify the fields of their databases that captured the expense for their reported home market and U.S. selling functions. See Ta Chen's Supplemental Questionnaire dated February 15, 2007 at 1-2 and Exhibit 4. Based upon the information on the record, the Department notes that Ta Chen demonstrated that sales pricing/marketing support; freight and delivery; inventory maintenance/warranty; and warranty/technical services for its home market sales were either performed or offered to its home market customers during the POR.

Ta Chen claims that petitioners' statement that Ta Chen is responsible for risk of non-payment, pricing, marketing, arranging delivery, maintaining warehouse inventory, and technical services for U.S. sales is incorrect. Ta Chen states that its affiliate, TCI, incurs all of those risks and responsibilities for U.S. sales. For home market sales, Ta Chen insists that it is responsible for risk of non-payment, pricing, marketing, arranging delivery, maintaining warehouse inventory, technical services, and getting and maintaining customers. Ta Chen states that because its home market responsibilities are greater than its responsibilities for U.S. sales to TCI, of solely processing orders, a CEP offset adjustment is supported and warranted. In addition, Ta Chen points out that petitioners' argument has repeatedly been rejected in multiple past reviews, and that they have provided no new information or evidence to strengthen their argument in this review. See id.

Department's Position

We have reexamined the record and our LOT analysis in the Preliminary Results and continue to find that Ta Chen's home market sales are made at a more advanced LOT than its sales to TCI, and that a CEP offset adjustment is warranted. Section 1677b(a)(7)(A) of the Act provides that differences in LOTs for which adjustments may be made involve the performance of different selling activities and a demonstrated effect on price comparability. Under special circumstances as described at 19 CFR § 351.412(f), the Department may make a CEP offset using indirect selling expenses in the home market. The offset can only be applied where the respondent has succeeded in establishing that there is a difference in LOT between the CEP sales and the home market sales, and NV is determined at a more advanced LOT than the CEP LOT, but the available data do not permit a determination on whether the difference affects price comparability, although the respondent has cooperated to the best of its ability. See id.

We disagree with petitioners' contentions that the Department must compare Ta Chen's home market selling functions with those performed by Ta Chen for its sales to the first unaffiliated customer in the United States. The Department's practice has been to analyze the selling functions performed by the respondent for sales to its U.S. affiliate. In this case that would be Ta Chen's sales to TCI. See, e.g., Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review, 71 FR 76978 (December 22, 2006) and accompanying Issues and Decision ("I&D Memorandum") at Comment 3, and Tapered Roller

Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part, 65 FR 11767 (March 6, 2000) and accompanying I&D Memo at Comment 2.

Ta Chen reported that its selling functions for home market sales included maintaining inventory to provide just-in-time or immediate shipments to customers, incurring seller's risk of non-payment by customers, addressing customer complaints as to quality, delivery, or specification, handling freight and delivery arrangements, traveling and entertaining customers, projecting needs and conducting new customer research, research and development (as needed), providing customers with technical assistance, providing packing services, and providing after sale services, including additional or supplemental documents sought by customers. See Ta Chen's Section A Response at 18.

For U.S. sales made to its U.S. affiliate, TCI, Ta Chen reported that its selling activities consisted of accepting orders, scheduling production, and making arrangements for inland freight to the port, brokerage, containerization and Taiwan customs clearance, including payment of harbor tax. Ta Chen's terms of sale to TCI are C&I Taiwan, and Ta Chen reported that title transfers to TCI after the merchandise is loaded on board the vessel in Taiwan. Ta Chen reported that TCI is a master distributor and handles all the selling functions for sales to the first unaffiliated customer in the United States, including all communications with customers, U.S. customs duties, U.S. brokerage, U.S. inland freight, U.S. warehousing, inventory maintenance and assumption of risk of nonpayment. See Ta Chen's Section A Response at 19.

Although Ta Chen's activities related to freight and delivery arrangements are somewhat greater for sales to TCI than for home market sales, the record shows that Ta Chen engages in a higher level of sales effort for home market sales than for U.S. sales. Ta Chen has more home market customers who purchase in smaller volumes than TCI and require more individual contact. Although the number of sales staff employed for Ta Chen in Taiwan is less than those employed for selling to the United States, this is not necessarily an indication that more effort is made for U.S. sales. Record evidence shows that Ta Chen's volume of home market sales for both the foreign like product and other products besides SSBWPFs sold in the home market is significantly less than the total amount of sales of all products to the United States. Therefore, a larger sales staff selling all of Ta Chen's products to the United States for both subject merchandise and non-subject merchandise may be a logistics function of a larger overall market (i.e., more employees are needed to serve a larger market). The CEP offset measures the level of effort of each selling activity, and not necessarily the number of employees dedicated to sell all merchandise to each market.

Ta Chen assumes credit risk and provides technical services only for its home market sales. In addition, Ta Chen provides just-in-time delivery requiring a higher level of inventory maintenance only for home market sales, while orders for U.S. sales are filled mainly out of production runs. Therefore, because the home market selling functions related to sales process

and inventory maintenance are greater (i.e., performed at a higher level of activity) than the selling functions performed for U.S. sales, we conclude that the LOT of home market sales is different from the LOT for Ta Chen's CEP sales. Moreover, in reviewing record evidence, we find that the LOT is more advanced in the home market than in the United States. However, because there is only one LOT in the home market, the Department is unable to quantify the effect of the difference in LOT on prices. The Department notes that petitioners' argument regarding whether Ta Chen is warranted a CEP offset based upon its selling functions has been repeated in each of the past four segments of this case. However, petitioners have not cited to any new facts since those prior reviews. Therefore, for these final results, and consistent with our practice in the recent prior administrative reviews of Ta Chen's sales, we are continuing to grant Ta Chen a CEP offset. See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 71 FR 67098 (Nov. 20, 2006) and accompanying I&D Memorandum at Comment 2; 70 FR 73727 (Dec. 13, 2005) and I&D Memo at Comment 2; 70 FR 1870 (Jan. 11, 2005) and accompanying I&D Memorandum at Comment 4; 68 FR 69996 (Dec. 16, 2003) and accompanying I&D Memorandum at Comment 3; and 67 FR 78417 (Dec. 24, 2002) and accompanying I&D Memorandum at Comment 6.

Comment 3: Level of Trade (LOT) Adjustment

Ta Chen requests that the Department grant a level of trade adjustment. Ta Chen states that it sells to distributors and end-users in the home market. Ta Chen defines those two channels of distribution as "HM LOT 1" and "HM LOT 2," respectively. Ta Chen argues that an analysis of Ta Chen's home market sales data indicates that prices to distributors are significantly less than prices to end-users. Ta Chen insists that by manipulating the Department's quantitative SAS program to activate an LOT adjustment, it is evident that a clear pattern of price difference exists between its distributor and end-user customers. Ta Chen explains that the difference in prices between the two channels of distribution is caused by fewer selling functions being applicable to distributors, and more selling functions applying to end-users. See Ta Chen's Brief at 1-2.

Ta Chen states that all of its U.S. sales are made to TCI, its master distributor, who in turn sells to other U.S. distributors. Therefore, Ta Chen contends that its home market sales to end-users should be adjusted downward to reflect the level of trade pricing difference between end-users and distributors. Ta Chen claims that this adjustment will more accurately reflect its home market prices to a level more comparable to its U.S. sales to TCI, and provide a more appropriate comparison. See id.

Petitioners disagree with Ta Chen's request that it be granted an LOT adjustment based upon its two channels of distribution in the home market. Petitioners support their position by stating that under 19 U.S.C. § 1677b(a)(7)(A), 19 C.F.R. § 351.412(c)(2), and the SAA, a respondent seeking an LOT adjustment to normal value must first show that home market sales were made at different levels of trade, and demonstrate that there are substantial difference in selling activities. Petitioners point to Ta Chen's questionnaire and supplemental questionnaire responses in which

Ta Chen states that all home market sales are made at the same level of trade, and that prices did not vary based on either channel of distribution or customer category. Petitioners cite to Ta Chen's September 26, 2006, Section B questionnaire response at B-16 and Ta Chen's Section A Response at 13. Petitioners note that Ta Chen's argument that it now has two levels of trade in the home market is contrary to its responses put on the record for this proceeding. Petitioners argue that the Department's Preliminary Results correctly concluded the selling functions for Ta Chen's reported channels of distribution constituted one LOT in the home market, and that this finding is consistent with what Ta Chen has reported on the record. Therefore, petitioners conclude that the Department should affirm its Preliminary Results and find that Ta Chen does not qualify for an LOT adjustment. See Petitioners' Rebuttal Brief at 1-3.

Department's Position:

We find that Ta Chen is not entitled to an LOT adjustment based upon its two channels of distribution in the home market. 19 U.S.C. § 1677b(a)(7)(A) specifies that differences in LOTs for which adjustments may be made must involve the performance of different selling activities and a demonstrated effect on price comparability. We note that this definition contrasts with the one used prior to the 1994 statutory changes. Previously, the LOT was often defined as the position of the customer in the market, e.g., end users or original equipment manufacturers, wholesalers, or distributors, and retailers, without regard to specific selling functions performed. Such customer categories may still be considered as the basis for different LOTs if the Department determines that differences in selling functions exist between these groups.

During the course of this proceeding Ta Chen has clearly stated that its home market constitutes one LOT, and that prices do not vary based on either channel of distribution or customer category. Ta Chen's current argument submitted in its brief stating that it now has two LOT's in the home market is inconsistent with information it has put on the record. We note that Ta Chen has received a CEP offset based on the fact that its home market only has one LOT, and that the Department is unable to quantify the effect of the difference in LOT on prices. See Comment 2 above. Therefore, as in our Preliminary Results, we continue to conclude the selling functions for Ta Chen's reported channels of distribution constitute one LOT in the home market, and that Ta Chen does not qualify for an LOT adjustment.

Comment 4: CEP Profit Calculation

Ta Chen requests that the Department adjust its calculation of its CEP profit to U.S. sales by considering its U.S. inventory carrying costs and its U.S. credit costs caused by delayed customer payments. Ta Chen argues that TCI incurs enormous expenses associated with these two costs and that an adjustment to the Department's CEP profit calculation would accurately reflect Ta Chen's true profit and costs. See Ta Chen's Brief at 1-2.

Petitioners argue that the Department correctly computed CEP profit, consistent with its standard practice. Petitioners point out that the Department rejected Ta Chen's argument in the Preamble

to the current regulations, stating that it “does not take imputed expenses into account in calculating cost. Moreover, normal accounting principles permit the deduction of only booked expenses, not imputed expenses, in calculating profit.” Antidumping Duties; Countervailing Duties, 62 FR 27296, 27354 (May 19, 1997). Furthermore, according to petitioners, the Department’s Policy Bulletin No. 97/1: Calculation of Profit for Constructed Export Price Transactions (Sept. 4, 1997) at 3, states that U.S. expenses in the total actual profit calculation are to “exclude from the calculation imputed amounts for credit expenses and inventory carrying costs.” Petitioners argue that the Department considers actual interest expenses associated with financing activities of the company, and that the use of imputed expenses would double-count the company’s cost of financing and, thus, artificially reduce the actual profit. Finally, petitioners note that the CIT rejected Ta Chen’s arguments regarding the Department’s standard CEP profit calculation in its April 2006 decision of Ta Chen Stainless Steel Pipe, Ltd. v. United States, 427 F. Supp. 2d 1265, 1277 (“Ta Chen v. United States 2006”). See Petitioners’ Rebuttal Brief at 4-6. Therefore, for the final results, petitioners insist that the Department reject Ta Chen’s arguments regarding the Department’s standard CEP profit calculation. See id.

Department’s Position:

The Department finds that its calculation of CEP profit, as calculated in the Preliminary Results is correct, and an adjustment to the calculation is unwarranted. The CIT has twice upheld the Department’s methodology for calculating CEP profit in proceedings covering the antidumping duty order on SSBWPFs from Taiwan. In addition to Ta Chen v. United States 2006, in Alloy Piping Products, Inc., et al., v. United States, Slip Op. 04-134 (Oct. 28, 2004) at 10, the CIT determined that “[t]his court cannot find, however, that the ‘imputed expenses represent some real, previously unaccounted for, expenses...’” Thus, given that the CIT has rejected this same claim by Ta Chen from previous reviews, the Department will continue to follow its standard practice and make no changes in its calculations for the final results of this review. See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 70 FR 1870 (Jan. 11, 2005) and accompanying I&D Memorandum at Comment 5.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and making no change to the calculated dumping margin. If these recommendations are accepted, we will publish the final results of the review and the final weighted-average dumping margin for Ta Chen in the Federal Register.

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date