

DATE: January 30, 2008

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

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

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review on Stainless Steel Sheet and Strip in Coils
– July 1, 2005, through June 30, 2006

Summary

We have analyzed the comments of the interested parties in the 2005-2006 administrative review of the antidumping duty order covering stainless steel sheet and strip in coils (SSSSC) from Taiwan. As a result of our analysis of the comments received from interested parties, we have made changes in the margin calculations as discussed in the “Margin Calculations” section of this memorandum. 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 administrative review on which we received comments from parties:

1. Unreported Sales
2. Home Market Rebates
3. Affiliation between Chia Far Industrial Co. Ltd. (Chia Far) and Lucky Medsup Inc. (Lucky Medsup)
4. Lucky Medsup’s U.S. Indirect Selling Expenses
5. Cost of Manufacturing
6. Clerical Error in the Preliminary Results
7. Affiliated Party Purchases

Background

On August 3, 2007, the Department published the preliminary results of this review. See Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Rescission in Part

of Antidumping Duty Administrative Review, 72 FR 43236 (Aug. 3, 2007) (Preliminary Results). The period of review (POR) is July 1, 2005, through June 30, 2006.

We invited parties to comment on our preliminary results of review. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results.

Margin Calculations

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

- We corrected a clerical error in the calculation of Chia Far's variable overhead expenses. See Comment 6;
- We adjusted Chia Far's reported costs so that inputs obtained from affiliated parties reflect arm's-length prices in accordance with section 773(f)(2) of the Tariff Act of 1930, as amended (the Act). See Comment 7; and
- We adjusted Chia Far's general and administrative expense ratio to correct certain errors identified during the cost verification. See the January 30, 2008, Memorandum from Heidi K. Schriefer to Neal M. Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Chia Far Industrial Factory Co., Ltd." (Chia Far Final Cost Calculation Memo).

Discussion of the Issues

Comment 1: Unreported Sales

The petitioners¹ contend that Chia Far failed to report certain home market sales made during the POR because they claim that the reported data conflicts with certain information obtained during the course of this administrative review. Because the specifics of the petitioners' allegation are proprietary in nature, we are unable to discuss them here. For a summary of this allegation, see the January 30, 2008, memorandum to the file from Elizabeth Eastwood entitled, "2005-2006 Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan: The Petitioners' Allegation of Unreported Home Market Sales by Chia Far" (Chia Far Home Market Sales Memo).

According to the petitioners, the Department's questionnaire clearly instructed Chia Far both to report all of its home market and U.S. sales of SSSSC during the POR and to identify all home

¹ The petitioners in this administrative review are Allegheny Ludlum Corporation, United Auto Workers Local 3303 (formerly Butler Armco Independent Union), United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

market customers which purchase SSSSC for export. The petitioners allege that Chia Far ignored these instructions because it did not identify its Taiwan customers which are also worldwide exporters of the subject merchandise, nor did it state how it determined which sales to these customers were for consumption in Taiwan. As a result, the petitioners contend that Chia Far withheld critical information, thereby failing to cooperate fully in this administrative review.

Moreover, the petitioners argue that, while the Department verified Chia Far's reported sales data and found no unreported sales transactions, this verification finding does not prove that Chia Far reported all home market sales during the POR because: 1) Chia Far chose not to address the conflicting information raised by the petitioners in comments submitted prior to the start of verification; and 2) documents provided during verification purportedly supporting the completeness of the response were themselves not complete. Regarding this latter point, the petitioners assert that the customer code list contained in sales verification exhibit 10 does not include home market customers reflected on documents contained in other sales verification exhibits. See the June 27, 2007, memorandum from Jill Pollack, Senior Analyst, to the file entitled, "Verification of the Sales Response of Chia Far Industrial Factory Co. Ltd. (Chia Far) in the Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils (SSSSC) from Taiwan" (Chia Far Sales Verification Report) at verification exhibits 10 and 12.

The petitioners contend that the Department's request for a complete and accurate reporting of Chia Far's home market sales placed a statutory obligation on Chia Far to provide one. As support for this assertion, the petitioners cite Olympic Adhesives, Inc. v. United States, 899 F.2d 1565, 1571-72 (Fed. Cir. 1990); Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea, 58 FR 37176, 37182 (July 9, 1993); and Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15467, 15473 (Mar. 23, 1993), as well as section 776(a) of the Act. The petitioners contend that, because: 1) the Department clearly informed Chia Far of its obligation to report all home market sales; and 2) evidence exists that shows that Chia Far failed to do so (see the Chia Far Home Market Sales Memo), the Department should conclude that it cannot rely on Chia Far's home market sales database. According to the petitioners, given that Chia Far relied on its computer system to classify and report sales to the Department, it is likely that the failure to report the home market sale at issue is a systemic reporting problem that would result in a failure by Chia Far to report other similar home market sales.

The petitioners state that, under sections 776(a)(1) and (2) of the Act, the Department shall make a determination using the facts otherwise available if it determines that either the necessary information is not available on the record or if an interested party has withheld requested information, failed to provide it in a timely manner, significantly impeded a proceeding, or provided unverifiable information. The petitioners claim that section 776(a) of the Act applies here because Chia Far's home market sales: 1) were not timely submitted; 2) could not be verified; and 3) were so incomplete that Chia Far's reported data could not reliably serve as a

basis for reaching a determination. Moreover, the petitioners contend that Chia Far did not act to the best of its ability in providing information requested by the Department, and its reported data cannot be used without undue difficulties. Therefore, the petitioners contend that section 776(a) of the Act leaves the Department no choice but to use the facts otherwise available when reaching its final results for Chia Far in this administrative review.

Moreover, the petitioners contend that the Department has ample precedent to reject Chia Far's home market sales data and base its final margin on adverse facts available (AFA). For example, the petitioners note that in the less-than-fair-value segment of this proceeding, the Department based the margin for Yieh United Steel Corp. (YUSCO) on total AFA because YUSCO failed to report all of its home market sales. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan, 64 FR 15493, 15496 (Mar. 31, 1999). The petitioners note that the Court of International Trade (CIT) upheld this decision, based in part on a finding that YUSCO did not report one representative sale in the home market. See Allegheny Ludlum Corp. v. United States, 215 F. Supp. 2d 1322, 1330-1344 (CIT 2000).

In addition, the petitioners assert that use of AFA here would be consistent with two decisions by the Court of Appeals for the Federal Circuit (CAFC), which hold that a respondent is required to do "the maximum that it is able to do." As support for this assertion, the petitioners cite Nippon Steel Corp. V. United States, 377F.3d 1373, 1382 (Fed. Cir. 2003) (Nippon) and NSK, Ltd. v. United States, 481 F.3d 1355, 1361 (Fed. Cir. 2007). The petitioners further note that the CAFC has found that the Department must objectively demonstrate that the following two conditions have been satisfied before concluding that a respondent has been uncooperative: 1) a reasonable respondent would have known that the requested information was required to be kept; and 2) the respondent both failed promptly to produce requested information and was not fully responsive due to a lack of cooperation either by failing to keep and maintain the requested information or by failing to put forth maximum effort in obtaining the requested information from its records. See Nippon, 337 F.3d at 1382-83. The petitioners argue that, given this guidance, the Department can reasonably determine that Chia Far has not acted to the best of its ability because it has not reported all of its home market sales during the POR. Consequently, the petitioners contend that, for the final results, the Department should assign Chia Far a margin based on total AFA, 21.10 percent, which is the highest rate assigned in any segment of this proceeding.

Chia Far disagrees that adverse inferences are appropriate here, maintaining that the evidence on the record overwhelmingly demonstrates that it reported all of its home market sales. First, Chia Far asserts that, at verification, the Department reconciled Chia Far's reported home market sales without discrepancy to both its internal books and records and its audited financial statements. See the Chia Far Sales Verification Report at page 15. Further, Chia Far notes that at verification the Department also confirmed that its list of POR home market customers was complete. See the Chia Far Sales Verification Report at page 18. Finally, Chia Far points out that the Department conducted multiple completeness tests of Chia Far's reported data at verification and also found no discrepancies. See the Chia Far Sales Verification Report at pages 17 and 18.

Chia Far also addresses the petitioners' specific allegations regarding its home market sales, the details of which are proprietary in nature. See the Chia Far Home Market Sales Memo for further discussion. Thus, Chia Far asserts that there is no reasonable basis to conclude that it has not accurately reported its POR home market sales, and as a result the Department should continue to use its reported data for purposes of the final results.

Department's Position:

We disagree that Chia Far made unreported sales of SSSSC in the home market during the POR. At verification we reconciled the total quantity and value of Chia Far's reported home market sales to its general ledger and financial statements without discrepancy, and thus we found that the total quantity and value of these sales were reported accurately. See the Chia Far Sales Verification Report at page 15. In addition, we also performed numerous tests to confirm that the reported sales data was complete. As a part of these completeness tests, we asked Chia Far to demonstrate that it did not sell SSSSC to any customers not reported in its home market or U.S. sales listings.

Specifically, our verification report states the following:

In order to determine that {the customer code lists contained in Exhibits B-7 and C-1 of Chia Far's October 10, 2006, submission} are complete, we obtained a printout of all customer codes contained in Chia Far's sales database. See verification exhibit 13 for the export portion of this list. We identified all U.S. and home market customers on this printout and tied them to the EP and home market customers shown on the customer code lists in Exhibits B-7 and C-1. We confirmed that the U.S. customer list did not include the names of any known Taiwanese producers of subject merchandise. Regarding the home market customer list, we noted that this list contained a customer code for a company named *****, which company officials stated was part of the *****. We examined the information contained in Chia Far's sales database and determined that Chia Far's most recent sale to this customer was in December 2003 (i.e., more than a year prior to the start of the POR). See verification exhibit 13. We noted no discrepancies.

See the public version of the Chia Far Sales Verification Report at page 18.

Based on this completeness test, we concluded that Chia Far had disclosed to the Department all of the Taiwan customers to which it sold SSSSC during the POR and that Chia Far had no home market sales to companies of particular concern to the petitioners during this time period. We disagree with the petitioners that this completeness test was inadequate because the documents used to perform the test were themselves incomplete. As noted above, sales verification exhibit 13² contains Chia Far's customer code list for the company's export customers; however,

² In their argument, the petitioners referenced Chia Far's customer code lists in error as contained in sales verification exhibit 10. However, the customer code lists, or portions thereof,

contrary to the petitioners' assertions, this verification exhibit does not contain a purportedly complete list of home market customers. Rather, as also noted above, it contains supporting documentation related to an unreported home market customer, the last sale to which was made prior to the POR.³

Finally, we disagree with the petitioners that the business proprietary information upon which they rely to make their argument constitutes evidence that Chia Far misrepresented its sales during the POR or that it otherwise failed to disclose necessary information to the Department. (See the Chia Far Home Market Sales Memo for the analysis underlying this conclusion.) Rather, we find that this argument is based on speculation and there is no evidence on the record to support this allegation. It is well established that mere speculation does not constitute substantial evidence, which is the standard for substantiating an agency finding. See, e.g., Asociacion Colombiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466 (CIT 1999) at 471-472; Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia, 69 FR 20592 (Apr. 16, 2004) accompanying Issues and Decision Memorandum at Comment 4. Thus, for the reasons stated above and discussed in the Chia Far Home Market Sales Memo, we find the petitioners' argument that Chia Far failed to report certain home market sales during the POR to be without merit. Consequently, we have continued to accept Chia Far's POR home market sales data for purposes of the final results.

Comment 2: *Home Market Rebates*

Chia Far reported rebates which were paid to certain home market customers during the POR. For the preliminary results, we accepted Chia Far's reported home market rebates without adjustment. The petitioners contend that the Department should recalculate these rebates for purposes of the final results, based on information discovered by the Department at verification.

Specifically, the petitioners contend that, while the Department found at verification that Chia Far paid rebates to its customers in a lump sum not tied to specific sales invoices, the credit notes used to record these rebates in the company's accounting system did, in fact, reference specific invoice numbers. See the Chia Far Sales Verification Report at page 23. Because Chia Far reported these rebates on additional invoices, the petitioners contend that Chia Far artificially lowered the net price of those sales. To remedy this error, the petitioners argue that the

obtained at verification are included in sales verification exhibit 13.

³ We note that this verification exhibit also contains Chia Far's customer list current as of the date of verification. However, this list was not used to determine the completeness of the response because it related to a period subsequent to the POR and thus did not pertain to the POR (which ended more than a year prior to the start of verification). For this reason, it was not referenced in the verification report; nonetheless, because it contained the translated names associated with certain of Chia Far's customer codes, it was used at verification and included as part of the verification exhibit.

Department should assign Chia Far's home market rebates only to the invoice indicated on the corresponding credit note.

Chia Far maintains that, contrary to the petitioners' assertions, it correctly reported its POR home market rebates. Chia Far notes that the Department examined these rebates at verification and found that the company's internal sales documentation clearly shows the basis on which the rebate was calculated. See the Chia Far Sales Verification Report at pages 22 and 23. According to Chia Far, based on this finding, the Department should accept these amounts as reported for purposes of the final results.

Department's Position:

In its questionnaire response, Chia Far reported that it granted rebates to certain home market customers during the POR, which were "generally in the form of volume rebates." See Chia Far's October 10, 2006, questionnaire response at page 32. Chia Far allocated these rebates over the quantity of each sale on which the rebates were paid, and it provided supporting documents related to several transactions in Exhibit B-27 of its January 16, 2007, submission.

At verification, we discussed the circumstances under which Chia Far granted these rebates with company officials, and we reviewed the company's methodology for reporting them. We confirmed that Chia Far accurately reported the total amount of rebates granted to each applicable home market customer during the POR. See the Chia Far Sales Verification Report at page 22. We also reviewed the assignment of these rebates to individual transactions reported in the home market sales listing. In the course of our examination, we found that Chia Far's credit notes did not reference all of the invoices for which a rebate had been reported. However, we discussed this fact with company officials, who explained that Chia Far does not issue credit notes related to specific invoices but rather pays rebates as a lump sum. Specifically, our verification report states:

We noted that the Sales Allowance Certificates for these rebates did not reference the invoice numbers for which Chia Far had reported rebates. Company officials explained that the rebate amounts shown on Sales Allowance Certificates reflect a lump sum rebate amount granted to the customer for sales of certain products and, therefore, does not indicate the original sales invoices on which the rebates were granted. According to company officials, the rebates were assigned to specific sales in the home market sales listing based on sale date and product characteristics. We noted that the Payment Collection Report for customer ***** for the month in which the rebates were granted includes a note indicating that an amount of NT\$ ***** shown on the report relates to a rebate of NT\$ ***** per kg. Regarding the rebates granted to customer *****, we noted that the Sales Record for this customer includes a handwritten note which indicates that a rebate of NT\$ ***** was granted to this customer in July. See verification exhibit 24.

See the Chia Far Sales Verification Report at pages 22 and 23.

We disagree that evidence on the record shows that the rebates were limited to only the invoices noted on the Sales Allowance Certificates. According to the General Payment Collection Reports corresponding to these documents, Chia Far paid the rebates as a specific amount per kilogram (see, e.g., note 12 of Attachment 1.3 in Exhibit B-27 of the January 16, 2007, submission). While the Sales Allowance Certificates do reference individual invoices, the total weight of the products shipped under these invoices is far less than the weight on which Chia Far paid the rebates (calculated as the per-unit amount multiplied by the number of kilograms on the invoices shown on the Sales Allowance Certificates). In contrast, the total amounts of the rebates paid by Chia Far divided by the total weight of the sales on which Chia Far reported the rebates exactly corresponds to the total per-unit amount shown on the General Payment Collection Report. Thus, while the company may have referenced only certain invoices on its Sales Allowance Certificates, it would be unreasonable to conclude that these rebates related to only those particular sales, and as a result, allocating them to only those transactions would be both arbitrary and distortive. Therefore, we have continued to accept Chia Far's reported home market rebates as reported for purposes of the final results.

Comment 3: *Affiliation between Chia Far and Lucky Medsup*

In the preliminary results, the Department determined that Chia Far and one of its U.S. customers, Lucky Medsup, are affiliated. See Preliminary Results, 72 FR at 43240-43241. Chia Far requests that the Department reconsider this determination because: 1) there is no cross stock ownership between Chia Far and Lucky Medsup, nor is there any family relationship between the stockholders and officers of each company; 2) Chia Far is not in a position to control Lucky Medsup or vice versa; and 3) a principal/agent relationship does not exist between the parties.

Chia Far contends that the Department confirmed each of the above facts at verification. According to Chia Far, Lucky Medsup is a reseller of Chia Far's merchandise, and in this role Lucky Medsup locates its own customers and sets prices to them, takes title to the steel on a "free on board" (FOB) foreign-port basis, and arranges and pays for all international and U.S. movement expenses. Moreover, Chia Far maintains that Lucky Medsup is not paid a commission by the company, but rather earns a profit from its mark-up of the price at which it purchases SSSSC. Thus, Chia Far claims that Lucky Medsup operates like any other independent U.S. importer that engages in "back-to-back transactions" with a foreign supplier and U.S. end customers. According to Chia Far, the Department frequently encounters such relationships and does not consider them to be affiliated-party transactions.

Further, Chia Far contends that Lucky Medsup is not an exclusive distributor for Chia Far, nor does it have any agreement, either written or verbal, to be so. In particular, Chia Far contends that the Department's finding that Chia Far and Lucky Medsup are affiliated rests on a document from 1994, the details of which are proprietary in nature. However, Chia Far argues that any exclusive distribution/sole agency relationship that may have existed between the companies in the past would have had a term of no more than one year and has never been renewed. Rather,

Chia Far asserts that Lucky Medsup was founded to import medical supplies, and the company continues to sell these products.

According to Chia Far, the textbook definition of an agent is a person with the ability to negotiate contracts or incur costs on behalf of a principal. Chia Far claims that Lucky Medsup does not have that authority; rather, Chia Far claims that Lucky Medsup negotiates contracts on its own account with both Chia Far and customers in the United States. Chia Far maintains that Lucky Medsup solely assumes the risk of loss if it does not deliver subject merchandise or does not receive payment from its customers.

In spite of such claims, Chia Far concedes that, on occasion, it knows the identity of Lucky Medsup's customer as well as certain details regarding the end transaction. For example, Chia Far notes that, because the transaction with Lucky Medsup is back-to-back, it knows what material the end customer has ordered and the timing of delivery to it. However, Chia Far claims that the Department confirmed at verification that Lucky Medsup officially notifies Chia Far of the customer's identity only at the time of shipment, and that there is no evidence to demonstrate that, at the time the sale is negotiated between Lucky Medsup and the end customer, Chia Far either knows the end price or has any role in setting it. Further, while merchandise is shipped directly from Taiwan to the end customer, Chia Far maintains that Lucky Medsup is responsible for making these shipping arrangements.

According to Chia Far, affiliation cannot be established solely based on the facts that Lucky Medsup: 1) identifies Chia Far as the manufacturer to its customer; and 2) does not maintain an inventory in the United States, and a finding of affiliation based solely on these facts would be inconsistent with the Department's standard under its current practice. For example, Chia Far maintains that the facts here are common to all back-to-back transactions between a foreign manufacturer and an unaffiliated U.S. trading company, which the Department normally treats as EP sales. Moreover, Chia Far claims that the Department has recently made similar findings in several cases. For example, Chia Far notes that in Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 72 FR 30753, 30755 (June 4, 2007) (CFS Paper from Indonesia), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia, 72 FR 60636 (Oct. 25, 2007) (CFS Paper Final), although the foreign manufacturer itself claimed affiliation with a U.S. importer by means of an exclusive distributor relationship, the Department concluded that the parties were not affiliated because: 1) there was no written agreement between them; and 2) the U.S. importer was not precluded from purchasing and reselling subject merchandise produced by other foreign manufacturers.⁴ According to Chia Far, because no written agreement existed during the POR between it and Lucky Medsup, and because Lucky Medsup is not precluded from selling SSSSC manufactured by companies other

⁴ See also Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico, 67 FR 55800 (Aug. 30, 2002) and accompanying Issues and Decision Memorandum at Comment 1c (Wire Rod from Mexico).

than Chia Far, the Department should find that Chia Far and Lucky Medsup are not affiliated parties for purposes of the final results. Furthermore, Chia Far notes that the Department confirmed at verification that Lucky Medsup has begun importing carbon steel wire rod from China and also is involved in some domestic purchases and sales of SSSSC which were not produced by Chia Far.

The petitioners disagree, asserting that Chia Far has repeated many of the arguments that it made in previous administrative reviews regarding its purported lack of affiliation with Lucky Medsup. According to the petitioners, the Department should continue to find that Chia Far and Lucky Medsup are affiliated because of their principal/agent relationship, as it has done in the prior segments of this proceeding.

The petitioners note that, in the first administrative review of SSSSC from Taiwan, Chia Far claimed that it was not affiliated with any of its U.S. customers. However, the petitioners assert that they submitted evidence to the contrary, which led the Department to find that Chia Far and Lucky Medsup were in fact affiliated. See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 41509, 41512 (Aug. 8., 2001) (SSSSC from Taiwan First Review Preliminary Results), unchanged in Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 6682 (Feb. 13, 2002) (SSSSC from Taiwan First Review Final Results). The petitioners note that the Department's finding was upheld by the CIT. See Chia Far Industrial Factory Co., Ltd. v. United States, 343 F. Supp. 2d 1344 (CIT 2004).

The petitioners contend that the facts have not changed since the Department first deemed the two companies as affiliated. According to the petitioners, although Chia Far has claimed that its distribution contract with Lucky Medsup was terminated in 1995, to date Chia Far has submitted no evidence that its principal/agent agreement with Lucky Medsup is no longer valid. In addition, the petitioners note that, although there continues to be no cross-ownership of stock or familial relationships between the two companies, as was the case in previous segments, neither factor is a requirement for the Department to find that two parties are affiliated via a principal/agent relationship.

The petitioners state that in SSSSC from Taiwan First Review Final Results the Department considered the following seven factors when determining whether a principal/agent relationship existed: 1) the foreign producer's role in negotiating price and other terms of sale; 2) the extent of the foreign producer's interaction with the U.S. customer; 3) whether the agent/reseller maintains inventory; 4) whether the agent/reseller takes title to the merchandise and bears the risk of loss; 5) whether the agent/reseller further processes or otherwise adds value to the merchandise; 6) the means of marketing a product by the producer to the U.S. customer in the pre-sale period; and 7) whether the identity of the producer on sales documentation inferred such an agency relationship during the sales transactions. See SSSSC from Taiwan First Review Final Results and accompanying Issues and Decision Memorandum at Comment 23. According to the

petitioners, an examination of these factors in the instant administrative review continues to show that Chia Far and Lucky Medsup are affiliated.

Specifically, the petitioners contend that Chia Far was actively involved in the negotiations between Lucky Medsup and the ultimate U.S. customer, given that: 1) Lucky Medsup sent the initial inquiry of its end customer to Chia Far in order to receive a quote from Chia Far; and 2) when Lucky Medsup's end customer requested a better price, Lucky Medsup communicated this request to Chia Far and waited for Chia Far to respond before responding to the end customer. The petitioners maintain that documentation obtained at verification demonstrates that Lucky Medsup identified its U.S. customer when requesting a price quote, which demonstrates that Chia Far establishes the terms of sale not only with Lucky Medsup, but also with the end customer via Lucky Medsup, from the very beginning of the sales process. Moreover, the petitioners note that Lucky Medsup did not maintain any inventory during the POR, but rather Chia Far shipped the merchandise to Lucky Medsup's customers directly from Taiwan.

Furthermore, the petitioners maintain that only Chia Far bore the risk of loss on the extension of credit because documentation contained in its questionnaire response shows that Lucky Medsup collected payment from the end customer before remitting payment to Chia Far. The petitioners argue that this fact pattern is similar to that in the 2002-2003 administrative review, where Chia Far confirmed that it (and not Lucky Medsup) was the party that extended credit to U.S. customers, because Lucky Medsup generally received payment from its end customer before paying Chia Far. See Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 7715 (Feb. 15, 2005) and accompanying Issues and Decision Memorandum at Comment 6.

The petitioners further note that Lucky Medsup did not process or add value to the subject merchandise, given that Chia Far shipped the merchandise directly to the end customer. Finally, the petitioners contend that Lucky Medsup clearly marketed the subject merchandise on behalf of Chia Far, noting that documentation obtained at verification shows that Lucky Medsup informed the end customer that Chia Far was the mill producing the merchandise.

With respect to the two cases cited by Chia Far, CFS Paper from Indonesia and Wire Rod from Mexico, the petitioners argue that these cases actually support a finding that Chia Far and Lucky Medsup are related via a principal/agent relationship. According to the petitioners, in CFS Paper from Indonesia, the Department found affiliation between the respondent in that case and a foreign trading company because the Department determined that the respondent was involved in the pricing of the merchandise, the trading company did not maintain an inventory of the subject merchandise, and the merchandise was shipped directly from the respondent to the end customer in the United States. See CFS Paper from Indonesia, 72 FR at 30755. The petitioners disagree with Chia Far's claim that the situation of the second company, a U.S. importer, is relevant here because the respondent and importer had no written agreement showing that an exclusive distributor arrangement existed and the U.S. importer was not precluded from selling merchandise produced by other manufacturers. In contrast, the petitioners claim that here there is

a written agreement between Chia Far and Lucky Medsup and Lucky Medsup did not sell subject merchandise produced by other manufacturers during the POR. As a factual matter, the petitioners disagree with Chia Far's claim that Lucky Medsup was not obligated to sell only Chia Far's merchandise, given that all of Lucky Medsup's sales during the POR were of subject merchandise sourced only from Chia Far. Indeed, the petitioners assert that during the POR Lucky Medsup was wholly dependent on Chia Far for its supply of the subject merchandise. According to the petitioners, this dependency is a classic characteristic of a principal/agent relationship.

Regarding Wire Rod from Mexico, the petitioners state that the Department found no affiliation between the respondent and one of its U.S. customers because the Department concluded that there was no evidence that the selling arrangements between these parties gave the respondent any measure of control over the U.S. customer. See Wire Rod from Mexico at Comment 1c. The petitioners contend that this also differs from the situation here, where, as discussed above, there is ample evidence showing that Chia Far controls the selling of its merchandise to the United States through its agent Lucky Medsup.

Thus, the petitioners maintain that, for the final results, the Department should continue to: 1) find that Chia Far and Lucky Medsup are affiliated through a principal/agent relationship; and 2) treat Chia Far's U.S. sales through Lucky Medsup as CEP sales.

Department's Position:

As we noted in the Preliminary Results, during the first administrative review in this proceeding, the Department found Chia Far and its U.S. reseller, Lucky Medsup, to be affiliated by way of a principal-agent relationship. The Department primarily based its finding on: 1) a document indicating that Lucky Medsup was a "sole agent" for Chia Far, and thus demonstrating the existence of a principal-agent relationship; 2) Chia Far's degree of involvement in sales between Lucky Medsup and its customers; 3) evidence indicating Chia Far knew the identity of Lucky Medsup's customers, and the customers were aware of Chia Far; 4) Lucky Medsup's operations as a "go-through" that did not maintain any inventory or further manufacture products; and, 5) Chia Far's inability to provide any documents to support its claim that the document indicating a principal-agent relationship was not valid during the POR. See SSSSC from Taiwan First Review Final Results at Comment 23 (upheld by the Court of International Trade (CIT) in Chia Far Industrial Factory Co. Ltd. v. United States, et al., 343 F. Supp. 2d 1344, 1356 (CIT 2004)). See also the July 31, 2007, memorandum from Elizabeth Eastwood, Senior Analyst, to the file entitled, "Placing Information Regarding the Principal-Agent Relationship between Lucky Medsup Inc. and Chia Far Industrial Factory Co., Ltd. on the Record of the 2005-2006 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Taiwan." In all subsequent administrative reviews (*i.e.*, the second through the sixth), the Department has continued to treat Chia Far and Lucky Medsup as affiliated parties.

After reviewing the record of this proceeding, we continue to find that Chia Far and Lucky Medsup are affiliated, in accordance with section 771(33) of the Act. We find the fact pattern in the instant review is similar to that which existed in previous administrative reviews where the Department has found the parties to be affiliated. See SSSSC from Taiwan First Review Final Results, and accompanying Issues and Decision Memorandum at Comment 23. First and foremost, while Chia Far claims that the agency agreement from 1994 has expired, the company has not provided any document in response to the Department's request that it demonstrate that this agreement was terminated and the principal-agent relationship no longer exists. See Chia Far's January 16, 2007, supplemental questionnaire response at page 2. Furthermore, Chia Far's degree of involvement in Lucky Medsup's U.S. sales is similar to that found in prior reviews. Specifically, the Department examined written documents related to certain U.S. sales by Lucky Medsup and was able to establish from these documents that, for at least certain of these U.S. sales, Chia Far knew the identity of the end-customers before it set its price to Lucky Medsup. Further, the absence of other documented evidence on the record of knowledge of the end-customer by Chia Far for certain other U.S. sales by Lucky Medsup is not dispositive of whether or not Chia Far had knowledge of Lucky Medsup's end-customer for these sales, especially where, as here, the Department has consistently found in prior reviews that Chia Far did have such knowledge. In addition, Lucky Medsup's customers knew they were purchasing Chia Far merchandise because Lucky Medsup's sales order confirmation identified Chia Far as the manufacturer, and Chia Far shipped the merchandise directly to the end-customers. See the Chia Far Sales Verification Report at pages 8 and 9. Additionally, during the POR, Lucky Medsup only sold subject merchandise produced by Chia Far. See the July 13, 2007, memorandum from Elizabeth Eastwood to the file entitled, "Verification of the Sales Response of Lucky Medsup Inc. (Lucky Medsup) in the 2005-2006 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils (SSSSC) from Taiwan" at page 3. Lastly, as was true in prior segments of this proceeding, during the instant POR Lucky Medsup did not maintain inventory of, or further manufacture, SSSSC.

We disagree that the Department's practice supports a finding that Chia Far and Lucky Medsup are not affiliated. While in CFS Paper from Indonesia the Department found no affiliation between a U.S. reseller and its Indonesian supplier based, in part, on the fact that no written agreement between the parties existed, this is not the case here. Rather, both Chia Far and Lucky Medsup signed an agreement certifying that Lucky Medsup functions as a "sole agent" for Chia Far. Indeed, Chia Far itself conceded that it considers this agreement to be a sole agency agreement. See Chia Far's January 16, 2007, supplemental questionnaire response at page 2. The record contains no documentation demonstrating that this agreement has been terminated. To the contrary, the fact that all of Lucky Medsup's sales of subject merchandise consisted solely of Chia Far merchandise is a strong indication that Chia Far maintained the ability or potential to exercise control over Lucky Medsup's sales and business practices and, thus, that the sole agency relationship continues to exist. Similarly, we disagree with Chia Far's contention that Wire Rod from Mexico precludes the Department from finding affiliation between it and Lucky Medsup. As the petitioners noted, in Wire Rod from Mexico, the Department did not find affiliation between a respondent and one U.S. customer because there was no evidence that the respondent

controlled any of the sales terms set by the U.S. customer. However, that situation also differs from the one here, where the existence of the agency agreement between Chia Far and Lucky Medsup, along with the other factors described above, demonstrates that such control exists.

Thus, for the reasons noted above, we continue to find that Chia Far and Lucky Medsup are affiliated by way of a principal/agent relationship in accordance with section 771(33) of the Act. Should the underlying facts change in subsequent segments of this proceeding, we will re-evaluate this issue in those segments.

Comment 4: *Lucky Medsup's U.S. Indirect Selling Expenses*

In the preliminary results, the Department recalculated Lucky Medsup's indirect selling expense ratio to include an amount of unreported pension expenses discovered at verification. See Preliminary Results, 72 FR at 43242. Chia Far requests that the Department reverse this adjustment in the final results.

Chia Far notes that Lucky Medsup is a Subchapter S corporation, and thus the company's profits flow directly to the personal tax return of the owner. According to Chia Far, the Department has taken the position in previous administrative reviews that profits made by Lucky Medsup are not part of indirect selling expenses. Chia Far contends that, because the pension expenses in question were incurred to establish a pension plan for Lucky Medsup's owner and his wife, the Department should view them as an alternative, tax-advantaged method of distributing profits to the owner. Chia Far asserts that the only reason that the owner re-characterized the distribution as a pension payment was to reduce his personal taxes, and it points out that it would be ironic if this distribution resulted in a corresponding increase in the antidumping duty payable in this administrative review.

Alternatively, Chia Far argues that the Department should either: 1) disregard the pension expense adjustment because it results in an aberrant expense which is completely out of line with Lucky Medsup's normal indirect selling expenses, similar to the Department's treatment of warranty expenses; or 2) reject Lucky Medsup's 2005 income statement in its entirety because it is aberrant and base the company's indirect selling expenses on Lucky Medsup's 2006 income statement.

The petitioners disagree, stating that the Department properly treated Lucky Medsup's pension expenses as a part of indirect selling expenses for purposes of the preliminary results. The petitioners note that Lucky Medsup recorded these pension costs in its general ledger as an expense, which confirms that these costs are related to the company and are properly included in indirect selling expenses. According to the petitioners, this treatment is also consistent with section 773(f)(1)(A) of the Act, which directs the Department to base a respondent's costs on its normal books and records.

Further, the petitioners state that including pension expenses as a part of indirect selling expenses is consistent with the Department's past practice. As support for this assertion, the petitioners cite Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom, 61 FR 51411, 51419 (Oct. 2, 1996), where, according to the petitioners, the Department confirmed that the general and administrative expenses of the respondent properly included the expenses related to a pension fund for the company's owners.

Finally, the petitioners refute Chia Far's characterization of Lucky Medsup's pension expenses as expenses which are extraordinary for the company. According to the petitioners, the Department defines extraordinary expenses as expenses that are tied to an event or transaction that is both unusual in nature and infrequent in occurrence. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan, 63 FR 40451, 40467 (July 29, 1998). Because pension expenses are typical expenses for businesses in the United States, the petitioners assert that they cannot be considered extraordinary expenses. Therefore, the petitioners maintain that the Department should continue to include Lucky Medsup's pension expenses in the calculation of Lucky Medsup's indirect selling expense ratio.

Department's Position:

We continue to find it appropriate to include the pension expenses at issue as a part of U.S. indirect selling expenses. At verification, we found that Lucky Medsup incurred these pension expenses during the POR, and it recorded them as a normal expense in the books and records of the company. See the July 13, 2007, memorandum from Elizabeth Eastwood to the file entitled, "Verification of the Sales Response of Lucky Medsup Inc. (Lucky Medsup) in the 2005-2006 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils (SSSSC) from Taiwan" at page 10.

We do not find persuasive Lucky Medsup's contention that its pension expenses are an aberrant expense for the company that should be disregarded by the Department. The Department's practice is to disregard only those expenses which have been shown to be extraordinary (*i.e.*, both unusual in nature and infrequent in occurrence) for the company. See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (Feb. 23, 1998). Pension expenses are expenses which businesses in the United States typically incur, and thus they are not deemed to be extraordinary. Consequently, we have continued to include Lucky Medsup's pension expenses in the calculation of U.S. indirect selling expenses for the final results.

Comment 5: Cost of Manufacturing

The petitioners contend that the Department should adjust Chia Far's total manufacturing costs to account for an unreconciled difference observed at verification between the total manufacturing

costs from the company's financial accounting system and the total of the per-unit manufacturing costs from the reported cost files in Chia Far's questionnaire response.

Chia Far did not comment on this issue.

Department's Position:

We agree that it is appropriate to include this difference in Chia Far's total manufacturing costs. However, because this adjustment was accounted for in the preliminary results, it is unnecessary to make additional changes to our calculations for purposes of the final results. See the July 27, 2007, Memorandum from Heidi K. Schrieffer to Neal M. Halper entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Chia Far Industrial Factory Co., Ltd." (Chia Far Preliminary Cost Calculation Memo); and the Chia Far Final Cost Calculation Memo.

Comment 6: *Clerical Error in the Preliminary Results*

Chia Far notes that the Department made a clerical error in the preliminary results when it incorrectly calculated the variable cost of manufacturing by adding fixed overhead to the total cost of manufacturing instead of deducting it. Chia Far asserts that the Department should correct this error in its calculation for the final results.

The petitioners did not comment on this issue.

Department's Position:

We have examined our calculations and agree that we incorrectly included fixed overhead in Chia Far's variable manufacturing costs. For the final results we have corrected the calculation of the variable cost of manufacturing to exclude fixed overhead.

Comment 7: *Affiliated Party Purchases*

During the POR, Chia Far obtained protective film used in the manufacture of subject merchandise from a company named Moonstar Poli-Film (Moonstar). In prior segments of this proceeding, as well as for the preliminary results here, the Department has treated Chia Far and Moonstar as affiliated parties, based on a family relationship between the president of Chia Far and the chairman of Moonstar. The petitioners agree with this conclusion, and they maintain that the Department should continue to treat the companies as affiliates for purposes of the final results. The petitioners contend that, although the chairman of Moonstar was replaced by his daughter during the POR, this change is not relevant because Chia Far's and Moonstar's shared family members (uncle and niece) clearly fall within the Act's definition of familial affiliated parties. The petitioners note that this interpretation of family was upheld by the Court in Ferro

Union, Inc., v. United States, 44 F. Supp. 2d 1310, 1325 (Ferro Union), where the Court found that an uncle and nephew met the Act's definition of "family."

Based on their analysis of the prices paid to Moonstar for certain protective film product numbers versus the prices paid to unaffiliated parties for similar protective film product numbers, the petitioners argue that Moonstar's transfer prices do not reflect market values. Because the petitioners claim that the cost of protective film is an important part of the dumping analysis, they assert that the Department should adjust the reported costs to reflect a market value for the protective film obtained from Moonstar for the final results.

Chia Far disagrees that it continues to be affiliated with Moonstar, and thus it also disagrees that an adjustment is necessary. While Chia Far concedes that the two companies were previously affiliated via the relationship between the chairman of Moonstar and the president of Chia Far, it claims that the family relationship is now too tenuous to deem the companies as affiliates, and indeed they are not considered so under Taiwan generally accepted accounting principles (GAAP). Moreover, Chia Far notes that section 771(33)(A) of the Act designates familial parties as affiliated when they are "{m}embers of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants." Chia Far argues that, because a niece is not a "lineal descendant" of an uncle, the companies cannot be considered affiliated under U.S. antidumping duty law. While acknowledging that the Court in Ferro Union did find that an uncle and nephew relationship met the statute's definition of family, Chia Far points out that the Court also stated that the Department could not enforce such an interpretation without first providing notice to the respondents that it intended to include non-lineal descendants in its interpretation of the term "family." Because such notice was not given in this administrative review and because the apparent intent of the drafters of the Act was to limit the term "family" to members of the same nuclear family and to lineal descendants only, Chia Far believes the Department should likewise refrain from drawing such an expansive definition of the term in this case.

Nevertheless, in the event that the Department finds that the two companies are affiliated, Chia Far maintains that its purchases from Moonstar were at arm's-length prices. According to Chia Far, the petitioners' calculations were based on only half of the POR. Chia Far contends that once the entire POR is taken into account, the average price paid to Moonstar was higher than the average price paid to unaffiliated parties. Therefore, Chia Far argues that an adjustment to the prices paid to Moonstar for protective film is not necessary for the final results.

Department's Position:

In the previous segments of this case, the Department found that Chia Far and Moonstar were affiliated based upon familial relationships because the president of Chia Far was the brother-in-law of Moonstar's chairman. However, during the sales and cost verifications in this segment of the proceeding, Chia Far claimed that these companies are no longer affiliated in light of the fact that Moonstar's chairman stepped down in September 2004 and was replaced by his daughter,

i.e., the niece to Chia Far's president. Chia Far noted that this change in affiliation status is disclosed in a note in Chia Far's 2005 audited financial statements, which indicates that the two companies were no longer affiliated under Taiwan accounting rules. See the Chia Far Sales Verification report at page 4 and the August 30, 2007, memorandum from Heidi K. Schiefer, Senior Accountant, to the file entitled, "Verification of the Cost Response of Chia Far Industrial Factory Co., Ltd. in the Administrative Review of Stainless Steel Sheet and Strip in Coils from Taiwan" at page 4.

While we agree that Chia Far's financial statements no longer identify the two parties as affiliated under Taiwan GAAP, we find that the specific language of the antidumping statute is prevailing. In accordance with section 771(33)(A) of the Act, the following persons or parties are affiliated:

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

The daughter who now controls Moonstar is the lineal descendant of the former chairman and the niece to the president of Chia Far. Therefore, the Department finds that the members of the family (i.e., the uncle and niece) are affiliated according to section 771(33)(A) of the Act. This finding is consistent with Notice of Final Results of Antidumping Duty Administrative Review: Structural Steel Beams from Korea, 70 FR 6837 (Feb. 9, 2005), and accompanying Issues and Decision Memorandum at Comment 2, where the Department similarly found that an uncle and his nephews constituted "family" under the Act. Further, as noted by the petitioners, the CIT has upheld the Department's interpretation that the definition of family includes uncle/nephew (and presumably uncle/niece) relationships under section 771(33)(A) of the Act. See Ferro Union, 44 F. Supp. 2d at 1325. See also in Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808 (Oct. 16, 1997)). Consequently, we find sufficient evidence to conclude that Chia Far and Moonstar continue to be affiliated based on the record of this review.

Additionally, we find unpersuasive Chia Far's contention that Ferro Union requires specific notification of the Department's intent to consider an uncle and niece relationship as meeting the definition of "family" under section 771(33)(A) of the Act before such a determination can be made in any case. As noted above, there is adequate case precedent, to which Chia Far itself cited, that has defined the Department's parameter of family as including an uncle and nephew (or niece). Thus, we disagree that the Department's interpretation of "family" in this case is a further expansion of the definition of which parties would be unaware and need notification. In Ferro Union, the Court's intention was to prevent a respondent from having to guess at the meaning and full scope of "family" when determining what affiliated party information needed to be provided to the Department. See Ferro Union, 44 F. Supp. 2d at 1310, 1325. Such is not the situation in the instant case. Throughout the course of the proceeding, Chia Far presented Moonstar as an affiliated party and provided all information requested by the Department with regard to affiliated party transactions. It was not until the sales and cost verifications that Chia

Far suggested that these companies may no longer be affiliated. Therefore, we do not find that Chia Far was hindered in its ability to respond to the Department's questionnaires or that the record is lacking due to the determination that these parties are still affiliated. As a result, we have continued to find Moonstar and Chia Far to be affiliated for these final results.

Because Chia Far purchased protective film used in the production of subject merchandise from Moonstar, under the guidance of section 773(f)(2) of the Act, the Department tested the transactions between these affiliated parties to determine if they reflect arm's-length prices. In doing so, we agree with Chia Far that the petitioners' suggested comparison of transfer and market prices fails to incorporate all POR pricing information that is on the record. Therefore, for the final results, we have calculated and compared the POR-wide average per-unit transfer and market prices by thickness of protective film. Specifically, we compared the POR price per square meter paid to Moonstar for each thickness of protective film to the POR price per square meter paid to unaffiliated suppliers for the same thickness of protective film and did not find them to be at arm's length. Consequently, we adjusted the reported costs to reflect arm's-length prices for the final results. For the details of this adjustment, see the Chia Far Final Cost Calculation Memo.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree_____

Disagree_____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)