Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review, 63 FR 37516, 37517 (July 13, 1998); *E.I. DuPont De Nemours & Co.* v. *The United States,* 98–7 (CIT Jan. 29, 1998) (''*DuPont*'').

Department's Position: We agree with KSC. As noted, our long-standing practice is to derive the financial expense rate using the respondent's audited consolidated financial statements. *See, e.g., Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 42001, 42005 (August 6, 1998). This practice has been upheld by the CIT as reasonable. *See DuPont.* Petitioners are correct in noting that the depreciable basis of the asset does not include financing costs, and the financing costs associated with this specific transaction between the two affiliated entities are eliminated in the preparation of consolidated financial statements. However, petitioners are incorrect in their assertion that these financing expenses should be included in the depreciable basis of the asset as this would result in the double-counting of costs. Since KSC's reported financial expense rate was properly based on its audited consolidated financial statements, which reflect all borrowing incurred by the consolidated entity, we have not made any adjustments to this rate.

Comment 9: Calculation Error

Petitioners claim that there is an error in KSC's reported cost for one control number, because the reported cost does not agree to supporting documents presented at the cost verification. Petitioners claim that the supporting documents indicate that the reported costs were understated and the Department should adjust the reported cost accordingly.

KSC asserts that the reported cost for the control number is correct. KSC states that the supporting worksheet contains a clerical error and that, after correcting for this error, the weighted-average cost calculation on the worksheet agrees to the reported cost.

Department's Position: We agree with KSC. We reviewed the worksheet that demonstrates the weighted-average cost calculation for this control number, noting that the unit costs of two products comprising the control number were switched in error. When the error is corrected, the resulting weighted-average cost is consistent with the figure reported by KSC. Therefore no adjustment is warranted.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1999 (the date of publication of the *Preliminary Determination* in the **Federal Register**) for KSC and companies falling under the All Others category. We are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after October 12, 1998, for NSC, Nippon Metal Industries, Nisshin Steel Co., Ltd., and Nippon Yakin Kogyo. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
KSC Steel Corporation	37.13
Nippon Steel Corporation	57.87
Nisshin Steel Co., Ltd.	57.87
Nippon Yakin Kogyo	57.87
Nippon Metal Industries	57.87
All Others	37.13

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and de minimis margins and any margins determined entirely under section 776 of the Act, from the calculation of the ''All Others'' rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order and direct Customs Service officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective dates of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13680 Filed 6–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen (Tung Mung); Joanna Gabryszewski (Chang Mien); Gideon Katz (YUSCO and Yieh Mau); or Michael Panfeld (Ta Chen), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408; (202) 482–0780; (202) 482–5255; and (202) 482–0172, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Final Determination

We determine that stainless steel sheet and strip in coils (''SSSS'') from Taiwan are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice. Additionally, as discussed below, we have determined that the application of total adverse facts available is warranted with respect to YUSCO and Ta Chen.

Case History

Since the amended preliminary determination (*Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from Taiwan, (Amended Preliminary Determination*) (64 FR 4070, January 27, 1999)) the following events have occurred. We conducted a sales verification of Yieh United Steel Corporation's (''YUSCO'') questionnaire response on January 18–22, 1999. We conducted a sales and cost verification of Tung Mung Development Co., Ltd's (''Tung Mung'') questionnaire response on January 25–29, 1999. We conducted a sales and cost verification of Chang Mien Industries Co., Ltd.'s (''Chang Mien'') questionnaire response on February 2–6, 1999. We conducted a sales verification of Yieh Mau Corporation's (''Yieh Mau'') questionnaire response on February 8–9, 1999. Finally, we conducted a verification of Ta Chen Stainless Pipe Co., Ltd.''s (''Ta Chen Taiwan'') and Ta Chen International's (''TCI'') (collectively ''Ta Chen'') middleman dumping questionnaire response on April 5–8,1999 in Los Angeles and on April 12–16, 1999 in Taiwan. On April 12, 1999, respondents YUSCO, Ta Chen, Chang Mien, and Tung Mung provided this monthly shipment data for subject merchandise to the U.S. for 1996, 1997, and 1998.

Petitioners and respondents submitted case briefs on April 20, 1999. On April 22, 1999, petitioners (the only party requesting a public hearing) withdrew their request for the public hearing. Petitioners and respondents submitted rebuttal briefs on April 26, 1999.

On February 5, 1999, Ta Chen submitted a middleman dumping questionnaire response. On February 17 and on March 3, 1999, Ta Chen submitted additional information. On April 7, 1999, the Department requested historical data from respondents regarding exports of subject merchandise during the POI to the U.S. for the years 1996, 1997, and 1998. On April 20, 1999, the Department released a preliminary decision on our middleman dumping investigation of Ta Chen. *See* Memorandum from Michael Panfeld to the File entitled *''Ta Chen Stainless Pipe Co., Ltd.: Preliminary Middleman Dumping Analysis.''* In that memorandum, we preliminarily found that Ta Chen did not engage in middleman dumping with respect to purchases from YUSCO. However, we did preliminarily find that Ta Chen engaged in middleman dumping with respect to purchases from Tung Mung. On May 3, 1999, petitioners and respondents submitted a second round of case briefs, focused on middleman dumping issues. Petitioners and respondents submitted rebuttals for this second case brief on May 7, 1999.

Scope of the Investigation

We have made minor corrections to the scope language excluding certain stainless steel foil for automotive catalytic converters and certain specialty stainless steel products in response to comments by interested parties.

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses

of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[5]

Period of Investigation

The period of investigation (''POI'') is April 1, 1997 through March 31, 1998.

Fair Value Comparisons

To determine whether sales of SSSS from Taiwan to the United States were made at less than fair value, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''export price'' section of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Transactions Investigated

Chang Mien

With respect to home market sales, we have determined that the date of the order confirmation is the appropriate date of sale since it is the date on which the terms are set and is not changed thereafter, *i.e.* the date which ''established the material terms of sale.'' 19 CFR 401(i). For a further discussion of this issue, *see* the date of sale discussion for Chang Mien further in the body of this Final Determination, and in the *Analysis of Chang Mien in the Final Determination of Stainless Steel Sheet and Strip in Coils from Taiwan Memorandum* (''*Analysis Memorandum: Chang Mien*''), May 18, 1999.

For U.S. sales, we have determined that the date of invoice is the appropriate date of sale since it is the date on which the terms of the sale are set and is not changed thereafter. For a further discussion of this issue, *see* the date of sale discussion for Chang Mien, further in the body of this final, and in the *Analysis Memorandum: Chang Mien*.

Tung Mung

For Tung Mung's U.S. sales, we have used contract date as date of sale. With respect to home market sales, we have determined that the date of invoice is the appropriate date of sale since it is the date on which the terms are set and is not changed thereafter, i.e. the date which ''established the material terms of sale.'' 19 CFR 401(i). For a further discussion of this issue, *see Analysis of Tung Mung in the Final Determination of Stainless Steel Sheet and Strip in Coils from Taiwan Memorandum* (''*Analysis Memorandum: Tung Mung*''), May 18, 1999. For U.S. sales, as a result of verification, we have treated Tung

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Mung's sales to Company X as sales through Ta Chen Taiwan in our calculations. *See* Ta Chen Taiwan Verification Report dated April 28, 1999 and *Analysis Memorandum: Tung Mung.*

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by respondents, covered by the description in the ''Scope of Investigation'' section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's August 3, 1998 questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or constructed export price (''CEP'') transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (''SG&A'') and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In this investigation, none of the respondents requested a LOT adjustment. To ensure that no such adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Taiwan markets, including the selling functions, classes of customers and selling expenses for each respondent.

Tung Mung

Tung Mung claimed that there was only one LOT in the home market. Tung Mung reported that in the home market it made sales to distributors, service centers, and end-users through one channel of distribution. Tung Mung offered freight and delivery arrangements and warranty services to all customers in the home market. The Department confirmed this information at verification (*see Verification Report: Stainless Steel Plate in Coils from Taiwan, Less than Fair Value Investigation*, p. 8). Based on our analysis, for the final determination, we determine that Tung Mung had one LOT in its home market.

In the U.S. market, Tung Mung reported that it sold at one LOT through two channels of distribution: (1) A foreign distributor, and (2) domestic trading companies. In the U.S. market, Tung Mung reported only one LOT to customers. Tung Mung reported that it performed identical selling functions in the United States and in the home market. These selling functions include freight and delivery arrangements and warranty services. The Department confirmed this information at verification (*see* Tung Mung sales verification report, p. 9). Therefore, for the final determination, we determine that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the home market and the United States. Therefore, a LOT adjustment for Tung Mung is not appropriate.

Chang Mien

Chang Mien reported two LOTs in the home market and two channels of distribution. Within both channels of distribution, the merchandise is either shipped immediately to the customer or stored in Chang Mien's warehouse. In the home market, Chang Mien stated that it performed identical selling activities for both channels of distribution, such as providing inventory maintenance, technical advice, warranty services, delivery arrangements, and advertising. Although the selling activities offered are identical for each of its customers, an additional selling activity is performed for those sales which are stored in inventory. However, we determine that sales on which inventory maintenance is performed do not involve significantly greater resources than sales on which inventory maintenance is not performed and, therefore, do not constitute a separate LOT. The Department confirmed this information at the verification (*see* Memorandum to the File through Rick Johnson from Laurel LaCivita, *Chang Mien Industries Co., Ltd., Home Market Sales, United States Sales Verification Report; Stainless Steel Plate in Coils from Taiwan, Less than Fair Value Investigation* (''*Chang Mien Sales Verification Report*''), pp. 4–5). With respect to the final determination, the Department determines that Chang Mien's two claimed LOTs constitute one LOT. For a further discussion of this issue, *see Analysis Memorandum: Chang Mien*, pp. 7–8.

In the U.S. market, Chang Mien reported that it sold at one LOT, through one channel of distribution, and to one type of customer (trading company). For sales in the U.S. market, Chang Mien performed the following activities: packing, delivery arrangements (*i.e.*, transportation, brokerage and handling, and marine insurance), advertising, and warranty services. Based on a comparison of the selling activities performed in the United States market to the selling activities in the home market, we conclude that there is not a significant difference in the selling functions performed in both markets. The Department confirmed this information at the verification (*see* Chang Mien Sales Verification Report, pp. 4–5). Therefore, for the final determination, we determine that there is one LOT in the U.S. and that sales to these customers constitute the same LOT in the home market and the United States. Therefore, a LOT adjustment for Chang Mien is not appropriate.

Export Price

For all respondents (except Ta Chen and YUSCO—*see* ''Facts Available'' section below), we based our calculation on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. Furthermore, we calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

We made company-specific adjustments as follows:

Tung Mung

We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight; containerization expenses; brokerage and handling expenses; harbor duty fees, and bank charges. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Chang Mien

We made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight; brokerage and handling; ocean freight; and marine insurance. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

1. Home Market Viability

As discussed in the preliminary determination, we determined that the home market was viable for YUSCO, Tung Mung, and Chang Mien. No party has contested this decision. For the final determination, we have based NV on home market sales.

2. Cost of Production Analysis

Based on the cost allegation submitted by petitioners in the petition, the Department found reasonable grounds to believe or suspect that respondents had made sales in the home market at prices below the cost of producing (''COP'') the merchandise, in accordance with section 773(b)(2)(A) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See Initiation of Antidumping Investigation: Stainless Sheet and Strip In Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, (''*Initiation Notice*'') 63 FR 37521 (July 13, 1998).

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. We relied on the COP data submitted by each respondent in its cost questionnaire response. Additionally, we made the following adjustments based on our verification findings: (1) We made an adjustment to Tung Mung's G&A expenses to account for power expenses; and 2) for Chang Mien, we revised costs for three CONNUMs, as discussed further in Comment 8.

B. Test of Home Market Prices

We compared the weighted-average COP for each respondent, adjusted where appropriate (see above), to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities,'' pursuant to section 773(b)(2)(C)(i), within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan.

Price-to-Price Comparisons

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test. We disregarded sales to affiliated customers that failed the arm's-length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(c)(ii) of the Act.

Tung Mung

For Tung Mung's home market sales of products that were above COP, we based NV on prices to home market customers. We made a deduction for inland freight and two post-sale price adjustments (these adjustments were reported as a quantity discount and other discounts) pursuant to section 351.401(c) of the Department's regulations. We calculated NV based on prices to unaffiliated home market customers. In addition, we made circumstance-of-sale (''COS'') adjustments for differences in direct selling expenses (*i.e.*, credit and warranty expenses), where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Based on the results of verification, we made an adjustment to indirect expenses. *See* Tung Mung Sales Verification Report at p. 14 and *Analysis Memorandum: Tung Mung*, p. 6.

Chang Mien

For Chang Mien's home market sales of products that were above the COP, we based NV on prices to unaffiliated home market customers. We made a deduction for inland freight. In its December 4, 1998 submission, petitioners argued that the Department should deny Chang Mien's reported home market credit expense and reclassify Chang Mien's claimed advertising expenses as indirect selling expenses. For the preliminary determination, the Department accepted Chang Mien's home market credit expenses and classified Chang Mien's advertising expenses in both the U.S. and home market as direct selling

expenses. However, based on findings made at verification, we have reclassified Chang Mien's claimed advertising expenses as indirect selling expenses for the final determination. *See Analysis Memorandum: Chang Mien* at 4. For a further discussion of this issue, *see* Comment 11 ''Advertising Expenses'' below. Furthermore, based on a pre-verified correction, we have adjusted Chang Mien's reported advertising expenses. Additionally, for the Final Determination, we will only make adjustments for warranty expenses associated with POI sales and have, therefore, excluded one of the two warranty expenses claimed by Chang Mien. *See* Comment 12 ''Warranty Expenses'' below. We made COS adjustments for direct selling expenses (*i.e.*, credit, warranty and bank charges), where appropriate. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of similar merchandise. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For these EP comparisons, for Tung Mung, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of SSSS from Taiwan. Section 735(a)(3) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine on the basis of the information available to the Department, whether:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers an existing antidumping duty order on SSSS in the United States or elsewhere to be sufficient. Petitioners did not provide any information indicating a history of dumping of SSSS from Taiwan. Furthermore, we investigated the existence of antidumping duty orders on SSSS from Taiwan in the United States or elsewhere, and did not find any. On April 7, 1999, we requested respondents to submit historical data on exports of subject merchandise to the United States for 1996, 1997 and 1998. On April 12, 1999, YUSCO, Chang Mien, Tung Mung, and Ta Chen submitted the historical data on U.S. exports as requested.

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers estimated dumping margins of 25 percent or greater for EP sales to impute knowledge of dumping and of resultant material injury. In this regard, we note that the ITC preliminarily determined that the domestic industry is materially injured or threatened with material injury by reason of imports from Taiwan. *See Notice: International Trade Commission,* 63 FR 41864 (August 5, 1999). In this investigation, with the exception of YUSCO, we have not established estimated dumping margins of 25 percent or greater. Based on these facts, we determine that, with the exception of YUSCO, the first criterion for ascertaining whether critical circumstances exist is not satisfied. Therefore, we determine that there is no basis to find that critical circumstances exist with respect to exports of SSSS from Taiwan by all respondents except YUSCO (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails From Korea,* 62 FR 25895, 25898 (May 12, 1997)). Because the dumping margins for all companies except YUSCO are below the 25 percent threshold, we have not analyzed the shipment data for these respondents to examine whether imports of SSSS have been massive over a relatively short period.

For YUSCO, we compared shipment data for the periods December 1997 through May 1998 and June through November 1998 (the post-petition period), and found that YUSCO did not have massive shipments of SSSS to the United States in the post-petition period. Therefore, we find that critical circumstances do not exist. For a more detailed discussion of this analysis, *see Analysis Memorandum—YUSCO* from Rick Johnson to Edward Yang, May 19, 1999.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by the respondents for use in our final determination. We used standard procedures, including examination of relevant sales, accounting, and production records and original source documents provided by respondents.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

YUSCO

We find, based on the evidence set out below in the ''total facts available'' section of the notice, that by not reporting a large portion of the home market database, YUSCO withheld information that had been requested by the Department (*i.e.*, all home market sales of the foreign like product) and did not act to the best of its ability in providing the requested information. Accordingly, the Department used facts available with an adverse inference, as provided for in section 776(b) of the Act. Since these sales were not reported to the Department, this information was clearly not provided in a timely manner (*i.e.*, in response to Section B of the Department's questionnaire). Furthermore, YUSCO's withholding of

crucial information which the Department needed to calculate an accurate normal value significantly impeded the Department's investigation. As a result, we must rely on the facts otherwise available.

Ta Chen

We also determine, in accordance with section 776(a) of the Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for Ta Chen because, despite the Department's attempts to verify necessary information provided by Ta Chen, the Department could not verify the information as required under section 782(i) of the Act. Furthermore, section 782(e) of the Act authorizes the Department to decline to consider information that is submitted by an interested party that is necessary to the determination under certain circumstances, such as when such information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination or when such information cannot be verified. As discussed below in Comment 23, we determine that information provided by Ta Chen in this investigation could not be verified.

Total Facts Available

YUSCO

Section 773(a)(1)(B) of the Act requires that, in determining normal value, the Department use all sales of the foreign like product sold for consumption in the exporting country, provided the sales are in the usual commercial quantities, made in the ordinary course of trade and, to the extent practical, at the same level of trade as the export price or constructed export price sale. Our questionnaire requires that where the home market is viable, respondents report all sales of the foreign like product sold in the home market.

The Department's antidumping questionnaire issued to YUSCO, at B–1, notes that Section B of the questionnaire ''provides instructions for reporting your sales of the foreign like product in your home market or a third-country market.'' Foreign like product, in turn, is defined in the glossary to the antidumping questionnaire as referring ''to merchandise that is sold in the foreign market and that is identical or similar to the subject merchandise. When used in the questionnaire, foreign like product means all merchandise that is sold in the foreign market and that fits within the description of merchandise provided in Appendix III to the questionnaire (section 771(16) of the Act).'' Therefore, it is clear from the instructions in the questionnaire that respondent is required to report all sales of subject merchandise in the foreign market. Furthermore, in explaining how to report customer codes for home market sales, the questionnaire states that, ''(i)f known, identify customers that export some or all of their purchases of the foreign like product. Explain how you determined which sales were for consumption in the foreign market.'' *See* Questionnaire at page B–8. This instruction clearly places an obligation upon a respondent and contemplates, in accordance with section 773(a)(1)(B) of the statute, that sales for consumption in the home market be reported as home market sales. Moreover, the questionnaire specifically asked respondent to identify customers that export and explain how it determined what sales were for home market consumption.

The record establishes that YUSCO failed to report a substantial portion of sales possibly consumed by home market customers. On pages 3 and 4 of its November 18, 1998 supplemental questionnaire response, YUSCO stated that:

> The majority of YUSCO's home market customers are further manufacturers. These further manufacturers produce different types of SSSS and/or non-subject merchandise from YUSCO's SSSS, and sell to their customers in the home market, U.S., and third countries. As stated above, YUSCO states that it does not know which YUSCO's SSSS was further manufactured into different types of SSSS or into non-subject merchandise. Nor does YUSCO claim to know which YUSCO's SSSS was finally destined to either the home market, the United States, or third countries.

We confirmed this during verification by interviewing 12 members of YUSCO's sales department via a written questionnaire. The questions concerned the employees' role, knowledge of its customers, and knowledge of further-processing. *See Facts Available Decision Memorandum—YUSCO* for a full discussion, as well as Exhibit 7 of the YUSCO sales verification report.

Prior to verification YUSCO submitted a list of ''UZ sales'' which were sales made to home market further manufacturers. These customers informed YUSCO that the processed SSSS would be exported, but did not specify whether the exported product would still be subject merchandise. YUSCO claims that these sales should not be used in calculating YUSCO's dumping margin because YUSCO knew that its SSSS would be finally exported to third countries. Consistent with *Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils From Taiwan,* 64 FR 15493 (March 31, 1999), however, these sales must be included in a normal value calculation for YUSCO because YUSCO has not demonstrated that it knew that the SSSS from these sales was not consumed in the home market. YUSCO thus erroneously considered a substantial portion of its sales as third country export sales, even though they were sales to unaffiliated home market customers. Likewise, YUSCO also did not report a large number of indirect export sales, coded ''U*.'' These sales were made to Taiwan customers who possibly further manufactured the SSSS and then exported it to third countries. Although YUSCO reported the total quantity and value of these sales, it did not submit a U* sales listing and it did not provide evidence that this merchandise was exported as subject merchandise.

Although YUSCO has provided information regarding total value and quantity of its home market sales, it has not explained why it did not report a large number of sales to home market customers who possibly further manufactured SSSS into non-subject merchandise before export. Nor has it reported the individual sales transaction data necessary to conduct the dumping analysis.

As noted above, under section 773(a)(1)(B), normal value is based on sales of the like product for consumption in the home market. Thus, sales may be excluded from the home market database only if a respondent knew or had reason to know that merchandise was not sold for home consumption. *See INA Walzlager Schaeffler KG* v. *United States,* 957 F. Supp. 251, 263H (CIT 1997). Therefore, if YUSCO had demonstrated that it knew or had reason to know that its sales of subject merchandise in the home market were not for consumption in the home market, it may have been appropriate for YUSCO to omit these sales from its home market sales. In this case, as described above, YUSCO has admitted that a large portion of its sales are further processed prior to exportation. It is without question that if merchandise sold in the home market, even if ultimately destined for export, was consumed in the home market in producing non-subject merchandise prior to exportation, then it should be reported as part of the home market sales database. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From Korea,* 58 FR 37176 (July 9, 1993) (Comment 9); *Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic*

of Korea, 58 FR 15467 (March 23, 1993). Therefore, YUSCO should have reported these sales as home market sales.

Moreover, substantial evidence reveals that YUSCO's reliance on its internal coding system for sales reporting purposes contains an additional flaw: namely, this system is not used in accordance with YUSCO's own stated guidelines. Specifically, the Department found, in *SSPC from Taiwan,* that a product which, according to YUSCO's description, should have been coded as a ''UAS'' sale to the United States (irrespective of the Department's ultimate determination that, for our purposes, this sale was properly considered to be a home market sale), was in fact coded as a domestic sale (*see* Comment 1 and 2 of *SSPC from Taiwan*). The Department notes that the same system was used for the purposes of reporting sales in the instant investigation (*see* YUSCO sales verification exhibit 3, and pages 4 and 6 from YUSCO's verification report dated January 28, 1999 in *SSPC from Taiwan,* which has been placed on the record of this investigation). Therefore, further doubt is cast upon the reliability of YUSCO's reporting methodology.

Because YUSCO's reliance on this internal classification of home market and third country sales for reporting sales to the Department was inadequate, by relying on it YUSCO failed to comply to the best of its ability with the Department's instructions. Additionally, although YUSCO did submit its UZ sales listing late in our investigation, this information is grossly incomplete and thus unusable for our dumping calculation purposes. Furthermore, because it was submitted on January 11, 1999, we had no opportunity to issue supplemental questionnaires regarding these sales. The UZ sales listing is missing key information, such as product characteristics, CONNUMs, customer codes, relevant dates, and a number of adjustments. This information is thus so incomplete that it cannot serve as a reliable basis for reaching our determination of normal value. Finally, because this UZ sales information was so incomplete and was submitted too late for the Department to seek additional information regarding these sales, we find that the submission of these sales cannot reasonably be construed as evidence that YUSCO was attempting to cooperate to the best of its ability.

Ta Chen

Generally, and in the process of verification, the Department's analysis of the completeness of a respondent's U.S. sales database is essential because the database is used to calculate the anti-dumping duties. An incomplete U.S. sales database is normally sufficient to render a company's response inadequate for the purpose of calculating a dumping margin. *See, e.g., Persico Pizzamiglio, S.A.* v. *United States,* Slip Op. 94–61 (CIT 1994) (*Persico*) (upholding the Department's use of best information available for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification).

Despite our efforts at verification, we were unable to verify information which is necessary and must be verified in order for us to make a determination under section 731 of the Act. Specifically, we were unable to verify the data Ta Chen provided concerning its purchases and subsequent U.S. sales of subject merchandise produced by YUSCO and Tung Mung. Most significantly, we found that Ta Chen was unprepared to demonstrate that the appropriate universe of purchases and U.S. resales were reported, that further-manufacturing activities in Taiwan were not related to subsequent U.S. sales, and that it had reported all expenses related to its purchases. As we have indicated above, incompleteness of the U.S. sales database is a critical flaw and is a factor which, by itself, forms an adequate basis for our determination to use facts available.

Thus, we have determined that although Ta Chen provided information we requested which was necessary for us to perform our analysis, the information could not be verified as required by section 782(i) of the Act. Thus, in accordance with section 782(e)(2) of the Act, we have declined to consider information submitted by Ta Chen because it could not be verified. Because we were unable to verify necessary information, we were unable to employ our normal middleman dumping analysis. Under section 776(a) of the Act, we are required, in reaching our determination, to use total facts available because we could not verify Ta Chen's data. Thus, for Ta Chen, we have determined that it is appropriate to select from the facts otherwise available to the Department.

Adverse Facts Available

YUSCO

Where the Department determines that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act provides that the Department may use an adverse inference in selecting from the facts available. *See, e.g., Roller Chain, Other Than Bicycle, From Japan; Final Results and Partial Recission of Antidumping Duty Administrative Review,* 63 FR 63671 (November 16, 1998); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997). We have determined that YUSCO failed to cooperate to the best of its ability within the meaning of section 776(b) because YUSCO failed to follow the Department's instructions to report all home market sales.

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition. Section 776(c) of the Act provides that, when the Department relies on secondary information, such as the petition, as facts available it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870). At the outset of this investigation, the Department examined the accuracy and adequacy of the price to price information in the petition. We determined that the price to price comparisons and price to CV comparisons constituted sufficient evidence of dumping to justify initiation. *See Initiation Notice* at 37527 (estimated margins for Taiwan ranged from 8.23 percent to 77.08 percent).

In order to determine the probative value of the petition margins for use as adverse facts available for the purposes of this determination, we have examined evidence supporting the petition calculations. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the petition margin was based and compared the sources used in the petition to YUSCO's reported sales databases. Based on this analysis, we have successfully corroborated the information in the petition regarding price to price comparisons. *See Facts Available Memorandum—YUSCO.* Therefore, we have chosen the highest petition margin (based on price-to-price comparisons) for Taiwan of 21.10 percent as the basis

for using total adverse facts available. *See* comment 2, below, for a full discussion of the overall facts available margin.

Ta Chen

We examined whether Ta Chen had acted to the best of its ability in responding to our requests for information, such as U.S. sales data. We took into consideration the fact that, as an experienced respondent in other investigations and orders, its ability to comply with our requests for information could be distinguished from, for example, the ability of a less experienced company. Thus, Ta Chen can reasonably be expected to know which types of essential data we request in each investigation or review, and to be conversant with the form and manner in which we require submission of the data.

In addition to taking into account the experience of a respondent, the Department may find it appropriate to examine whether the respondent has control of the data which the Department is unable to verify or rely upon. The record reflects that Ta Chen was in control of the data which was vital to our dumping calculations and which we were unable to verify or rely upon. *See Facts Available Decision Memorandum—Ta Chen* from Rick Johnson to Edward Yang, dated May 19, 1999 (''Facts Available Decision Memorandum-Ta Chen'').

An additional factor we have considered is the extent to which Ta Chen might have benefitted from its own lack of cooperation. The SAA states that ''where a party has not cooperated, [the Department] may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *Id.* at 870. In accordance with our policy, we considered the overall effect of Ta Chen's errors. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for Ta Chen. *See Facts Available Decision Memorandum—Ta Chen.*

In light of Ta Chen's familiarity with the Department's practices, its control of the necessary data, and the potential benefits it may have received, we have determined that Ta Chen failed to act to the best of its ability in providing the data we requested. Therefore, in accordance with section 776(b) of the Act, we have, on the basis of the record in this case, determined that it is appropriate for us to make the adverse inference authorized under that subsection of the statute. Accordingly, for this final determination, we base Ta Chen's margin on adverse facts available.

In selecting a margin which would appropriately reflect our decision to use adverse facts available for Ta Chen, we examined the rates applicable to this case throughout the course of the proceeding. As adverse facts available, we have selected a rate of 15.34 percent for Ta Chen's resales of Tung Mung's and YUSCO's product, which reflects the highest rate in *Stainless Steel Sheet and Strip in Coils from Taiwan: Whether to Initiate a Middleman Dumping Investigation (''Middleman Initiation Memo'')* dated December 3, 1998. As we discuss in Comment 2 below, we have used this rate in calculating an overall weighted-average margin for Tung Mung and YUSCO.

As indicated above, section 776(c) of the Act requires the Department to corroborate secondary information used as facts available to the extent practicable. Because the facts available applied to Ta Chen for this investigation is secondary information within the meaning of section 776(c) of the Act, we have, in accordance with section 776(c), corroborated this information with independent sources.

In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the middleman dumping calculations on which the middleman dumping petition was based and compared these sources to Ta Chen's reported data. Based on this analysis, we are satisfied that this information has probative value. *See Facts Available Decision Memorandum—Ta Chen.* Thus, we have determined that information and inferences which we have applied are reasonable to use under the circumstances of this determination, in accordance with the *SAA* at 869. Furthermore, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse facts available.

Interested Party Comments

General Issues

Comment 1: Currency Fluctuations

Petitioners argue that the Department should calculate final dumping margins for all respondents using three separate averaging periods to account for alleged severe currency fluctuations which occurred during the POI. Petitioners charge that there were sudden and dramatic drops in the value of the New Taiwan dollar relative to the U.S. dollar (from an annualized 9.83 percent drop in the first six months of the period of investigation to an annualized 70.60 percent drop in the last quarter of 1997). Therefore, to account for these sudden currency fluctuations, petitioners urge the Department to calculate three separate weighted-average price comparisons for each product under investigation; one for the first six months of the POI, another for the October 1997 through December 1997 period, and a third for the January 1998 through March 1998 period. Petitioners argue that the failure to account for the ''severe'' exchange rate fluctuations during the POI through the use of three separate periods will result in the dilution of pre-existing dumping margins resulting solely from exchange rate changes and independent of any pricing changes by respondents.

Petitioners maintain the use of multiple averaging periods to account for exchange rate fluctuations is consistent with what petitioners claim to be the two goals of the antidumping law: (1) to provide relief to domestic industries facing unfair competition, and (2) to make fair comparisons. *See Smith-Corona Group* v. *United States,* 713 F.2d 1568, 1575–76 (Fed. Cir. 1983) and *Koyo Seiko Co.* v. *United States,* 20 F.3d 1156, 1158–59 (Fed. Cir. 1994) (''*Koyo Seiko*''). Petitioners allege that unless the Department calculates separate margins for three periods, the macroeconomic conditions unrelated to each respondent's competitive pricing policies will unfairly and inappropriately mask Taiwan respondents' true margins of dumping. Petitioners assert that in several recent antidumping investigations, the Department recognized that a rapid currency devaluation may mask dumping margins and that multiple averaging periods are appropriate. *See, e.g., Final Determination of Sales at Less Than Fair Value; Stainless Steel Plate in Coils from Korea (''SSPC From Korea''),* 64 FR 15443, 15452 (March 31, 1999) and *Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea (''ESBR from Korea''),* 64 FR 14865, 14868 (March 29, 1999). Petitioners note that the Department has specifically addressed in its regulations the appropriate use of multiple averaging periods to avoid the possibility of distortion in the dumping calculation. *See Preamble to Antidumping and Countervailing Duties; Final Rule,* 62 FR 27296, 27377 (May 19, 1997) (''*Preamble*'') (stating that [Commerce] should address depreciating currencies more fully in its regulations); and 19 CFR 351.414(d)(3) (stating that Commerce may use shorter

averaging periods ''when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation...''). Petitioners assert that to achieve ''fairness,'' which is the goal of the dumping law, the Department must consider sudden currency devaluations in calculating dumping margins. Petitioners argue that given the significant degree of devaluation of the Taiwan dollar that occurred in the last quarter of 1997, calculating a single POI weighted-average price for each product is inappropriate.

Petitioners argue that the statute and the *SAA* authorize the Department to rely on modified averaging comparisons where time affects sales comparability. Petitioners assert that the *Notice of Proposed Rulemaking and Requests for Public Comment,* 61 FR 7308, 7349 (February 27, 1996) (*''Notice of Proposed Rulemaking''*), state that the Department will normally calculate an average-to-average comparison by weight-averaging sales during the entire period of investigation. Petitioners argue that the Department may resort to shorter time periods where the normal values, export prices, or constructed export prices for sales included in an averaging group differ significantly over the course of the POI. Petitioners allege that NV differs significantly and dramatically over the course of the POI when exchange rates are taken into account.

Petitioners cite to the Department's reasoning in *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan (''PVA from Taiwan''),* 61 FR 14064, 14069 (March 29, 1996), where the Department acknowledged that time affects price comparability, and relied on two averaging periods to calculate dumping margins. Petitioners note that although *PVA from Taiwan* involved an affirmative change in home market selling practices by respondent, the Department held that the change in selling practices enhanced the effect of time on price comparability ''because the respondent entered into long-term contracts that dramatically reduced NV in the last six weeks of the POI.'' *Id.* Petitioners argue that the need for separate averaging periods is even stronger in this investigation than in *PVA from Taiwan,* because the steep decline in NV results from the Department's calculation methodology, not from some independent action by respondents. *Id.*

Petitioners argue that the ''precipitous'' drop at the last quarter of 1997 has a strong effect on the dumping calculations since respondents' costs for raw materials would be affected by the New Taiwan dollar's decline. Petitioners contend that if separate costs were available for three periods, it would be almost certain that all post-decline NV's would be below respondents' costs and that dumping would be found based on a comparison of respondents' U.S. prices to their actual ''constructed value'' for that same period. Petitioners assert that respondents are more likely to be further reducing U.S. prices in response to the Taiwan currency devaluations, whereas under the Department's current methodology, no dumping would be found for this period.

Petitioners argue that the Department often departs from ordinary comparison methodology to account for extraordinary events. Petitioners argue that the courts have recognized that dumping margins should not be ''artificially'' created simply because of unforeseen changes in the exchange rate, citing, *e.g., Melamine Chem., Inc.* v. *United States*, 732 F.2d 924, 929–932 (Fed. Cir. 1984). In addition, petitioners argue that dumping margins should not be eliminated artificially because of unanticipated changes in the exchange rate, given that the goal of the antidumping law is to protect the domestic industry from unfair trade practices, citing *Koyo Seiko* at 1158. In so arguing, petitioners cite to past Department decisions where the Department made adjustments to cost to account for extraordinary events that occurred during the period of investigation or review (*Floral Trade Council* v. *United States*, 16 CIT 1014, 106–17 (1992); *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Presses and Components Thereof, Whether Assembled or Unassembled from Japan,* 61 FR 38139, 38153 (July 23, 1996); *Final Determination of Sales at Less Than Fair Value: Fresh Kiwi Fruit from New Zealand,* 57 FR 13695, 13697 (April 17, 1992)). Petitioners assert that the Department consistently has recognized and attempted to minimize the effect of severe currency devaluations in dumping calculations, citing *Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Brazil*, 55 FR 23120 (June 6, 1990) (to account for hyperinflation, the Department calculated a separate foreign market value for each price period); *Certain Fresh Cut Flowers from Columbia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53297 (October 14, 1997) (holding that calculations should be revised to account for the ''devaluation of the Columbian currency''). Petitioners contend that the *Notice of Proposed Rulemaking* (at 7349) states that the Department may resort to shorter time periods where normal values included in the averaging group differ significantly over the POI.

Petitioners argue that the Department also acknowledges that standard weight-averaging procedures are inappropriate under extraordinary circumstances by adopting special procedures for exchange rate conversions where foreign currencies appreciate vis-a-vis the dollar. Petitioners assert that 19 CFR 351.415 permits respondents time to adjust their pricing practices so that appreciating currencies do not ''create'' dumping margins. Petitioners argue that likewise, depreciating foreign currencies should not be used to reduce or eliminate margins of dumping. Petitioners argue that if a respondent is dumping at a time of stable inflation and currency valuation, dumping should not be eliminated because of an extraordinary devaluation of the foreign currency that otherwise has no impact on the respondent's pricing practices. Petitioners argue that respondents did not take any affirmative steps in the latter part of the period of investigation to eliminate or minimize its dumping. Petitioners claim that but for the rapid and unexpected devaluation of the Taiwan dollar, respondents' level of dumping would have been the same. Therefore, petitioners argue, the Department has not only the authority, but also the obligation, to rely on an alternative method to calculate the dumping margins to ensure a fair result.

YUSCO argues that the Department should reject petitioners' request to calculate dumping margins using three separate averaging periods. YUSCO argues that petitioners' arguments are based on a ''tortured'' calculation of the exchange rate and on inapposite determinations in *ESBR from Korea* and *SSPC from Korea*. YUSCO asserts that petitioners grossly exaggerate the New Taiwan dollar fluctuation.

YUSCO argues that contrary to petitioners' findings, the New Taiwan dollar exchange rates in the last three months in 1997 are within normal currency fluctuations addressed by the Department's standard rules for currency conversions. YUSCO asserts that section 351.415(c) of the Department's regulations state that the Department will ''ignore fluctuations in exchange rates.'' YUSCO claims that the New Taiwan dollar fluctuated only 12.6 percent in the last three months of 1997. Respondent argues that petitioners relied on a misleading calculation of a

yearly change in the New Taiwan dollar exchange rate that never occurred. Specifically, YUSCO claims that petitioners' ''annualized'' change of 70.6 percent is fictitious and alleges that petitioners inflated the denominator of their percentage calculation and ''irrationally'' extrapolated an inflated one quarter rate change over a year in which no such sustained change occurred.

YUSCO also claims that the Department did not use separate averaging periods when moderate currency fluctuation occurred in prior proceedings. In so arguing, YUSCO cites *Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled and Whether Complete or Incomplete, from Japan* (''*EPGTC from Japan*''), 62 FR 24394 (May 5, 1997), where the Department did not use separate averaging periods even though the Japanese yen fluctuated over 25 percent during the period of investigation. YUSCO argues that the Department's determinations in the South Korean cases petitioners have cited are not applicable to the instant case. YUSCO asserts that in *SSPC from Korea*, the Department determined that normal value, in U.S. dollar terms, in the last two months differed significantly from normal value in the earlier period due to a significant change in the exchange rate. In *SSPC from Korea*, the Department found that ''the won's value decreased by more than 40 percent in relation to the dollar in the last two months of 1997.'' YUSCO argues that, in contrast, the New Taiwan dollar fluctuated only 4.88 percent in the last two months of 1997, and less than 13 percent in the last three months of 1997. Finally, YUSCO argues that neither the New Taiwan dollar nor the Taiwan economy has ever faced the currency crisis similar to the one that South Korea faced in 1998.

Chang Mien also argues that petitioners have exaggerated the exchange rate fluctuations by annualizing their percentage change. Chang Mien assert that on a month-to-month basis, or annually, rather than ''annualizing'' individual numbers, the exchange rate between the New Taiwan dollar and the U.S. dollar changed approximately 15 percent using the Department's own data. Thus, Chang Mien argues, a change in the exchange rate on a month-to-month basis rather than on an annualized basis reveals that the change was less than ''sudden and dramatic.'' Chang Mien alleges that, with the exception of the two months from November to December 1997, the change in exchange rate was small and not sustained. Chang Mien claims that in the last two months of the POI, the New Taiwan dollar began a recovery, appreciating against the U.S. dollar.

Chang Mien disagrees with petitioners' argument that the instant situation is comparable to the cases of *SSPC from Korea* and *ESBR from Korea*. As noted by YUSCO, Chang Mien also contends that in the above Korean cases, the Department found more than a 40 percent change in the exchange rate in the POI. Moreover, Chang Mien asserts that in *SSPC from Korea*, the Department found not only that there was a precipitous drop in the Korean won/U.S. dollar exchange rate, but also that this drop continued through the end of the POI, without quick rebound. According to Chang Mien, in contrast to the won, the New Taiwan dollar fell only 15 percent in the POI and also rebounded significantly in the last two months of the POI.

Chang Mien asserts that petitioners' reading of the *Preamble* to the Department's regulations is misplaced. Chang Mien argues that the *Preamble* instead reads that ''the Department did not change its policy regarding the use of the exchange rates.'' *Id*. Chang Mien contends that among the areas the Department did not revise includes the use of either the actual exchange rate on a particular day or the use of a rolling eight-week average if the daily exchange rate varies by more than 2.25 percent from the rolling average. Chang Mien claims that this provision of using the rolling average for moderate fluctuations effectively takes care of any exchange rate fluctuations affecting dumping calculations, such as the fluctuations found in this case.

Chang Mien disagrees with petitioners' interpretation that the provision under 19 CFR 351.414(d)(3) allows the use of shorter averaging periods, ''when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation * * *'' Chang Mien argues that this provision has no relevance to using multiple averaging periods due to rapid currency fluctuations. Chang Mien claims that the provision instead relates solely with averaging all home market sales, for example, and comparing them to an average of all U.S. sales. Further, Chang Mien argues that the Court of Appeals for the Federal Circuit has ruled that a respondent cannot be held responsible for actions beyond its control, citing *Melamine Chemicals, Inc.* v. *United States*, 732 F.2d 924 (Fed. Cir. 1984).

Chang Mien argues that the Department should disregard petitioners' suggestion to use multiple averaging periods to account for currency fluctuations for the following policy reasons. First, Chang Mien contends that using this methodology would be prejudicial to respondents because it would provide no certainty on how to ensure that future sales comply with the antidumping duty statute with regard to currency fluctuations. Second, Chang Mien argues that multiple averaging periods would result in artificial dumping margins based solely on changes in the exchange rates. Third, Chang Mien claims that neither petitioners nor the Department have established clear guidelines on what constitutes either a severe, abnormal fluctuation or sufficient rebound from a severe currency devaluation. Finally, Chang Mien asserts this treatment of exchange rate fluctuations suggested by petitioners would have a ''nightmarish'' effect on future cases that would similarly be affected by exchange rate fluctuations.

Chang Mien asserts that it is the exchange rate, not price, which has fluctuated. Chang Mien contends it does not have any control over the exchange rates, nor have petitioners alleged that Chang Mien significantly changed its business practices or pricing policy as a result of the exchange rate fluctuations. Chang Mien objects to petitioners' allegation that the fluctuation of exchange rates in the instant case is an ''extraordinary event'' sufficient enough to warrant using multiple averaging periods to calculate dumping margin. Chang Mien argues that currency fluctuations in the instant case cannot be equated with the hyperinflation seen in Brazil and in other antidumping cases, citing *Industrial Nitrocellulose from Brazil; Final Results of Antidumping Duty Administrative Review*, 55 FR 23120 (June 6, 1990).

Finally, Chang Mien asserts that if the Department were to use multiple averaging periods, three calculations for the cost of production for each period also must be used in the margin calculation. Chang Mien argues that petitioners raised the issue of exchange rate fluctuations only in their case brief, making it impossible for respondents to submit cost of production data for each period within the time limits of this proceeding.

Similar to YUSCO and Chang Mien, Tung Mung argues that the exchange rate changes during the POI were not significant enough to warrant dividing the period into three periods. Tung Mung argues that petitioners' assertion that Tung Mung's costs for raw materials would have ''skyrocketed'' as a result of the declining New Taiwan

dollar overlooks the fact that much of Tung Mung's raw materials are obtained from domestic and imported sources. Tung Mung objects to petitioners' argument that Tung Mung failed to take ''affirmative steps'' during a period when the New Taiwan dollar was declining, given that the decline of a foreign currency in relation to the U.S. dollar reduces any dumping margin that might have existed or increases the safety margin.

Department's Position: We disagree with petitioners and have continued to use POI averages and our exchange rate model in this final determination. While we agree in principle with petitioners that we may use averaging periods of less than the POI when normal value, export price, or constructed export price varies significantly over the POI under 19 CFR 351.414(d)(3), we do not find that normal value or export price varied significantly over the POI due to exchange rate fluctuations for any of the respondents.

In cases where there is a precipitous drop in the foreign currency's value during the POI, we may find it appropriate to use multiple averaging periods to avoid the possibility of a distortion in the dumping calculation caused by exchange rate fluctuations. *See, e.g., SSPC from Korea*, where the Department used two averaging periods to calculate the dumping margin because there was a precipitous drop in the won in relation to the dollar (more than 40 percent in a two month period). However, in the instant case, changes in the exchange rate were moderate. Using exchange rate data from the Federal Reserve, we found that the value of the New Taiwan dollar relative to the U.S. dollar declined steadily over the POI and the overall decline in the value of the New Taiwan dollar relative to the U.S. dollar was less than 20 percent over the POI. Given these facts, we find no basis to conclude that the change in the value of the New Taiwan dollar over the POI was so significant that it warranted the use of multiple price averaging periods.

Comment 2: Independent Rates

Channel-specific dumping rates are inappropriate and without basis, petitioners contend, because the focus of the statute, the Department's regulatory regime, and both administrative and judicial precedent is on obtaining a single, weighted-average dumping rate for each foreign producer or exporter. Petitioners contend that multiple channels through which a foreign producer or exporter chooses to ship sales to the United States do not entitle them to channel-specific dumping rates.

Petitioners contend that there is no statutory basis for assigning a channel-specific rate. Petitioners, citing to sections 777A(c)(1) and 731(1) of the Act, argue that Congress has charged the Department with ascertaining the extent to which subject merchandise is dumped in the United States and assigning a single, weighted-average dumping rate to each producer or exporter under investigation. Petitioners state that there is no language in the statute to the effect that a producer is to receive a channel-specific dumping rate. In contrast, petitioners assert, the statute contemplates what, at best, might be called a ''unitary'' rate, reflecting all the given producer's sales to the United States regardless of routing and distribution.

Petitioners argue that given the circumstances in the instant case and the Department's discussion of its current regulations, the Department should impose a single, weighted-average dumping rate for each investigated producer. Petitioners cite the Department's discussion in *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27303 (May 19, 1997) (''*Final Rule*'') with regard to regulation 351.107:

> The Department also believes it is not appropriate to establish combination rates in an AD investigation or review of a producer; *i.e.*, where a producer sells to an exporter with knowledge of exportation to the United States. In these situations, the establishment of separate rates for a producer in combination with each of the exporters through which it sells to the United States could lead to manipulation by the producer. Furthermore, the Department recognizes that in many industries it is not uncommon for a producer to sell some amount of merchandise purchased from other producers. In such situations, the Department generally intends to establish a single rate for such a respondent based on its status as a producer, although unusual circumstances may warrant the application of a combination rate.

Petitioners state that both YUSCO and Tung Mung have acknowledged that they knew the subject merchandise was to be resold by the middleman or trading company to the United States, citing YUSCO's and Tung Mung's September 8, 1998 responses at A–12 and A–8, respectively. Moreover, petitioners allege that there are no unusual circumstances presented in the instant investigation that would justify recourse to a combination rate alongside a separate rate for YUSCO and Tung Mung.

Petitioners maintain that relevant precedent further reinforces the conclusion that a single, weighted-average dumping rate should be assigned to each producer and exporter of the subject merchandise. Petitioners maintain that the decision of *SSPC from Taiwan* with regard to separate dumping rates for each producer should not be followed, as it is at variance with the Department's express policy and precedent, citing *Ferrovanadium and Nitride Vanadium from the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review*, (''*Ferrovanadium from Russia*'') 62 FR 65656, 65659 (December 15, 1997); *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, (''*CVD SSPC from Korea*'') 64 FR 15530, 15532 (March 31, 1999); and *Certain Pasta from Italy: Results of New Shipper Antidumping Duty Administrative Reviews*, (''*Certain Pasta from Italy*'') 64 FR 852853 (January 6, 1999) and 63 FR 53641, 53642–43 (October 6, 1998). Petitioners state that the Department's findings in *Certain Pasta from Italy* differ from the instant case only in that Corex, in its role as a trading company, was not involved in a middleman dumping investigation.

Petitioners argue that the Department has recognized the need of assigning producers a single, weighted-average dumping rate, regardless of channels used to sell merchandise to the United States, to prevent margin manipulation and avoidance of antidumping duties, citing the *Final Rule* at 27303. Petitioners contend that the use of channel-specific dumping rates, as requested by respondents, would encourage respondents to resort to middleman dumping. Petitioners maintain that a foreign producer and an unaffiliated middleman could easily engage in price manipulation such that respondents could avoid antidumping duties by having the producer sell to the middleman at non-dumped prices and rely upon the middleman to carry out the dumping in the resale that usually is not analyzed by the Department. Moreover, if the producer is excluded from the order by virtue of its own separate rate, petitioners argue that the producer will be free to accomplish dumping on its own.

Petitioners maintain that it is this reasoning that causes the Department to capture the total amount of dumping through an additional analysis of the middleman's dumping. In keeping with this purpose, petitioners surmise, the Department should assign a single, weighted-average dumping rate because the total dumping by these two parties has benefitted the subject merchandise imported into the United States. Thus,

even absent an affiliation between the producer and the middleman within the meaning of section 771(33) of the Act, petitioners argue that the producer and the middleman are ''rightly perceived by the Department as having effectively worked in tandem'' in dumping the subject merchandise.

Petitioners also cite *Sweaters Wholly or in Chief Weight of Man-made Fiber from Taiwan: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, (''*Sweaters*'') 58 FR 32544, 32645 (June 11, 1993) as punctuating the notion that the Department will assign a single, weighted-average dumping rate to each producer, no matter whether the producer's product has gone through a trading company like Jia Farn or directly to the United States. In *Sweaters*, the Department stated that:

> The CIT agreed with the Department that the subject of antidumping orders is merchandise, not companies, and that only merchandise manufactured by Jia Farn was excluded from the order * * *''

Petitioners argue that *Sweaters* buttresses the Department's authority to act forcefully within the bounds of the statute to preclude circumvention of antidumping duties. Therefore, petitioners submit that the Department should use a single, weighted-average dumping rate on YUSCO and Tung Mung to prevent possible circumvention of antidumping duties.

YUSCO states that the record does not support a middleman dumping finding in this investigation, but in case the Department does find middleman dumping, YUSCO should be assigned an independent dumping margin. YUSCO, in explaining its reasoning for an independent rate, states that the record establishes that YUSCO is an independent producer and exporter of SSSS, as it made direct sales to U.S. customers during the POI, and that according to section 777A of the Act, the Department ''shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise'' unless such individual rate determination is not ''practicable.'' Therefore, YUSCO contends that it is entitled to an independent deposit rate. Furthermore, since the Department verified YUSCO's sales and cost information, the Department should, according to YUSCO, have no undue difficulties in calculating this margin. According to YUSCO, the Department's decision in *Fuel Ethanol from Brazil* supports this argument since in that case the Department assigned an independent deposit rate to a manufacturer based on its sales to the United States other than through a trading company.

YUSCO argues that the Department should disregard petitioners' arguments and assign an independent rate to YUSCO based only on dumping margins produced from YUSCO's sales other than through Ta Chen.

First, YUSCO argues that petitioners' arguments are contrary to the Department's practice and regulations. YUSCO states that petitioners' ''knowledge'' standard does not apply to cases when ''unusual circumstances may warrant the application of a combination rate,'' as stated in the preamble. YUSCO argues that since the Department and petitioners have both admitted that middleman dumping is unusual, knowledge of destination should be irrelevant to the determination of a middleman dumping deposit rate.

Second, YUSCO disagrees that combination rates offer respondents a possibility to circumvent antidumping duties, and that, according to the preamble, combination rates are issued in order to prevent circumvention.

Third, YUSCO asserts that petitioners incorrectly state that the Department's knowledge test as stated in the preamble supersedes *Fuel Ethanol from Brazil.* YUSCO states that the Department set a standard regarding middleman dumping as an exception to the knowledge test in *Fuel Ethanol from Brazil* and that *SSPC from Taiwan* changes *Fuel Ethanol* only regarding combination rate methodology. According to YUSCO, all other aspects of *Fuel Ethanol*, including the calculation of a producer's independent rate, are still applicable. YUSCO states that the Department correctly assigned both a combination rate and independent rate to YUSCO in *SSPC from Taiwan.*

Finally, YUSCO states that all four cases that petitioners quote are irrelevant to this investigation. *Ferrovanadium from Russia* does not apply because it is a non-market economy case. *CVD SSPC from Korea* is also irrelevant, argues YUSCO, since the Department stated that combination rates would serve no purpose in that specific case. YUSCO also argues that *Certain Pasta from Italy* is irrelevant, because petitioners incorrectly claim that the Department did not assign a combination rate to a trading company. In fact, YUSCO notes that the trading company was in fact a producer, and the Department specifically noted the importance of assigning a combination rate to a producer and exporter. Finally, YUSCO argues that *Sweaters from Taiwan* is irrelevant because the issue in that case was not, as petitioners state, possible circumvention of antidumping duties by a producer; rather, the issue was over whether a company should be considered a producer, an issue which YUSCO maintains is irrelevant to the case at hand.

YUSCO also argues that petitioners' single rate methodology would unreasonably and unfairly punish YUSCO and its U.S. customers since nothing on the record shows that any of these parties were involved in Ta Chen's selling practices. Furthermore, as in *Fuel Ethanol from Brazil* and *SSPC from Taiwan*, YUSCO claims that the Department should not double-count dumping margins generated from sales to Ta Chen when calculating a separate rate for YUSCO, since the margins for sales to Ta Chen will be incorporated into the YUSCO/Ta Chen combination cash deposit rate. YUSCO claims that not double-counting advances fairness and administrative efficiency in determining importer-specific assessment rates.

Tung Mung argues that, if the Department does affirm its middleman dumping finding, the Department should issue a separate rate for Tung Mung. Tung Mung argues that in middleman dumping cases the Department has consistently issued separate rates to the producers, citing *SSPC from Taiwan* (assigning two cash deposit rates, one to apply to sales made by the producer through the middleman, the other to apply to any sale of subject merchandise by the producer other than through the middleman). Tung Mung argues that assigning a separate rate for Tung Mung is fair and appropriate because the producer should not be penalized in making future sales to the United States as a result of pricing activities by the unaffiliated middleman that are, by definition, completely outside the producer's knowledge or control. Tung Mung argues that it should be able to continue to make direct sales to the United States without the importer being burdened with cash deposits that resulted from Ta Chen's activities. Tung Mung also requests that the Department confirm its decision that direct sales from Tung Mung to TCI, Ta Chen Taiwan's U.S. affiliate, are not subject to the middleman dumping analysis and therefore that such sales in the future would not be subject to any middleman dumping rate that the Department might issue in its final determination.

Tung Mung disagrees with petitioners' proposal to issue a single rate and argues that petitioners' reasoning is ''fatally'' flawed. Tung Mung asserts that the cases relied upon

by petitioners involved middleman sales but no middleman dumping. Tung Mung agrees with petitioners' request to issue a single rate to a producer, regardless of which channel it is selling to the United States. Tung Mung finds this policy appropriate where the producer alone has been found to be dumping, and not the middleman. However, Tung Mung challenges petitioners' assertions that the Department has changed its policy of giving a separate rate to the producer in middleman dumping cases, and instead now applies a single, weighted average margin, noting that in *SSPC from Taiwan,* the Department gave one rate to the producer—based in its sales to the middleman—and another rate to the producer/middleman combination. Tung Mung asserts that petitioners failed to explain how manipulation by the respondents is possible in the instant case. Tung Mung distinguishes the instant case from *CVD SSPC from Korea,* where the producer in question was selling through five different trading companies. Here, Tung Mung argues, there would only be two rates for each producer—one applying to its sales to the United States through Ta Chen, the other to the remainder of its sales. Thus, Tung Mung argues there would be no opportunity for manipulation.

Tung Mung finds implausible petitioners' claim that the producer and middleman can work in tandem in dumping the subject merchandise in the United States. Tung Mung argues that this assertion made by petitioners has no basis in fact and contradicts the Department's practice of giving separate rates to the producer and the middleman in middleman dumping cases. Tung Mung argues that petitioners even admit the implausibility of price manipulation by the middleman and the respondent producer, because by having the middleman carry out the dumping in the resale, the middleman would incur substantial losses. Thus, Tung Mung argues that the middleman could not engage in such a pricing strategy for any length of time.

In conclusion, Tung Mung submits that the Department should find a separate rate for Tung Mung based on direct sales to the United States. Further, Tung Mung argues that if that rate is *de minimis,* Tung Mung should be excluded from the order with respect to future sales to the United States that do not go through Ta Chen.

Ta Chen argues that, as the Department determined in *SSPC from Taiwan,* any middleman dumping margin should only apply to sales made by Ta Chen Taiwan. According to Ta Chen, TCI, like any other U.S. corporation, should be permitted to purchase directly from a Taiwan manufacturer at that manufacturer's own dumping rate.

Department's Position: We agree with petitioners that separate channel-specific rates are not appropriate in this case. Accordingly, we have determined one rate for Tung Mung merchandise, whether or not exported by Ta Chen, and one rate for YUSCO merchandise, whether or not exported by Ta Chen.

In light of the arguments raised by interested parties in this proceeding, we have reviewed our findings in *SSPC from Taiwan.* In making that final determination, we notified the U.S. Customs Service that, for entries of subject merchandise produced by YUSCO and shipped to the United States through Ta Chen, the cash deposit rate would be 10.20 percent and, for all other entries of subject merchandise produced by YUSCO, the cash deposit rate would be 8.02 percent. However, in that determination, YUSCO sold the subject merchandise to the United States only through Ta Chen and the dumping margin on that channel was above *de minimis,* such that we were not faced with the same factual situation in the instant case.

In the instant case, the factual situation is different. For example, both Tung Mung and YUSCO had a small volume of sales to the United States not subject to our current middleman investigation. Moreover, in the *Preliminary Determination,* we determined that on an overall basis, neither Tung Mung nor YUSCO had estimated dumping margins that exceeded the *de minimis* level such that the possibility of exclusion existed for these firms. However, this preliminary finding did not include an analysis of middleman dumping. Thus, we recognize that, in this final determination, we are examining this issue for the first time since *Fuel Ethanol from Brazil.*

Since our finding in *Fuel Ethanol from Brazil,* the Department has adopted new regulations regarding so-called ''combination'' or ''channel'' rates. Specifically, section 351.107 of the Department's regulations was added, codifying our ability to issue channel rates in certain circumstances. The preamble to these regulations, which discusses our position on issuing channel rates in different factual scenarios (see *Preamble* at 27302–3), notes that we do not generally find it appropriate to determine channel rates when investigating producers.

After analyzing all interested party comments, we determine that it is appropriate to consider the full range of dumping when reaching a determination under sections 733(a) or 735(a) of the Act. This is particularly important given the number of sales of subject merchandise produced by YUSCO and Tung Mung which are made through Ta Chen, and given (in the case of Tung Mung) the identity of the customer(s) in the United States to which Tung Mung made its direct sales. *See Analysis Memorandum: Tung Mung,* Attachment 3. and *Facts Available Memorandum—YUSCO* at page 1. Under these circumstances, it is inappropriate to determine an independent margin for purposes of determining whether sales are made at LTFV under section 735(a)(1) or in determining eligibility for exclusion under section 735(a)(4) of the Act. However, we have taken into consideration the dumping margins attributable to both channels in determining the weighted-average dumping margins.

Therefore, for the final determination, we calculated an overall weighted-average margin (taking into account YUSCO's and Tung Mung's sales to Ta Chen and other customers, and the middleman dumping of YUSCO and Tung Mung merchandise attributable to Ta Chen) as provided for under section 735(c)(1)(B)(i) of the Act. We used this overall margin for determining whether SSSS from Taiwan is being sold in the United States at LTFV, as provided in section 735(a)(1) of the Act. We also compared the overall weighted-average margin to our *de minimis* benchmark to determine eligibility for exclusion, as provided in section 735(a)(4) of the Act.

In order to calculate the overall weighted-average margin, we used the following methodology. For YUSCO, we first calculated a rate for those sales made by YUSCO and Yieh Mau to Ta Chen by summing YUSCO's facts available rate and Ta Chen's facts available rate (the sum of which equals 36.44 percent). *See* discussion of these rates in the ''Facts Available'' section above. We also calculated the total weight of these sales. Similarly, we calculated the weight of sales made by YUSCO and Yieh Mau to all other customers, and we applied the adverse facts available rate of 21.10 percent to these sales. Finally, we weight averaged these two rates by the total sales volume. The overall margin is 34.95 percent. For further detail, *see Analysis Memorandum—YUSCO.*

For Tung Mung, we first calculated a rate for those sales made by Tung Mung to Ta Chen by summing Tung Mung's

rate and Ta Chen's facts available rate (the sum of which equals 15.40 percent). Then, we calculated the margin for other Tung Mung sales, which was zero. Finally, we weight averaged these two rates by the total value. The overall margin is 14.95 percent. For further detail, *see Analysis Memorandum—Tung Mung.*

Comment 3: All-Others Rate

Tang Eng and Chia Far argue that, where the Department makes all exporters mandatory respondents but does not calculate a margin for all respondents, the Department should calculate the ''all-others'' rate for the non-selected respondents as the average of the calculated dumping margins, including any *de minimis* margins and excluding any margins based entirely on facts otherwise available. Tang Eng and Chia Far assert that this treatment is provided for in the URAA and follows Departmental practice. Respondents cite *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China,* (''*Honey*'') 60 FR 14725, 14729 (March 20, 1995) and *Certain Fresh Cut Flowers From Colombia: Preliminary Results of Antidumping Duty Administrative Review,* (''*Flowers XI*'') 64 FR 8059, 8060–62 (February 18, 1999) as examples of the Department's prior treatment of non-selected respondents.

Petitioners contend that the ''all-others'' rate assigned to Tang Eng and Chia Far should exclude any *de minimis* margins. Petitioner's contend that the statute's language is unambivalent in its direction to calculate the ''all-others'' rate exclusive of *de minimis* margins and margins based on facts otherwise available. Petitioners cite *Flowers XI, et al,* as examples of Departmental precedent in keeping with this statutory requirement.

Department's Position: We agree with respondents in part. Section 735(c)(5)(A) of the Act directs us to calculate the ''all-others'' rate exclusive of *de minimis* margins and those margins determined entirely on facts otherwise available. Moreover, under this section, the ''all-others'' rate is established during the less-than-fair-value investigation and does not change in subsequent administrative reviews conducted under section 751. However, section 735(c)(5)(B) of the Act provides for an exception in instances where all margins are either *de minimis* or based on facts otherwise available.

In the instant case, all margins are either *de minimis* or based on facts otherwise available. Hence, we are not limited to the methodology prescribed in section 735(c)(5)(A) of the Act. Therefore, for this final determination, we have calculated the ''all-others'' rate based on a simple average of the corroborated price-to-price comparisons alleged in the petition, as indicated in our *Initiation Notice.*

We disagree with respondents' interpretation of *Honey* and *Flowers XI. Flowers XI* involves a review conducted under section 751 of the Act and did not result in a recalculation of the ''all-others'' rate. Rather, *Flowers XI* describes how the Department established a margin for those respondents for which a review was initiated, but were not selected for individual review under section 777A(c)(2)(A). *Honey* is not controlling because that investigation was governed by the Act prior to the URAA. Moreover, in that determination we did not include *de minimis* margins in our calculation of the all-others rate.

Company-Specific Issues

YUSCO/Yieh Mau

Comment 4: Affiliated Party Transactions

Petitioners argue that the Department should reclassify YUSCO's sales to Yieh Mau as affiliated home market sales and include them in the Department's arm's-length test of YUSCO's home market sales. Petitioners also state that, in the preliminary determination, the Department did not conduct an arm's-length test on YUSCO's sales to Yieh Mau because it determined that according to the evidence on the record, Yieh Mau was not affiliated with YUSCO. Petitioners claim that, as discovered at verification, this decision is improper.

During verification, petitioners argue, the Department confirmed that an affiliation exists between YUSCO and Yieh Mau within the meaning of section 771(33) of the Tariff Act, since the Department found that the same family owns large percentages of both companies and is involved in their management, thus making the two companies ''commonly controlled.'' In addition, petitioners state that an equity interest exists between these two firms and that YUSCO has consistently referred to Yieh Mau as an affiliated party.

Petitioners continue by citing the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate from Belgium* (''*Plate from Belgium*'') 64 FR 15476 (March 31, 1999), in which, according to petitioners, the Department determined that two companies were affiliated because they were under common control by another company. Petitioners draw a parallel inference with respect to YUSCO's and Yieh Mau's common familial control.

YUSCO states that even if the Department determines that YUSCO and Yieh Mau are affiliated, the Department should use YUSCO's sales to Yieh Mau in calculating YUSCO's dumping margin and not use Yieh Mau's sales, because YUSCO made its sales to Yieh Mau, not through Yieh Mau to other customers.

Department's Position: We agree with petitioners that YUSCO and Yieh Mau are properly considered affiliated parties under the statute. Section 771(33)(A) of the Act states that persons shall be considered affiliated if they are ''members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.'' Section 351.102(b) of the Department's regulations state that, in considering whether control over another person exists, the Secretary will consider, among other things, corporate or family groupings. At verification we found a significant degree of ownership by the same family. We also found that this same family is involved in the management of both companies. *See* YUSCO SSSS Sales Verification Report, dated April 12, 1999.

Given these circumstances, we determine that YUSCO and Yieh Mau are affiliated persons under section 771(33)(A) of the Act. Therefore, due to our above-described determination to use total adverse facts available for YUSCO, we also determine that Yieh Mau shall be subject to this decision as well.

Comment 5: Verification Corrections

Petitioners argue that the Department should disallow Yieh Mau's claimed adjustment for home market credit expenses and inventory carrying costs since the Department was unable to verify Yieh Mau's short-term interest rate. Petitioners contend that Yieh Mau did not provide the information that was required by the Department, although Yieh Mau possessed documents containing this information and could have retrieved these from storage. Therefore, petitioners argue, Yieh Mau failed to cooperate to the best of its ability and the Department may, according to Section 776(b) of the Tariff Act, use facts available with an adverse inference. Furthermore, petitioners cite the SAA, stating that the Department ''* * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.''

YUSCO did not comment on this issue.

Department's Position: We agree, in principle, with petitioners, that the use of adverse facts available would be warranted under these circumstances. However, due to our decision to apply total adverse facts available to YUSCO, this issue is moot.

Comment 6: Overall Cost Reconciliation

YUSCO argues that the Department should not adjust its reported costs by the difference between total reported COM and the total COM in its accounting system. YUSCO states that the Department verified all of its cost data for the POI and did not find discrepancies between reported COP and CV data and the material cost, direct labor, and overhead cost in its accounting records. Respondent asserts that it provided information necessary to quantify the differences between the amounts in the accounting records and reported TOTCOMs. YUSCO maintains that it quantified the differences between the accounting system and reported COMs for: raw material input costs for affiliated transactions; usage of processing time instead of production quantity as the allocation factor for production costs after the hot rolling stage; and recalculation of YUSCO's average material cost based on cost of goods used during the POI instead of only inputs purchased during the year.

Respondent contends that petitioners did not argue the validity of the difference resulting from reporting costs for the POI verses for the fiscal year. Therefore, YUSCO argues that if the Department adjusts for the other reconciling items, it should exclude this particular difference from the adjustment.

YUSCO argues that the Department's practice is not to adjust reported costs for explained differences between amounts in the accounting system and reported costs. YUSCO notes that the Department has not adjusted differences in the past which were ''adequately explained,'' citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 12725, 12736 (March 16, 1998) (Comment 13).

Petitioners argue that the difference the Department found between YUSCO's reported total cost of manufacturing and the amount in its accounting records is an unreconciled difference and it should be added to the reported costs. Petitioners state that while respondent explained the difference as being generated by the three items noted above, YUSCO did not quantify the amount of each item. Therefore, petitioners conclude that the difference is unreconciled.

As support for the importance of reconciling the costs, petitioners point to *Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review,* (''*CTL*'') 64 FR 77, 78 (January 4, 1999) (Comment 1), where the Department explained the role and significance of the cost reconciliation. Petitioners further point to the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan,* (''*SSPC from Taiwan*'') 64 FR 15493, 15498 (March 31, 1999), where the Department determined that the unreconciled difference between amounts in the accounting records and reported costs should be included in reported costs. Petitioners argue that the same determination should be made for this investigation.

Petitioners contend that YUSCO's analysis of the unreconciled difference is flawed. First, petitioners argue that YUSCO's calculated change in the work-in-process (''WIP'') account is not only related to subject merchandise but all WIP in the company and therefore could be overstated. Second, petitioners argue that the respondent erred in calculating the difference in costs due to the application of the major input rule for affiliated input purchases. Petitioners note that the difference calculated for the major input rule adjustments should only include slab costs and not overhead costs. Petitioners argued the same for YUSCO's difference in allocation methodology for the adjustment figure: namely, that the difference should only include slab costs. Petitioners conclude that once these errors in YUSCO's analysis are corrected, the original unreconciled difference remains. Therefore, petitioners conclude that the Department should adjust YUSCO's costs to include the total unreconciled difference between its costs in its accounting system and reported costs of manufacturing.

Department's Position: We agree with petitioners that any unreconciled understatement of YUSCO's reported costs should be added to the cost of manufacturing for COP and CV purposes. As articulated in *CTL,* the Department must assess the reasonableness of a respondent's cost allocation methodology according to section 773(f)(1)(A) of the Act. Before this can be done, however, the Department must ensure that the aggregate amount of costs incurred to produce the subject merchandise was properly reflected in the reported costs. In order to accomplish this, a reconciliation of the respondent's submitted COP and CV data to the company's audited financial statements, when such statements are available, is performed. YUSCO did not complete this reconciliation at verification because it did not identify and quantify all differences shown on the reconciliation. As stated in *CTL,* ''[i]n situations where the respondent's total reported costs differ from the amounts reported in its financial statements, the overall cost reconciliation assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV.'' As demonstrated in *SSPC from Taiwan,* we found that the reported costs should have been adjusted for the unreconciled portion of the difference between respondent's costs from its accounting system and reported costs of manufacturing. While YUSCO attempted to quantify the reconciliation differences in the brief, based on the verification exhibits, some portions remain unreconciled. However, due to our decision to apply total adverse facts available to YUSCO, this issue is moot.

Comment 7: Exchange Gains and Losses

Petitioners argue that YUSCO's net exchange loss related to notes payable for the POI should have been included in the financial expense rate calculation. According to petitioners, net exchange losses for notes payable are costs incurred by the company as a whole for financing purposes. Petitioners point to *SSPC from Taiwan,* where the Department determined that the current portion of the net exchange loss related to debt should be included in the financial expense rate calculation.

YUSCO did not comment on this issue.

Department's Position: We agree in principle with petitioners that the current portion of the net exchange loss related to notes payable should be included in the financial expense rate calculation. As explained in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31430 (June 9, 1998) (Comment 24), the Department includes in the cost of production the amortized portion of foreign exchange losses resulting from loans. However, due to our decision to apply total adverse facts available to YUSCO, this issue is moot.

Chang Mien

Comment 8: Conversion Costs

Petitioners state that, at verification, the Department discovered that Chang Mien failed to include any coils that were processed more than once in its rolling mill in Chang Mien's machine time analysis. Therefore, petitioners contend, respondent understated the cost of production for three CONNUMs and a certain number of coils. Petitioners argue that by not providing the Department with data regarding the coils in question, Chang Mien did not provide the information that was required by the Department. Thus, the Department was not able to determine the correct cost of production. Petitioners maintain that, pursuant to section 776(a)(2)(D) of the Act, if a respondent provides information but the information cannot be verified, the Department should resort to the use of fact otherwise available in reaching its final determination. Further, petitioners state that if the Department finds that a party has failed to cooperate by not acting to the best of its ability, the Department ''* * * may use an inference that is adverse to the interests of that party in selecting the facts otherwise available,'' citing section 776, 1677e(b) of the Act. Petitioners also argue that in determining the appropriate measure of adverse facts available, the SAA instructs the Department that it ''* * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,'' citing the SAA at 870. Petitioners contend that since respondent knew that multiple passes resulted in additional costs for producing these products but failed to report these additional costs, the Department should find that Chang Mien failed to cooperate to the best of its ability and, therefore, use an adverse inference in selecting facts otherwise available for this final determination. Furthermore, petitioners argue that the Department should apply the highest cost of production to the three CONNUMs so that respondent does not benefit from its lack of cooperation.

In its rebuttal, petitioners contend that the Department should not accept any post-facto argument provided by respondent. Petitioners assert that, given that it was the Department which discovered Chang Mien's omission during verification, the Department should find that Chang Mien failed to cooperate to the best of its ability and resort to the use of fact otherwise available in reaching its final determination.

Respondent argues that the Department should not increase the costs of labor and overhead for these coils which were processed through two passes but for which Chang Mien included cost of production data for only one pass. Respondent maintains that it did not fail to cooperate to the best of its ability, as petitioners assert. Instead, respondent continues, not reporting the second pass of the 23 coils was an oversight and for which it subsequently provided documentation during the verification. Respondent further contends that, given that these 23 coils represent a very small percent of all production of subject merchandise during the period of review, the Department can ignore, under section 19 CFR 351.413 of the Department Regulations, any change to the relevant CONNUMs if it believes that there will be no change to the dumping margin. Furthermore, respondent argues, one of the three CONNUMs in question was not sold in the U.S. and was not used by the Department in its calculations for the preliminary determination of this case.

Additionally, respondent asserts that the additional underreported costs for the small quantity of coils in question will not result in it obtaining a more favorable dumping margin in the Department's final determination. Respondent suggests that if, however, the Department concludes that it should account for any labor and overhead costs associated with a second pass on these coils, the Department should use its suggested methodology, which, respondent asserts, the Department verified and is contained in the *Verification of Cost of Production of Chang Mien Report* as Exhibit C–11, page 1, item 1. Respondent contends that the cold-rolling arrangement specified in the report is similar for this particular coil to that mentioned in the *Verification of Cost of Production of Chang Mien Report*, a pass from 3.00 mm to 1.50 mm and then from 1.50 mm to 0.40 mm. Respondent indicates that this exhibit details the ''working hours'' and ''productivity factor'' for the two passes for this coil and that by taking the data from the Verification Exhibit C–9, one can calculate the cost for each relevant cost field for one-pass and two-pass operations for all production of this particular CONNUM. Respondent argues that the Department should only add the difference between the two in its calculations. Respondent contends that the Department should apply this factor to all production of this particular CONNUM and all three CONNUMs in question.

Respondent reiterates, in its rebuttal, that the omission of the additional coils for the second pass was an inadvertent mistake on the part of Chang Mien and argues that the verified data should be used to correct it in the final determination. Furthermore, respondent notes that petitioners did not provide a case precedent to support their theory that the Department should treat a minor data problem by disregarding the entire cost data submission for the three CONNUMs at issue and substituting the highest figures for the entire cost of product for these CONNUMs.

Department's Position: Although petitioners are correct in noting that it was the Department which discovered the under-reported costs for the second pass of the 23 coils, we agree with respondent that the Department should simply recalculate the under-reported production costs based on the information gathered at verification. We disagree with petitioners that Chang Mien's COP data failed to be verified, and we believe that the percentage of coils affected by the respondents' omission is insignificant. First, for the three CONNUMs affected by this under-reporting, the 23 coils do not greatly impact the calculated costs, given the relative proportion of the weight of these coils to total weight of all coils used for the COP calculation. *See Analysis Memo: Chang Mien* at page 1. Second, on the issue of COP, we do not believe that Chang Mien has failed to cooperate by not acting to the best of its ability. Chang Mien cooperated fully with the Department verifiers upon the discovery of the under-reported costs during verification by providing the raw data for the coils and an excerpt from the computer sales listing showing the list of observation numbers and CONNUMHs of the coils that received a double pass during the verification. Finally, it is the Department's long-standing practice to accept certain omissions from the record during verifications if the Department believes they are unintentional and minor in magnitude.

For the above reasons, the Department has recalculated respondent's cost of production, without the use of facts available, by including the costs associated with the double pass of the 23 coils. The Department has calculated the costs using the methodology suggested by respondent and using the data which we confirmed at verification. *See Analysis Memo—Chang Mien.*

Comment 9: Date of Sale

Petitioners argue that the Department should use the order date for the home market and U.S. dates of sale, as opposed to the Department's decision in the preliminary determination to use date of invoice as the date of Chang Mien's U.S. sales. Petitioners maintain that based on the Department's verification of Chang Mien, the date of order confirmation is the appropriate date of sale for both home market and U.S. market. Petitioners contend that the Department's regulations state that the Department will defer to the date of invoice as the date of sale unless the record demonstrates that the material terms of sale for home market sales are established at a different date. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27349 (May 19, 1997). Petitioners further contend that in the preliminary determination, the Department correctly decided to depart from its preference of the date of invoice with regard to Chang Mien's home market sales given that Chang Mien usually had no price change or change in quantity for those sales between order confirmation date and shipping. Petitioners submitted that the same factual pattern exists for Chang Mien's U.S. sales and, therefore, petitioners argue, the order of confirmation date should serve as the date of sale for Chang Mien's U.S. sales as well. Therefore, petitioners argue that the order confirmation date most closely reflects commercial reality and the time when the material terms of sale are agreed upon for Chang Mien's sales.

Respondent argues that it routinely produces either too much or too little steel for each U.S. order. Because this occurs in the normal course of trade, respondent asserts that the Department should continue its practice of using the invoice date as the date of sale rather than the order date. Respondent argues that the Department's stated policy regarding date of sale (''* * * the Secretary normally will use the date of invoice'' (19 CFR 351.401(i)) is pertinent to the respondent's date of sale scenario and contends that the Department should, therefore, enforce its policy with regard to the respondent. Respondent also cites the Department's decision regarding date of sale in *SSPC from Korea,* in which the Department stated:

> We do not treat an initial agreement as establishing the material terms of sale between buyer and seller when changes to such an agreement are common even if, for a particular sale, the terms did not actually change.

Moreover, respondent asserts that the Department acknowledged in that case that it will uphold its standard of using the invoice date as date of sale as long as the material terms ''are subject to change'' (*Id.*). Respondent states that it provided the Department with an exhibit (Exhibit 61, November 27, 1998) comparing quantity ordered with quantity actually delivered and asserts that nothing in the verification reports refutes any of the data provided in the exhibit. Respondent points out that the Department did not attempt to verify any of the sales reported in that exhibit to determine whether they were beyond the tolerances called for in the orders. Had the Department verified this exhibit, respondent argues, it would have been clear that changes to the orders were neither infrequent nor abnormal. Had the Department verified all of the information available on the record, respondent asserts the Department would know that the high level of frequency of changes between quantity ordered and quantity actually delivered is a normal business practice for the respondent. Therefore, respondent concludes, the Department should not change its methodology with regard to date of sale in this case and should therefore, use the invoice date as the date of sale, rather than the order date, for sales to the United States.

Department's Position: We agree in part with respondent and petitioners. In the preliminary determination, the Department relied upon the date of the order confirmation as the date of sale for Chang Mien's home market transactions. According to Chang Mien's November 27, 1998 supplemental response regarding home market date of sale, ''there usually is no price change or change in quantity between order confirmation date (day 0) and shipping [invoice date] (day 1–3).'' *See* Chang Mien's November 27, 1998 supplemental response at 8. This was confirmed at verification. *See* Chang Mien Sales Verification Report at 5 (''We did not find material changes in the quantity and value terms from the order and invoice''). Therefore, with regard to home market sales, we agree with petitioners and will continue to use the date of order confirmation as the date of purchase for this final determination.

With regard to sales to the United States, the Department preliminarily determined that the invoice date was the appropriate date of sale. The Department based its decision in part on Chang Mien's November 27, 1998 supplemental response, in which the Department relied on respondent's assertion that ''[in] approximately 94.5 percent of the sales there was a change between the quantity from the date of confirmation and the invoice date.'' *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Stainless Steel Sheet and Strip in Coils from Taiwan,* 64 FR 101 (January 27, 1999). We disagree with respondent that the Department did not attempt to verify any of the sales reported in that exhibit to determine whether they were beyond the tolerances called for in the orders. During verification, the Department confirmed Chang Mien's basic methodology for reporting date of sale as described in their questionnaire response. The Department examined eight different sales contracts to the United States during the POI. These sales were part of the same universe of the sales contained in Chang Mien's November 27, 1998 supplemental response. No discrepancies were discovered. Given that Chang Mien successfully passed the sales verification, there is no record evidence to conclude that the Department should find the information submitted in response to the Department's request regarding date of sale to be unreliable. The Department does not agree with respondent that, for 94.5 percent of the sales, there was a change between the quantity from the date of confirmation and the invoice date. We have analyzed those sales that changed in quantity from the order of confirmation to the invoice date in excess of the variation of plus or minus 10 percent of the quantities delivered, as stated in Chang Mien's contracts, and found that the number of changes is significant and thus, the date of sale should continue to be the invoice date. *See Chang Mien Sales Verification Report* at 5 and *Analysis Memorandum: Chang Mien.* Additionally, in the Department's decision regarding date of sale in *SSPC from Korea,* the Department determined that the date of sale was the invoice date, or when the final terms of sales were established, in keeping with the Department's regulatory preference for using the invoice date of sale absent evidence ''that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' *See* 19 CFR 351.401(i). Therefore, in keeping with previous Department decisions and with the Department's policy, we agree with respondent and have used, for this final determination, the invoice date for sales transactions to the United States.

Comment 10: Surface Finishes

Petitioners argue that Chang Mien's claims that there is a difference between

surface finishes in their product description as defined between surface finish code 9 (hot-rolled, annealed and pickled, grinding) and code 1 (hot-rolled, annealed and pickled) should not be honored. Petitioners contend that, based on Chang Mien's own description of code 1 and code 9, the Department should consolidate codes 1 and 9 into a single finish code, because the grinding in the initial phase of production does not affect the ultimate finish of the merchandise. Furthermore, petitioners argue that the Department should consolidate finish code 10 (cold-rolled, not annealed and pickled) with code 3 (cold-rolled). Petitioners state that Chang Mien's description of the code 10 finish ''refers to material which has not completed production because, there were so many defects, that it already has been classified as non-prime material.'' *See* Supplemental Questionnaire Response of Chang Mien Industries, Co., Ltd., dated November 27, 1998 at 7. This description, petitioners assert, indicates that code 10 is cold-rolled material that Chang Mien has defined as non-prime merchandise, and petitioners argue that the designation of non-prime merchandise is not relevant in the finish characteristic. Therefore, petitioner concludes, the Department should consolidate the finish code 10 with finish code 3 in the final determination.

Respondent indicates that at verification, Chang Mien demonstrated to the Department that finishes 1 and 9 should not be consolidated because there were physical differences between the two. The differences, respondent states, were readily apparent from a visual inspection and explained in detail to the cost verifier. Respondent further contends that for the same reasons, code finishes 3 and 10 should not be combined. In addition, respondent argues, since finish 10 is not a completely produced product, the mechanical properties are different from finish 3 products. Lastly, respondent argues, that it would not make sense to combine a second quality sheet product, which has not completed the production process because they have so many defects, to first quality finished product. For this reason, respondent contends, finish 10 should not be compared to U.S. sales, as it is an unfinished product, and should be ignored.

Department's Position: With regard to Chang Mien's finish codes 1 and 9, we agree with petitioners and are continuing to treat these two codes as one combined group. For the application in the margin calculation of this decision, *see Analysis Memorandum: Chang Mien*. First, we note that finish codes 1 and 9 are nearly identical, as both products are hot-rolled, annealed and pickled. Furthermore, regardless of whether there is some difference in the physical appearance between products which have been subject to grinding (a matter about which there is no determinative record evidence), there is no record evidence to conclude that any alleged difference in physical appearance affects the product's end-use, or that such a difference is reflected in relatively higher production costs or prices. In any event, as we note below in Comment 14, in general, our model match criteria does not consider the number of processing steps undertaken for each coil. Moreover, we note that respondent did not raise this issue on the record when the Department requested public comments on its proposed product concordance.

With regard to finish codes 3 and 10, we find no reason to deviate from the Department's preliminary determination, in which we treated these two categories as separate codes. Unlike in the case of grinding, the Department generally recognizes that annealing and pickling are processing steps which significantly alter the physical appearance of a product, and generally affects product end-use, cost, and sales price. With regard to the definition of the merchandise as prime or non-prime, we note that in this case, this distinction is largely irrelevant to our analysis. That is, if the merchandise were indeed secondary, it would be separated from prime merchandise in our model match analysis, minimizing the impact of any decision to collapse the two codes (given that, as a rule, secondary merchandise, which is sold at reduced prices, fails the Department's cost test). However, in fact we dispute respondent's categorization of code 10 finish products as second quality sheet, as respondent itself has classified many sales of code 10 as prime merchandise. *See Analysis Memorandum: Chang Mien* pp. 6–7. Therefore, the record does not support Chang Mien's assertion that this merchandise is second quality.

Comment 11: Advertising Expenses

Petitioners argue that Chang Mien's claimed direct advertising expenses should be denied as a direct selling expense and reclassified as indirect selling expenses. Petitioners state that during verification, the Department examined various advertising expenses, and petitioners argue that Chang Mien could not demonstrate that it incurred direct advertising expenses on behalf of its customers. Petitioners further argue that the Department's questionnaire specifically states that in order to qualify for direct advertising expenses, respondent must have assumed advertising expenses on behalf of its customer, citing the Department's Questionnaire at p. B–28. Petitioners contend that the verified documents indicate that the claimed advertising expenses were general information on the company or products produced by the company, and hence Chang Mien did not demonstrate that it incurred advertising expenses to advertise to its customer's customers, citing Chang Mien's Questionnaire response to sections B–D at 26. Therefore, petitioners assert, for the final determination, the Department should deny Chang Mien's home market and U.S. market claim for direct advertising expenses and reclassify these expenses as indirect selling expenses.

Respondent states that the primary purpose of the advertising expense in periodicals and via the sample books for distribution to U.S. and home market customers is to assist its customers, who are distributors, to obtain new customers. Respondent further asserts that virtually all U.S. customers are distributors and not end-users and that they already buy from Chang Mien. These forms of advertising, respondent states, assist current customers to obtain new customers and show potential customers, via the sample book, the quality of Chang Mien's products. The same, respondent asserts, is true in the home market. Respondent states that advertising in periodicals also directly discusses the subject merchandise and is directed to the potential customers who would contact a distributor of Chang Mien steel. Given that the Department's verification team found no discrepancies when they inspected the advertising, respondent argues, the claimed advertising expenses should remain as a direct expense in the Department's final determination.

Department's Position: We agree with petitioners. We reviewed Chang Mien's claimed advertising expenses at verification and found that most of these promotional expenses were not incurred in marketing to Chang Mien's customers/end-users. *See Sales Verification Report: Chang Mien* at 11–12. Contrary to Chang Mien's assertion that it incurs advertising expenses on behalf of its customers/end-users, at verification Chang Mien indicated that they did not know whether distributors (Chang Mien's domestic customers) gave the sample book to the distributors' customers. *Id.* The Department examined various advertising documents, including advertising in the

Taiwan Import Export Company List, advertising in the local newspaper, advertising in the *Metal Bulletin Magazine*, brochure advertising, and the Stainless Steel Sample Book. *See* Chang Mien Sales Verification Report at 11, 12. Based on this review, we found that these advertisements were more general in nature and offered a variety of information on the company or products produced by the company. Moreover, Chang Mien did not demonstrate to the Department that the claimed direct advertising expenses were incurred to advertise to its customer's customers. In *Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from South Africa*, 64 FR 15459 at 43 (March 31, 1999), the Department concluded that print advertising expenses which are general in nature and ''intended to promote either the benefits of stainless steel generally, or Columbus's image as a reliable supplier of high-quality stainless steel'' do not represent expenses incurred by the respondent on behalf of its customers that can be claimed as a COS adjustment. Therefore, we conclude that Chang Mien's print advertising expenses are aimed primarily at its customers. As such, these expenses do not represent expenses assumed by Chang Mien on behalf of its customers, and do not merit treatment as a direct expense.

Comment 12: Home Market Warranty Claims

Petitioners argue that Chang Mien has double counted its claimed warranty expenses by counting (1) claims on subject merchandise where the sale and the warranty claim occurred during the period of investigation and (2) claims that were incurred during the period of investigation for sales prior to the period. *See* Chang Mien Questionnaire response to sections B–D at 27. Petitioners assert that not only has respondent claimed an adjustment for non-POI sales, it also has claimed both types of warranty expenses for some sales. The Department, petitioners argue, should only accept warranty claims incurred on POI sales and deny the warranty claims on non-POI sales.

Respondent states that the Department has a long-standing policy of using all direct, variable warranty expenses incurred in the POI when calculating this cost. It further states that the Department is fully aware that warranty claims may be made for merchandise long after it is sold and, respondent asserts, the Department has consistently used all warranty costs incurred in the POI, regardless of sales dates, in its calculations. Respondent cites the Department's decision in *Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review*, 63 FR 13204, 13205 (March 18, 1998), in which the Department stated:

> As noted in AFBs 1997, the Department has long recognized that warranty expenses cannot be reported on a transaction specific basis and an allocation is necessary * * * Accordingly, for the final results of this review, we have calculated warranty expenses as a separate direct variable expense * * * We allocated the expense to the metric tonnage sold.

Respondent asserts that to be consistent with the above stated decision, and based on the verified findings by the Department, that the Department should deduct all actual, variable warranty expenses incurred in the POI in its final determination of this case.

Department's Position: We agree with petitioners. Chang Mien has provided transaction-specific warranty claims, and thus an allocation of POI warranty expenses to POI sales is not warranted. The allocation of warranty expenses applies to situations where it is not possible to tie POR/POI warranty expense to POR/POI sales. The Department has recognized that in certain situations, warranty expenses cannot be reported on a transaction-specific basis, due to time lags between the warranty expenses incurred and sales associated with the warranty. Therefore, where warranty expenses cannot be reported on a transaction-specific basis, an allocation of POR/POI warranty expenses to POR/POI sales is deemed necessary. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Review*, 62 FR 2081, 2095 (January 15, 1997). Here, respondent provided transaction-specific warranty expenses, which were revised at verification. We verified documentation supporting that the warranty expense reported in the field WARR2H is associated with a non-POI sale. Therefore, because we have transaction-specific information with regard to warranty expenses, we only made adjustments for POI warranty expenses associated with POI sales.

Comment 13: Financial Expenses

Petitioners state that at verification, the Department found that Chang Mien recalculated its financial expense ratio to ''exclude non-financial items,'' thereby changing its financial expense ratio from its reported ratio in the September 24, 1998 submission. *See Cost Verification Report: Chang Mien*, at 2. Petitioners argue that for the final determination, the Department should recalculate Chang Mien's financial expense ratio to reflect all financial items. Petitioners further assert that the Department should consider interest expenses, losses on foreign exchange rate, loss on inventory valuation, and other losses. *Id.* Additionally, petitioners argue, interest income, investment income, miscellaneous income, rental income, and gains and losses on land value, should be excluded because they are either (1) not short-term interest income or (2) are not related to the production or sale of the merchandise and are more like investments.

In its rebuttal brief, Chang Mien contends that petitioners are incorrect in their arguments regarding the financial expense ratio. Respondent states that at verification, the Department found, in Verification Exhibit C–8, that items 7101 (interest income) and 7102 (investment income) are short-term and related to production. Therefore, Chang Mien argues, they should not be excluded from the calculations. Additionally, respondent asserts, the Department did not find any discrepancies with this reported data. Chang Mien maintains that given that it had already excluded miscellaneous income, rental income, and gains and losses on land value in its revised data, no further changes should be made to these items. Furthermore, respondent argues that if this information were excluded again, it would result in double counting this data. Chang Mien concludes by stating that the changes noted by the Department in its verification report should be used in the Department analysis for the final determination because (1) this information was verified and, (2) the reported figures in the verified information are calculated in accordance with Taiwanese Generally Accepted Accounting Principle (GAAP).

Department's Position: We agree with petitioners. During the cost verification, Chang Mien submitted corrections to its financial expense to exclude non-fianancial items. We have reviewed these items and concluded that most were inappropriately excluded from financial expenses. Therefore, we have revised our calculations to include all financial expenses. To obtain the revised financial expense ratio, we deducted short term income and the loss and sale of fixed assests from total non-operating expenses. *See Final Analysis Memo: Chang Mien*, pp. 4–5.

Tung Mung

Comment 14: Model Match

Tung Mung argues that the Department improperly treated certain types of coil as identical merchandise, by overlooking important distinctions in physical characteristics between the coil types at issue. Tung Mung asserts that the Department's selection of matching criteria to define identical merchandise must be based on ''meaningful physical characteristics,'' and may consider both price differences in the marketplace and cost in order to identify such ''meaningful physical characteristics.'' *Emulsion Styrenene-Butadiene Rubber from Mexico; Final Determination of Sales at Less Than Fair Value,* (''*ESBR from Mexico*''), 64 FR 14872, 14875 (March 28, 1999). Tung Mung maintains that the differences between the two types of coil at issue are ''meaningful'' enough to warrant treatment as separate products.

Tung Mung argues that the types of coils at issue differ significantly in terms of quality, use and price. First, Tung Mung claims that one type of sheet at issue develops unsightly lines, known as ''Luder's Lines,'' when drawn or stretched, and is therefore not used in applications where the sheet is visible in the final product. Second, Tung Mung argues that this type of coil is less expensive to produce and sold for a lower price. Tung Mung asserts that the difference in cost of producing the two products at issue was verified by the Department and results from the difference in the number of times the sheet goes through the mill, citing the Verification Report at p. 18. In addition, Tung Mung asserts that Tung Mung's sales tape shows that the two products sell for different prices. Therefore, Tung Mung argues that it was improper for the Department to treat the two products as identical and requests that the Department treat these two types of coil as separate products in the final determination.

Petitioners did not comment on this issue.

Department's Position: We disagree with Tung Mung and did not treat the coils at issue separately based on Tung Mung's reported finishes. As stated by respondent, the coils at issue differ by the number of processing steps undertaken for each coil. In general, our model match criteria do not consider the number of processing steps undertaken for each coil. Rather, it focuses on physical differences between products. However, it is important to note that products undergoing different processing steps will generally not match in any event, based on the model matching criteria which the Department has established for this investigation. Indeed, in this case, treating the coils at issue separately has no practical effect since the coils do not match based on other physical characteristics (which, it should be noted, rank higher in the Department's product concordance). *See* Questionnaire, Appendix V. Therefore, for the final determination, we did not treat the products in question separately.

Comment 15: Normal Value

Petitioners argue that the Department should use all six price components in the home market in calculating normal values as the Department did in the preliminary determination. Tung Mung indicated that it uses a combination of up to six tiers of prices to establish the price for a single coil. *See* September 24, 1998 Questionnaire Response at p. B–1. Petitioners note that Tung Mung stated in its response that its home market prices for one coil can consist of up to six price components. Petitioners also note that Tung Mung urged that the Department limit the normal value to only the first three price categories of the coil price and not consider the other three price categories which pertain to tail-end and untrimmed edges. Petitioners object to Tung Mung's suggestion in its Questionnaire Response (*see* September 24, 1998 Questionnaire Response at B–2) to consider only the first three price categories of the coil for determining normal value, by arguing that tail-end and untrimmed edges are integral sections of a home market coil, and therefore prices for these parts of the coil should be considered in calculating normal values to be compared with U.S. sales. In addition, petitioners argue that home market warranty expenses should also be calculated based on the weight of all six price components of the home market coil rather than only the three price components suggested by Tung Mung. We also continue to calculate warranty expenses based on all six price categories of the coils.

Tung Mung did not comment on this issue.

Department's Position: We agree with petitioners and have continued to use the actual selling price of the coils as reflected in the invoice to the customer in calculating normal value. Respondent has indicated that the invoice price represents the weighted-average of all six price categories of the coils. *See* September 24, 1998 Questionnaire Response at p. B–2.

Comment 16: U.S. Warranty Expenses

Petitioners argue that Tung Mung's U.S. warranty expenses should be adjusted to include warranty expenses for U.S. sales which occurred during the POI but pertained to products sold prior to the POI. Petitioners argue that the adjustment is justified under the holding of *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 Review and Termination in Part* (''*Tapered Roller Bearings from Japan*''), 62 FR 11825, 11839 (March 13, 1997). Petitioners maintain that the Department has long recognized that there is usually a time lag between the initial sale and any subsequent warranty claim because customers may not discover damaged goods until a later time. *Id.* Petitioners assert that the Department has held that where warranty expenses generally cannot be reported on a transaction-specific basis due to the time lag between the warranty claim and initial sale, an allocation of warranty expenses is necessary. *Id.* Therefore, petitioners argue that warranty expenses for U.S. sales should include warranty expenses occurring during the POI, even if they pertain to products sold outside of the POI.

Tung Mung argues that its single aberrational warranty claim made with respect to 1996 sales to the United States should not be used as a surrogate for warranty expense incurred on 1997 sales. Tung Mung contends that the Department accepts variable warranty expenses incurred during the POI as a ''surrogate'' for expenses actually incurred on sales during the POI, ''provided such expenses reasonably reflect the firm's historical experience with respect to warranty claims,'' citing *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, 51418 (October 2, 1996). Tung Mung maintains that the Department does not use this methodology where to do so would produce distorted results, citing *Color Television Receivers from Korea; Final Results of the Antidumping Duty Administrative Review,* 53 FR 24975 (July 1, 1988).

Tung Mung asserts that to base warranty claims paid in 1997 on 1996 sales would distort the calculation of the warranty adjustment. Tung Mung argues that more than ninety percent of the total amount of the warranty

expense at issue was due to a single claim. Tung Mung claims that the total amount of warranty claims paid in 1997 with respect to U.S. sales was aberrational compared to Tung Mung's general warranty experience. According to Tung Mung, the amount on the single claim was three times the amount paid by Tung Mung with respect to all home market warranty claims, despite the fact that home market sales during the POI were ten times as high as U.S. sales. Tung Mung asserts that there is no difference between the products sold to various markets which would account for such a huge swing. In fact, Tung Mung claims that the only difference would be whether or not the coils are trimmed, which Tung Mung claims has no bearing on the size or quantity of warranty claims. In addition, Tung Mung alleges that there is no difference in Tung Mung's warranty policy with respect to different markets. In sum, Tung Mung argues that the aberrational claim is not reflective of Tung Mung's normal experience and should not be used in the calculation of the warranty adjustment.

Tung Mung argues that the Department frequently uses actual warranty experience with respect to sales during the POI in cases involving steel, rather than the surrogate method. Tung Mung claims that in general, because steel is further processed quickly, warranty claims are made within a few months of sale. Tung Mung contends that since generally there is no significant lag in claims for merchandise such as steel, there is no reason for the Department to use the surrogate method. Tung Mung claims that, at verification, Tung Mung demonstrated that no claims had been made with respect to the coils sold to the U.S. market, many months after the close of the period of investigation.

Department's Position: We disagree with petitioners. Tung Mung provided warranty claim information on a transaction-specific basis; thus, an allocation of POI warranty expenses to POI sales is not warranted. The allocation of warranty expenses applies to situations where it is not possible to tie POR/POI warranty expense to POR/POI sales. The Department has recognized that in certain situations, warranty expenses cannot be reported on a transaction-specific basis, due to time lags between the warranty expenses incurred and sales associated with the warranty. Therefore, where warranty expenses cannot be reported on a transaction-specific basis, an allocation of POR/POI warranty expenses to POR/POI sales is deemed necessary. *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Review,* 62 FR 2081, 2095 (January 15, 1997). Here, respondent stated that it reported warranty claims on a transaction-specific basis and this fact was confirmed at verification. *See* Questionnaire Response at p. B–31; Verification Exhibit 8. We verified documentation supporting the fact that the warranty expense at issue is associated with a non-POI sale. We also examined documentation showing that there were no warranty expenses associated U.S. POI-sales were incurred in 1997 and 1998. *See* Verification Exhibit 8. Therefore, because we have transaction-specific information with regard to warranty expenses, we only made adjustments for POI warranty expenses associated with POI sales.

Comment 17: Duty Drawback

Petitioners argue that Tung Mung failed to provide sufficient evidence demonstrating that it meets the two prong test required for duty drawback adjustments; therefore, the Department should reject Tung Mung's claims for duty drawback adjustments. Petitioners note that it is the Department's practice to allow an upward adjustment to U.S. price for duty drawback only if the respondent meets the following requirements: (1) That there is a link between the import duty and the rebate granted; and (2) that the respondent has sufficient imports of raw materials used in the production of the final exported product to account for the drawback received on the export product, citing *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review,* 61 FR 69077 (December 31, 1996) (''*Pipe and Tube from Turkey*''); *Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review,* 64 FR 13169, 13172 (March 17, 1999). Petitioners assert that the Department has rejected duty drawback adjustment claims in their entirety where respondent failed to satisfy either part of Department's two-part test. Petitioners assert that the Department has denied a duty drawback adjustment to U.S. price where it is found that the respondent's duty drawback was based on the FOB sales prices of its finished goods for export and exceeded substantially the amount of customs duties it paid to import raw materials directly, citing *Stainless Steel Round Wire from India; Final Determination of Sales at Less than Fair Value,* 64 FR 17319, 17320 (April 9, 1999). Petitioners argue that the Department has made it clear that the respondent must document a direct link between duties paid and rebates received and that there are sufficient imports of raw materials to account for the drawback claim, citing *Pipe and Tube from Turkey* at 69078. Petitioners claim that Tung Mung has not sufficiently documented its claimed adjustment for duty drawback and therefore adjustments for duty drawback should be denied.

In both its case and rebuttal briefs, Tung Mung argues that it has satisfied the two-prong test for allowing a duty drawback adjustment, thus the Department should make an adjustment for the entire duty drawback adjustment claimed by Tung Mung. Tung Mung argues that the two-prong test for duty drawback adjustments does not require that each individual drawback payment be physically matched to imported raw materials. Furthermore, Tung Mung maintains that the Department recognizes the fungibility of material, as does U.S. law in the U.S. duty drawback program, citing 19 U.S.C. section 1313(b).

Tung Mung claims that it has fulfilled the requirements of the two-prong test for duty drawback adjustments. Tung Mung asserts that at verification it demonstrated the direct link between the import duty and the drawback, by providing examples of the documentation required to obtain duty drawback, including the drawback application form which is required to list the specific importation(s) with respect to which the drawback is claimed. In addition, Tung Mung claims that the Taiwan Ministry of Finance verifies each duty drawback application to ensure that the amount is not excessive.

Tung Mung argues that if it is determined that Tung Mung is not entitled to a duty drawback adjustment, the Department should treat the duty drawback payment as an offset to cost since as demonstrated at verification, duty drawbacks reduced Tung Mung's cost of production. Tung Mung cites *Solid Urea from Germany; Final Results of Antidumping Duty Administrative Review,* 62 FR 61271 (November 17, 1997), which held that an adjustment cost with respect to government benefits received was appropriate where the benefits are linked to specific costs. Tung Mung argues that the instant case is distinguishable from *Stainless Steel Round Wire from India,* where the government payment at issue was not related to the amount of import duty paid, but instead was based on the selling price of the finished goods. Tung Mung finds that case different from the

instant case in that the Department specifically found that the benefits received by respondent substantially exceeded the amount of import duties paid. Tung Mung asserts that at verification it demonstrated that duty drawback payments are recorded in its cost accounting records, which demonstrates that the duty drawback payments are associated with raw material costs.

Department's Position: We disagree with petitioners' argument that Tung Mung's reported duty drawback adjustment should be disallowed. At verification, Tung Mung provided adequate information to support its claimed duty drawback adjustment. Specifically, at verification, we examined documentation for selected sales showing a direct link between duties paid and rebates received and that there are sufficient imports of raw materials to account for the drawback claim. *See* Verification Exhibit 4. At verification Tung Mung demonstrated that the sales tied to the duty drawback adjustment, and furthermore, that the expenses traced to Tung Mung's accounting ledgers. See Verification Exhibit 4. Moreover, we examined duty drawback applications which showed the quantities imported and quantities on which drawbacks were paid. *Id.* We noted that petitioners have made no specific allegations that the quantities appearing in the verification exhibit are insufficient. Therefore, since Tung Mung has sufficiently demonstrated that it meets the two-prong test for duty drawback adjustments, we will accept the claimed adjustments. *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review,* 61 FR 69077, 69078 (Dec. 31, 1996).

Comment 18: U.S. Price

Petitioners argue that Tung Mung failed to report gross unit price for U.S. sales in the currency in which the transaction was incurred, which petitioners claim is contrary to the Department's longstanding practice. In addition, petitioners allege that the reporting of these sales in New Taiwan dollars causes distortions to the gross unit price and the margin calculation. Petitioners charge that Tung Mung's reporting of gross unit price has an expansive effect, affecting multiple variables such as gross unit price, total value, bank charges, credit expenses, indirect selling expenses, and domestic inventory carrying costs. Petitioners assert that the Department's questionnaire instructs respondents to report all revenues and expenses in the currency in which the transaction was incurred; moreover, petitioners argue that this method of reporting is in accordance with the Department's longstanding practice, citing *Stainless Steel Wire Rod from Korea; Final Determination of Sales at Less than Fair Value* (''*Wire Rod from Korea*''), 63 FR 40404, 40413 (July 29, 1998).

Petitioners argue that Tung Mung has not demonstrated that it meets the exceptions to the requirement of reporting expenses and revenues in the currency in which the transaction was incurred. Petitioners note that in *Steel Wire Rod from Canada; Final Determination of Sales at Less Than Fair Value* (''*Steel Wire Rod from Canada*''), 63 FR 9182, 9185 (February 24, 1998) the Department permitted respondent to report certain freight expenses in Canadian dollars because (1) respondent provided advance notification to the Department that it could not report the currency, in which the freight expense was incurred and (2) the Department verified that respondent used a daily rate when these expenses were recorded in its accounting records. Petitioners assert that Tung Mung has not met either of these requirements. Rather, petitioners assert that Tung Mung stated that it records the sales amount using the customer's exchange rate. Petitioners find Tung Mung's statement confusing, given that U.S. transactions were paid in U.S. dollars because there would be no need to note an exchange rate on its payment. Moreover, petitioners assert that Tung Mung would not have been burdened to report sales in the appropriate currency, since it only involved a few number of transactions.

Petitioners cite *Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel from Canada; Final Results of Antidumping Duty Administrative Review* (''*Certain Corrosion Resistant Carbon Steel from Canada*''), 63 FR 12726, 12727 (March 16, 1998) as another case in which the Department made an exception to the requirement of reporting an expense in which the transaction was incurred. In *Certain Corrosion Resistant Carbon Steel from Canada,* the Department allowed respondent to report expenses in the currency in which the transaction was not incurred because the Department found that the exchange rate has been stable during the period of review. Petitioners argue that the circumstances of *Certain Corrosion Resistant Carbon Steel from Canada* are contrary to that of the instant case because the exchange rate for New Taiwan dollars has been unstable during the POI. Therefore, petitioners assert that Tung Mung failed to cooperate to the best of its ability by not reporting gross unit price in the currency in which it was incurred. Consequently, petitioners submit that the Department should apply partial adverse facts available and apply Tung Mung's highest non-aberrant dumping margin to Tung Mung's U.S. direct sales.

Tung Mung argues that petitioners' claim that the Department should apply facts otherwise available to Tung Mung's U.S. Sales to a certain customer should be rejected. Tung Mung asserts that petitioners are mistaken in their claim that Tung Mung could not have invoiced its U.S. customers in NT dollars. Tung Mung asserts that although Tung Mung received payment in U.S. dollars, for each sale to the certain customer it issued both a commercial invoice expressed in U.S. dollars and also a Government Uniform Invoice in NT dollars, citing the Verification Report at p. 9. Tung Mung claims that it was the NT dollar figure from the Government Uniform Invoice that was entered into Tung Mung's books. Tung Mung further argues that the Department cannot apply adverse facts available because Tung Mung informed the Department that it had received payment for the sales in U.S. dollars and the Department did not ask it to change the information on the sales tape. Tung Mung argues that the Department cannot apply adverse facts available unless a respondent has specifically failed to cooperate with a request for information, citing 19 CFR 351.308(a). Therefore, Tung Mung argues that petitioners' suggestion that the Department use an adverse inference with respect to these sales is misplaced.

Department's Position: We agree with petitioners that the Department's standard questionnaire requires all parties to ''report the sale price, discounts, rebates and all other revenues and expense in the currencies in which they were earned or incurred.'' *See* Questionnaire at B–20. The Department accepted respondent's method of reporting these expenses for the preliminary determination. The Department has in limited circumstances allowed exceptions to this rule. *See Corrosion Resistant Steel from Canada* and *Steel Wire Rod from Canada.* In *Corrosion Resistant Steel,* the Department allowed respondent to report U.S. gross unit price in Canadian dollars based on the reasoning that the Canadian dollar was stable and the Department verified that respondent maintained expenses in Canadian dollars in its accounting records. As discussed earlier in this notice in Comment 1, we determined that the

New Taiwan dollar was relatively stable. Moreover, during our review of U.S. sales traces, we verified that Tung Mung maintains its records in its domestic currency, New Taiwan dollars (as with *Corrosion Resistant Steel from Canada*) and found no discrepancies in Tung Mung's reporting of sales. *See* Verification Report at p. 9 and Exhibit 2. Moreover, a review of the sales traces reveals that the difference between the exchange rate recorded on Tung Mung's GUI invoice and the Department's exchange rate data is negligible. *See Analysis Memorandum: Tung Mung* at p. 6. Therefore, we did not apply facts available to respondent's gross unit price for not reporting the U.S. price in U.S. dollars.

Comment 19: U.S. Packing Expenses

Petitioners argue that the Department should apply partial adverse facts available for variable and fixed overhead packing expenses. Petitioners argue that Tung Mung has provided conflicting statements regarding Tung Mung's inability to report variable and fixed overhead packing expenses. Petitioners argue that Tung Mung was instructed twice by the Department, in the questionnaire and in the supplemental questionnaire, to report the unit cost of packing, including variable and fixed overhead expenses, yet failed to do so, stating that ''it would be extremely difficult and time consuming for Tung Mung to segregate packing expenses in the manner requested,'' citing the Supplemental Questionnaire at 23. However, petitioners note that Tung Mung gave a different statement at verification where Tung Mung said that it did not report packing overhead because ''it didn't think that it was required to since packing was sub-contracted labor,'' citing the Verification Report at p. 10. Petitioners charge that Tung Mung failed to cooperate to the best of its ability since it was aware the Department's requirement to report packing overhead expenses and failed to provide a verifiable reason for its inability to report such expenses. Petitioners therefore argues that Department should apply partial adverse facts available to variable and fixed overhead expenses associated with additional export packing.

Respondent argues that the Department should not add overhead expense to packing costs and should reject petitioners' argument to apply adverse facts available in adjusting Tung Mung's reported export packing costs for overhead. Tung Mung asserts that it does not pay benefits to the individuals who perform packing labor and regards these individuals as independent contractors. For this reason, Tung Mung believed that it was unnecessary to include overhead in packing costs. Tung Mung claims that its statement made in its response that ''it would be extremely difficult and time-consuming to separate packing expenses in the manner requested by the Department'' did not refer to the breakout of overhead expenses, but rather to the Department's request that Tung Mung provide the basic cost of packing that is used for all coils, whether sold domestically or exported. Tung Mung alleges that any overhead attributable to expenses other than employee benefits would be extremely small, given the fact that the area occupied by the packing operations was ''tiny'' and the equipment used in packing minimal.

Tung Mung asserts that it has been fully cooperative through the course of this proceeding. Tung Mung argues against petitioners' proposed ''facts available'' adjustment of applying the highest calculated percentage difference between the reported material cost and total cost of manufacturing, insisting that this would be distortive. Specifically, Tung Mung claims that petitioners' proposed adjustment includes costs that are not incurred in export packing and also double counts certain expenses. Tung Mung claims that Tung Mung claims that the full manufacturing conversion costs include direct labor costs, as well as all personnel benefits for the manufacturing workers. Tung Mung asserts that the full manufacturing conversion costs include depreciation incurred on all of the manufacturing activities performed at Tung Mung. Tung Mung also claims that packing is part of the final production process. Tung Mung alleges that the Department routinely ignores adjustment of small magnitude and that should the Department determine an adjustment is warranted, the Department has all the data on the record necessary to perform an adjustment.

Department's Position: We agree with petitioners and adjusted packing expense to include packing overhead by adopting the adjustment method proposed in petitioners' case brief on April 20, 1999. The Department's Questionnaire requires that respondents include the cost of labor, materials and overhead in packing unit cost. See Questionnaire at p. B–27 and C–31. Although Tung Mung used subcontracted labor for packing, Tung Mung admitted that packing operations were performed at the premises of Tung Mung. Thus, it can be inferred that Tung Mung incurred overhead expenses attributable to packing other than personnel benefits. Tung Mung erroneously assumed that there was no need to provide the overhead expenses. Furthermore, Tung Mung failed to justify the claim that the collection of these expenses is burdensome. Therefore, we agree with the petitioners that the use of partial adverse facts available is appropriate in this case. As to the use of the adjustment proposed by the petitioners, we believe it is a reasonable approximation of the overhead component of the packing cost. Tung Mung did not provide any alternative adjustment method to correct for the unreported overhead expenses. We disagree with Tung Mung that the record contains information that can be used for this adjustment without undue difficulties on the part of the Department. Therefore, for this final determination, we have recalculated Tung Mung's reported U.S. packing expenses. *See Analysis Memorandum: Tung Mung,* p. 5.

Comment 20: Direct Selling Expenses

Petitioners argue that Tung Mung failed to provide direct selling expenses associated with visits to U.S. customer's customers. Petitioners note that at verification, the sales manager for Tung Mung made a statement indicating that he had visited the U.S. customer and met with Tung Mung's customer's U.S. customers to discuss merchandise quality. Petitioners argue that Tung Mung should have reported expenses incurred for its customer's customer in its reported direct selling expenses. Petitioners assert that since Tung Mung knew that it incurred these expenses on behalf if its customer, the Department should find that Tung Mung failed to cooperate to the best of its ability. Therefore, citing section 776(a)(2)(A), petitioners argue that the Department should apply partial adverse facts available and use Tung Mung's Sales Department expenses reported in computer field DINDIRSU as a U.S. direct selling expense.

Tung Mung argues that petitioners' claim that Tung Mung failed to provide direct selling expenses with respect to a sales trip taken by the company's sales manager to visit TCI's U.S. customers is unfounded. Tung Mung argues that record facts do not demonstrate that the sales manager's trip was taken during the period of investigation. Moreover, Tung Mung asserts that total business expenses, which were reported in the September 24, 1998 response and later confirmed at verification, shows that total business expenses are ''hardly enough'' to support a business trip to the United States. Tung Mung further

contends that the verification report makes no indication that the expense at issue was incurred with respect to specific sales, which would require the travel expenses to be treated as direct selling expenses. Tung Mung asserts that the Department's regulation 351.410(c) defines 'direct selling expenses' as ''expenses * * * that result from, and bear a direct relationship to, the particular sale in question.'' Tung Mung objects to petitioners' suggestion to apply adverse facts available by treating Tung Mung's indirect expenses as direct selling expenses for US sales because the details of Tung Mung's business trip expenses incurred in connection with export are on the record. Tung Mung argues that even if the Department was justified in applying adverse facts available, the business trip expenses for export sales reported on the record should be the maximum amount used.

Department's Position: We disagree with petitioners that there is sufficient record evidence to infer that respondent withheld information regarding direct selling expenses incurred on behalf of its customers. The sales manager's statement (that he had visited the customer at issue and met with Tung Mung's customer's U.S. customers to discuss merchandise quality) at verification was not made in response to questions relating to selling expenses, but related to the verification team's questions regarding Tung Mung's knowledge of the ultimate destination of home market sales. *See* Verification Report at p. 8. There is no evidence to indicate that the sales manager's statement was anything but general in nature or referred specifically to an actual expense directly related to specific sales (whether or not within the POI). As respondent notes, the Department's regulations define 'direct selling expenses' as ''expenses * * * that result from, and bear a direct relationship to, the particular sale in question.'' *See* 19 CFR section 351.410(c). We do not have any evidence showing that the statement made at verification directly relates to a particular sale, and we verified that business trip expenses were adequately accounted for, we will not adjust direct selling expenses alleged travel expenses related to U.S. sales.

Comment 21: Year-End Adjustments

Petitioners argue that the Department should include all year-end adjustments in the calculation of Tung Mung's cost of production and constructed value. Petitioners assert that Tung Mung stated that it had a net year-end adjustment. Petitioners argue that Tung Mung stated that it did not include the year-end adjustment in its reported cost of production, but considered the year-end adjustment in the denominator of the general and administrative and financial expense calculation. Petitioners allege that the result of Tung Mung's reporting is that there is an ''apples-to-oranges'' comparison. Petitioners claim that the percentages of general and administrative expenses and financial expenses as a percentage of cost of sales have been lowered due to the consideration of the year-end adjustment in the cost of goods sold, and these percentages are being applied to an understated cost of manufacture (due to the lack of consideration of the year-end adjustment). Therefore, petitioners argue that the Department should recalculate reported cost of manufacture to include the net year-end adjustments.

Tung Mung did not comment on this issue.

Department's Position: We disagree with petitioners. At verification, we determined that the year-end accruals and adjustments at issue are minimal, accounting for a small percent increase in Tung Mung's reported costs. *See* Verification Report at p. 13. In addition, the effect of the year-end accruals and adjustments on reported costs is offset by Tung Mung's over-reporting of costs, which was discovered at verification. *See* Verification Report at p. 11. Since the year-end adjustments at issue are minimal, we did not recalculate reported cost of manufacture to include the net year-end adjustments, as proposed by petitioners.

Comment 22: General and Administrative Expenses

Petitioners argue that the Department should recalculate Tung Mung's general and administrative (''G&A'') expenses to reflect all of Tung Mung's G&A expenses. Petitioners charge that Tung Mung based its G&A expense ratio only on expenses within the stainless steel division. Petitioners claim that Tung Mung's G&A ratio fails to account for expenses from the parent group. Petitioners argue that the Department twice requested information on how Tung Mung computed its company's G&A expense ratio, and Tung Mung refused to provide the requested data. Petitioners allege that Tung Mung's reported G&A ratio is artificially low as evidenced by the fact that the G&A ratio is lower than the cost of goods sold ratio (without elaborating further). Petitioners argue that Tung Mung's claim that its parent, Tuntex Group did not incur any G&A expenses on behalf of Tung Mung is both undocumented and dubious. Specifically, they point out that it is unlikely that the Tuntex Group did not incur any G&A expenses on behalf of Tung Mung, given that Tuntex Group has a board of directors, a Tuntex Group chairman, the Group Chairman's office, a Project Department, and a Chairman, all of which overlook the Tuntex Group, including Tung Mung. Thus, petitioners urge the Department to recalculate G&A expense to account for expenses incurred on behalf of Tung Mung by the Tuntex Group. Petitioners argue that the Department, at a minimum, should base G&A expenses on the cost of goods sold ratio.

Tung Mung objects to petitioners' claim that Tung Mung's G&A expenses were incorrectly reported. Tung Mung asserts that its ''parent'' group, Tuntex Group, is not a corporate entity, but rather consists of several companies that are loosely affiliated through cross shareholdings. Tung Mung maintains that the Department verified financial statements and confirmed that Tung Mung is not consolidated with the Tuntex Group. *See* Verification Report at p. 3. Tung Mung also asserts that petitioners overlook the fact that Tung Mung reported that it pays a portion of the salary of the Chairman and his support staff, and that this expense is included in Tung Mung's G&A expenses, citing the November 12, 1998 Supplemental Response at 35, n.36. Tung Mung contends that this expense was confirmed at verification. Tung Mung argues that petitioners' proposed ratio for G&A is incorrect because it represents Tung Mung's reported corporate-wide figure for selling, general and administrative expenses. Tung Mung argues that the divisional G&A expense is more appropriate since Tung Mung's other division is completely unrelated to subject merchandise.

Department's Position: We agree with respondent. At verification, we confirmed that Tung Mung has included G&A expenses incurred with respect to the Tuntex Group in its reported G&A. We reviewed this calculation at verification and found it to be reflective of the actual cost incurred for the types of services that the parent group performed. We also confirmed at verification that the Tuntex Group is not a corporate entity but rather group of loosely affiliated companies with cross-shareholdings. As such, Tung Mung did not have consolidated financial statements. *See* Verification Report at p 3. Therefore, for the final determination, we did not recalculate Tung Mung's G&A to include additional parent group expenses.

Ta Chen

Comment 23: Facts Available

Petitioners state that section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the statute, or (4) provides such information, but the information cannot be verified, the Department shall, subject to sections 782(c)–(e) of the Act, use facts otherwise available in reaching its determination. In this investigation, petitioners argue, Ta Chen has tolled all of these provisions.

Petitioners cite three examples in the record that, petitioners contend, are evidence that Ta Chen withheld information that was requested by the Department. Petitioners first point to Ta Chen's failure to provide requested output from computer programs used to prepare the response and to test the completeness of Ta Chen's universe of U.S. sales. Petitioners assert that, as a result, the Department was unable to perform the completeness test of its reconciliation procedure. Petitioners also point to Ta Chen's inability to prove that, for sales allegedly made directly from a third party to TCI, payment was made directly to that third party by TCI. Rather, petitioners point to record evidence showing that TCI paid Ta Chen Taiwan and did not respond to the Department's request for Ta Chen to prove otherwise. Petitioners suggest that Ta Chen had ample time to respond given that the payment was made a significant period of time before verification. Finally, petitioners cite to Ta Chen's failure to disclose information on so-called ''triangle trades'' including a description of this sales process, the complete acquisition price, Ta Chen Taiwan's interest and banking fees, and TCI's banking fees.

Petitioners contend that Ta Chen failed to provide information in a timely manner or in the form required. Petitioners cite two instances where the Department suspended verification until Ta Chen was able to produce a general ledger and a subsidiary ledger. Petitioners note that the Department had instructed Ta Chen to prepare these documents in advance of verification. Petitioners also cite Ta Chen's failure to produce a further-manufacturing agreement and its failure to support a reconciliation between its general ledger and its invoice register. Petitioners also note that Ta Chen failed to provide a full translation of its most recent financial statements with regard to two affiliated party transactions.

Petitioners contend that Ta Chen significantly impeded the Department's investigation of middleman dumping. Petitioners cite Ta Chen's multiple requests for extensions, delays by Ta Chen in submitting its data, and the ultimate failure by Ta Chen to provide reliable information as a basis for its conclusion that the Department has been forced to severely limit its analysis period for the final determination. Petitioners assert that the Department has exceeded its normal practice by providing Ta Chen with opportunity after opportunity to cooperate. However, according to petitioners, Ta Chen's behavior has been uncooperative. Petitioners argue that the Department's verifications disclosed that Ta Chen engaged in a pattern of withholding factual information, submitting inaccurate and unverifiable sales and cost data, submitting information in an untimely manner or not in the form requested, and refusing to provide certain information requested at verification. Petitioners contend that Ta Chen further impeded the Department's investigation by submitting unexplained major changes to its data in a March 3, 1999 submission. Petitioners describe unexplained changes in the following fields: marine insurance, U.S. duty expenses, Taiwanese bank charges, Los Angeles and other warehouse expenses, transportation expenses, early payment discounts, supplier invoice dates, customer code, sale terms, gauge, finish, and constructed value information. Petitioners state that these unexplained changes cast doubt on Ta Chen's willingness to cooperate. Petitioners state that, singularly, these actions would warrant the application of total adverse facts available. However, in total, the Department has no other option but to assign a margin to Ta Chen based on total adverse facts available. However, if the Department should attempt to calculate a margin based on submitted data, petitioners argue that the Department should reject Ta Chen's unexplained March 3, 1999 data changes.

Petitioners assert that Ta Chen provided information that could not be verified and provide several examples of this type of information. Petitioners point to the alleged direct sales from a third party to TCI. Petitioners point to proprietary record evidence that, it contends, supports the conclusion that the sale was made through Ta Chen Taiwan and contradicts Ta Chen's claims that these were direct sales. Petitioners also cite record evidence that TCI's invoicing system and auditor's adjustments were not verified by the Department. Other examples cited by petitioners include: Ta Chen's inability to demonstrate that it did not further-manufacture SSSS that was subsequently sold in or to the United States and that it could not because it did not record the further-manufacturing activity in its accounting system; Ta Chen's failure to demonstrate that merchandise involved in a triangle trade was purchased from a vendor other than YUSCO or Tung Mung; Ta Chen's inability to account for yield loss on sales that were further-manufactured in the United States; Ta Chen's failure to report charges incurred upon opening a letter of credit; and Ta Chen's failure to inform the Department that there were additional sales made after its ''self-selected'' cut-off date. Petitioners also cite other examples of information that the Department ''was not able'' to verify.

Petitioners state that, by themselves, the deficiencies discovered by the Department at verification would warrant the use of facts available. In combination, they warrant the use of total adverse facts available. Petitioners contend that these deficiencies are so material and have such a significant impact that the Department should determine that Ta Chen failed to act to the best of its ability in this investigation and has been uncooperative. Petitioners argue that it is not practicable to provide Ta Chen ''with an opportunity to remedy or explain the deficiencies'' discovered at verification as called for under section 782(d) of the Act because the deficiencies cut at the basic core of Ta Chen's data. Therefore, the Department should disregard Ta Chen's response and assign Ta Chen a margin based on facts available under section 776(a) of the Act.

Petitioners argue that meeting any one of the provisions under section 776(a) of the Act is, subject to sections 782 (c)–(e) of the Act, grounds for the Department to disregard a respondent's response and assign a margin based on facts available. Petitioners assert that, for the reasons discussed above, the Department should determine that all four provisions of section 776(a) have been met and that Ta Chen has not acted to the best of its ability to cooperate with the Department's investigation.

In this situation, petitioners contend, section 776(b) of the Act authorizes the application of an adverse inference in choosing among facts otherwise available. Petitioners state that the Statement of Administrative Action (''SAA'') accompanying the URAA offers the following guidance: the

Department ''may employ adverse inferences about the missing information to ensure that the party *does not obtain a more favorable result by failing to cooperate than if it had fully cooperated*'' (emphasis added). Petitioners state that, under section 776(b), the Department has a range of options.

Petitioners believe that the most reasonable option is a margin based on the highest estimated dumping margin listed in the *Initiation Notice*, after adjusting for the actual dumping margins of Ta Chen's supplier; such that the combined vendor/middleman margin will equal 77.08 percent. Petitioners do not believe that the Department should choose the highest margins indicated in its middleman dumping allegation if those alleged margins are lower than any calculated margin based on Ta Chen's incomplete reporting, because to do so would reward Ta Chen for failing to cooperate. Therefore, petitioners argue that the Department should assign a margin to Ta Chen of 77.08 percent, less its vendor's individual margin, for the final determination.

Petitioners argue that Ta Chen itself was to blame for its significant failures at verification. Petitioners point to the verification outline's notice to Ta Chen that it should prepare documentation in advance and that if it was not prepared, the Department would move to another topic and might have to consider the item unverified due to time constraints. Petitioners cite the above-mentioned two instances were Ta Chen failed to prepare ledgers in advance at the home market verification. Likewise, petitioners contend, Ta Chen was not prepared to document auditor's adjustments at the U.S. verification. Petitioners assert that this behavior continued and cites several other instances in which Ta Chen was not prepared to support its response at verification.

Petitioners dispute Ta Chen's claim that the so-called ''triangle trade'' sales are ''canceled sales.'' Petitioners state that the Department examined purchase orders, invoices, payment notices, associated expenses, and supporting ledger entries for these sales. Petitioners argue that the completion of a commercial transaction cannot reasonably be referred to as a ''canceled sale.'' Regardless, petitioners note, Ta Chen failed to disclose the ''triangle sales.''

Petitioners disagree with Ta Chen in its view that direct sales made through Company X did not go through Ta Chen Taiwan. Petitioners point to record evidence that Ta Chen Taiwan was involved in this transaction. Moreover, petitioners point out that Ta Chen is basing its claim on exhibits that refer to Company Y and not Company X, which petitioners assert is a different company with a similar name.

Petitioners also disagree with Ta Chen's ''verification comments.'' For example, petitioners argue that: Ta Chen's reporting methodology contradicted the Department's instructions in the questionnaire and supplemental questionnaire; Ta Chen was required to report all of its resales and should have provided a more reasonable database; Ta Chen did not disclose or report a yield loss on further-manufactured sales; Ta Chen was unprepared to completely trace merchandise that underwent further-manufacturing in Taiwan; Ta Chen failed to provide proof of payment for marine insurance; Ta Chen failed to report certain bank charges; and Ta Chen failed to report all purchases in its Section D database. In sum, petitioners argue, Ta Chen's behavior can be characterized as (1) withholding information requested by the Department; (2) failing to provide information in a timely manner; (3) impeding the determination; and (4) providing unverifiable information. Therefore, petitioners argue, the Department should apply the highest margin published in the *Initiation Notice* for the final determination.

Ta Chen argues that it was cooperative. Ta Chen states that it advised the Department at the outset that it would have difficulties in answering the questionnaire in a short time period and requested a simplified reporting requirement on December 10, 1998. Ta Chen contends that its February 5, 1999 and February 17, 1999 responses contained the equivalent level of information compared to its reporting in *SSPC from Taiwan*. Ta Chen states that its March 3, 1999 submission was filed to help expedite matters, address petitioners' concerns, and correct errors. In Ta Chen's opinion, it believes that the Department found no unexplained methodological changes between the March 3 and February 5, 1999 submissions at verification.

Ta Chen states that petitioners' claim that its March 3, 1999 submission contains unexplained changes misses the mark. Ta Chen claims that the change to its reported Los Angeles warehousing expenses was *de minimis*. Ta Chen claims that its reported U.S. transportation costs were reported for Los Angeles warehouse sales that underwent further manufacturing in accordance with its February 5, 1999 submission (at pages 2 and 52). Ta Chen also disputes petitioners' claims with regards to: U.S. warehousing charges, early payment discounts, supplier invoice dates, customer codes, terms of sale, gauge, finish, and control number.

Ta Chen argues that the Department's own verification outline and procedure expressly permit a respondent to submit some new factual information. Thus, Ta Chen disagrees with petitioners that the Department lawfully advised Ta Chen that ''it would not accept any new factual information from Ta Chen.'' Ta Chen contends that the information presented at the start of verification was no more than minor corrections/clarifications of its prior submissions. Moreover, Ta Chen argues, given the peculiarities of the middleman investigation, under section 351.301(b)(1) of the Department's regulations, Ta Chen would have had to submit changes/clarifications in December 1998, which was before its original questionnaire response was even due.

Ta Chen takes issue with petitioners' interpretation of the verification results. For example, Ta Chen argues that all of its U.S. sales are made by TCI and thus, completeness is largely an issue for TCI not Ta Chen Taiwan. Ta Chen states that petitioners focus on a particular completeness test, whereas Ta Chen believes that the Department had already reconciled a bridge worksheet to the response via another exercise. Ta Chen also argues that it was not required to report ''triangle trade'' sales because, Ta Chen contends, ''triangle trades'' were not sales per se because title never transferred to Company X. Ta Chen argues that the terms of sale were ''FOB Los Angeles'' and that the merchandise had already been reinvoiced back to TCI before it reached the port. Thus, Ta Chen argues, title was never transferred, citing *Nissho Iwai American Corp. v. U.S.*, 982 F.2d 505 (Fed. Cir. 1992) (*Nissho Iwai*) and ''*What Every Member of the Trade Community Should Know About Bona Fide Sales and Sales for Exportation*'' U.S. Customs Service, November 1996; *et al.* Moreover, Ta Chen argues that there is a doctrine of transitory transactions in tax law which Ta Chen believes would support the view that, at most, the ''triangle trade'' represents a canceled sale. Ta Chen disagrees with petitioners'' interpretation of record evidence for marine insurance and ocean freight for sales made through Company X. Regardless, Ta Chen argues, even if this evidence proves that Ta Chen Taiwan provided insurance or facilitated shipping, the sale would still occur between Company X and TCI and thus, does not subject it to a middleman

investigation. Ta Chen also comments on numerous other aspects of its verifications, without argument.

Ta Chen argues that petitioners' suggested dumping margin, based on the highest rate alleged in the petition, is unlawful. Ta Chen argues that that rate was for manufacturers and, since middleman dumping methodology is different from the Department's normal dumping analysis, the petition rate is not applicable rendering its use unlawful and contrary to Department precedent. Moreover, if the Department finds that the verified dumping rates of all the manufacturers are below the petition rate, then the petition rate is neither probative nor corroborated. Rather, Ta Chen argues, it has been discredited and its use is unlawful according to court precedent. Ta Chen also argues that petitioners themselves have admitted that its alleged middleman dumping rate is wrong. Ta Chen also notes that the allegation was based on a price quote of a third party which, Ta Chen asserts, indicates that it was a direct sale with no middleman involvement, and that the source of the U.S. price quote for the middleman allegation was not disclosed. Thus, Ta Chen argues, the alleged middleman dumping margin was not probative or corroborated and fails to meet the statutory requirements.

Department's Position: We agree with petitioners in part. In this case, as noted above (*see* ''Facts Available''), we have determined to use facts available because we were unable to verify Ta Chen's response. Furthermore, in using facts available, we are employing an inference adverse to the interests of Ta Chen because we have determined that Ta Chen has failed to act to the best of its ability in responding to our requests for necessary information (*see* ''Adverse Facts Available'' above). Given the circumstances in this case, we disagree with petitioners that rates derived from our *Initiation Memo* would apply to a middleman situation because those estimates are based on our normal dumping methodology, whereas here, Ta Chen would have been subject to our middleman dumping methodology as defined in *SSPC from Taiwan*. Thus, for this final determination, as adverse facts available, we have selected a rate of 15.34 percent for Ta Chen's resales of Tung Mung's and YUSCO's merchandise, which reflects the highest rate from our *Middleman Initiation Memo*.

In this case, the inability to verify the completeness of Ta Chen's databases, particularly the U.S. sales database, is crucial and is a factor which, by itself, forms an adequate basis for our determination to use facts available. However, our attempted verifications yielded additional flaws in Ta Chen's response, providing further bases for our decision to employ facts available. For example, we found that Ta Chen did not report a particular type of sales process called ''triangle trading,'' or report its associated expenses and that Ta Chen could not support its claim that a sale to TCI was not YUSCO's or Tung Mung's merchandise. Ta Chen could not demonstrate that merchandise further-manufactured in Taiwan was not shipped to the United States as subject merchandise. For a complete listing of all flaws, *see Facts Available Decision Memorandum—Ta Chen*. In this regard, we note that Ta Chen's assertions regarding the verification findings are unsupported by record evidence, and as such remain mere assertions. Because of the gravity and the magnitude of the flaws in Ta Chen's response, we have determined that Ta Chen's information is unverifiable, and that there is no record evidence demonstrating that errors in Ta Chen's reporting of certain of its U.S. sales are limited and correctable. Thus, as explained above, we must use facts available in determining a margin for Ta Chen, as required under section 776(a) of the Act.

We also agree with petitioners that an adverse inference is warranted in determining a margin for Ta Chen because, as required under section 776(b), we find that Ta Chen has not acted to the best of its ability in responding to our requests for information. As noted above, Ta Chen has participated in numerous reviews and verifications in other antidumping proceedings and is aware of the type of information we require. However, despite Ta Chen's specific understanding of verification procedures, based not only on information provided in the verification outline, but also through their successful completion of verification in *SSPC from Taiwan* a mere four months prior to these verifications, Ta Chen has failed to substantiate at verification a fundamental element of its response: a complete purchase and sales reconciliation. We also find that, at verification, Ta Chen failed to produce, in a timely manner, documentation that was within its control, such as general and subsidiary ledgers, because this documentation was requested in our verification outlines (*see* Antidumping Duty Investigation of Stainless Steel Sheet and Strip in Coils from Taiwan; Ta Chen's Sales Verification Outline (''Verification Outline'' dated March 30 and April 5, 1999) . Ta Chen's comments regarding ''triangle trade'' sales and other verification findings are not persuasive that Ta Chen has failed to act to the best of its ability in responding to our requests for necessary information. Ta Chen's argument that ''triangle trade'' sales are not really ''sales'' and therefore it need not report them is incorrect. Ta Chen's reliance on tax law and U.S. Customs rulings is misplaced, because we are concerned with determining if Ta Chen sold merchandise at a price below its total acquisition costs. Our determinations are subject to Title VII of the Act rather than the Internal Revenue Code or U.S. Customs Bulletins and thus, Ta Chen should have reported these transactions. Furthermore, we note that Ta Chen made numerous other errors in its response that worked in its favor. *See Facts Available Decision Memorandum—Ta Chen*.

As we have indicated above, in accordance with our policy, we considered the overall effect of the errors to ensure that Ta Chen does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Thus, an additional factor we have considered is the extent to which Ta Chen might have benefitted from failing to cooperate fully if we had not made our determination on the basis of facts available. *See SAA* at 870. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for Ta Chen. *See Facts Available Decision Memorandum—Ta Chen*. Thus, for this final determination, we have applied adverse facts available to Ta Chen in accordance with section 776(b) of the Act.

Comment 24: Indirect Selling Expenses

Petitioners argue that the methodology preliminarily employed by the Department to compute the middleman dumping margin has not captured the full amount of dumping. In the event that the Department does not use total adverse facts available, petitioners request that the Department make several changes to its methodology.

Petitioners believe that the Department's methodology understates the extent of the losses incurred by Ta Chen on its resales. First, petitioners argue that the Department should include TCI's total operating and financing expenses, and not Ta Chen's ''incorrectly'' reported indirect selling expenses, as part of Ta Chen's net U.S. price. Petitioners claim that Ta Chen's reported indirect selling expenses do not include a number of expenses that are general in nature. Further,

petitioners maintain that verification proved that TCI's reported indirect selling expenses were distortive and understated. Petitioners cite *SSPC from Taiwan*, in which TCI ''admitted'' that it had erroneously excluded certain expenses from its indirect selling expenses and the Department recalculated TCI's indirect selling expenses based on the overall operating costs of TCI as a percentage of sales. Additionally, petitioners argue that the Department should deny Ta Chen's claimed interest income offset because Ta Chen has not demonstrated that this interest income was short-term in nature.

Petitioners claim that the Department not only asked Ta Chen to allocate total G&A over total cost of sales, but also pointed out severe deficiencies in Ta Chen's response and asked Ta Chen for complete responses. Petitioners also argue that Ta Chen should have revised its G&A figures in accordance with the final determination in *SSPC from Taiwan*. Nevertheless, according to petitioners, the record is clear with respect to Ta Chen Taiwan's sales, accounting, general management, and legal departments' involvement in SSSS sales to TCI, and therefore the Department must recalculate Ta Chen Taiwan's G&A expenses by allocating total G&A over total cost of sales.

Ta Chen argues that the dumping margin calculation should be based on the Ta Chen Taiwan G&A figures for coil only, as reported in Ta Chen's questionnaire response. If the Department does not do so, however, it should at least remove attorney fees for dumping work from Ta Chen's G&A costs. Ta Chen argues that it was not given an opportunity to revise its initial reporting of Ta Chen Taiwan interest costs and G&A. It cites *Ferro Union, Inc. & Asoma Corp.* v. *U.S.*, Slip Op. 99–27 at 41 & 44 (CIT March 23, 1999) in which the court held that the Department cannot expect a respondent to foresee the interpretation of a new term or methodology which is undergoing development, and that before resorting to facts available, the party must have a chance to remedy deficient submissions.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 25: Total Acquisition Cost and U.S. Price

The Department, according to petitioners, must revise its middleman dumping calculations for Ta Chen by comparing a normal value with an appropriately adjusted U.S. resale price as required by the statute. Petitioners claim that the legislative history of section 772 of the Act recognizes the Department's discretion to analyze each middleman resale so that dumping would not be masked. Petitioners further argue that the Trade Agreements Act of 1979 overturned the ruling in *Voss International Corp.* v. *United States* (''*Voss*'') in which the court rejected the administering authority's practice of setting purchase price as the producer's price to an unrelated middleman when the producer is aware that the middleman will resell the subject merchandise to the United States. Petitioners continue that Congress, according to H.R. Rep. No. 317, *supra*, at 75; S. Rep. No. 249, *supra*, at 94, (''*Senate Report*'') thus did not grant discretion to the Department to equate middleman dumping with the amount by which the middleman's adjusted resale price falls below the middleman's total acquisition cost. Rather, Congress ruled that the price between a producer and an unaffiliated middleman will serve as the basis for purchase price as long as the producer knows that the merchandise is intended for resale in the United States, and that the Department must take into account any middleman dumping along with dumping by the producer. Petitioners claim that the Department confirmed this in *Fuel Ethanol from Brazil.*

Petitioners argue that once the Department confirms that a middleman has made a substantial amount of its resales at prices substantially below its total acquisition costs, the Department must employ a statutorily defined normal value and U.S. price to compute the extent of the middleman's dumping. Petitioners state that Ta Chen's dumping margin must be calculated by comparing Ta Chen's constructed value with its net U.S. price, and that middleman dumping is not equal to the difference between Ta Chen's total acquisition cost and resale price. Petitioners express the need for a foreign referent market to provide a benchmark for a respondent's activity in the U.S. market, as prescribed in section 777A of the Act. Petitioners also argue that the Department's reliance on section 773 of the Act is not justified in measuring the amount of dumping by the middleman, since this section deals with the calculation of the cost of production of a respondent's home market sales, not the respondent's U.S. sales. Moreover, this section defines ''normal value'' with reference to home market prices or constructed value, and therefore, argue petitioners, a middleman's total acquisition costs for U.S. resales cannot satisfy this definition of normal value.

Furthermore, petitioners claim that the Department failed to calculate a proper U.S. price for Ta Chen based on constructed export price in its preliminary middleman dumping analysis because the Department failed to consider U.S. credit expenses, U.S. inventory carrying costs, in-transit inventory carrying costs, and CEP profit, as prescribed in section 772 of the Act. Petitioners further note that values for most of these expenses are not on the record and that this is another reason for the Department to resort to total adverse facts available.

Petitioners claim that the methodology directed by the statute for computing middleman dumping is essentially the methodology followed by the Department in computing dumping when transshipment is involved, and cite the *Notice of Final Determination of Sales at Less Than Fair Value: Sulphur Dyes, Including Sulphur Vat Dyes, from India* 58 FR 11835 (March 1, 1993) to illustrate their point.

Ta Chen argues that middleman dumping may not be lawfully calculated on the basis of constructed value since, according to legislative history, the Antidumping Manual, and court precedent, middleman dumping is selling below acquisition cost and related selling expenses, citing *SSPC from Taiwan, Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value,* 51 FR 5572, 5573 & 5577 (February 14, 1986); *Steel Wire Strand for Prestressed Concrete from Japan; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review,* 62 FR 60688 (November 12, 1997); *Certain Forged Steel Crankshafts from Japan; Final Determination of Sales Note Less Than Fair Value,* 52 FR 36984 (October 2, 1987); and *Mitsui* v. *U.S.,* (''*Mitsui*'') 18 CIT 185 (CIT March 11, 1994). Moreover, Ta Chen argues that petitioners' arguments contradict one another as petitioners cite authority to that effect that, at most, middleman dumping can only be based on the middleman's actual expenses and whether the middleman is selling below actual cost. *Department's Position:* Based on our decision to apply total adverse facts available, this issue is moot.

Comment 26: Ministerial Errors

Petitioners claim that the Department should correct several ministerial errors in the preliminary determination calculations. First, petitioners argue that the U.S. further manufacturing variable should not be converted to a character variable because, as such, these expenses were not deducted from the

U.S. gross unit price. Secondly, petitioners argue that the Department should format the control number field to ten digits so that the ''edge'' product characteristic can be considered. Thirdly, petitioners maintain that missing values for L.A. warehousing expenses should be set to zero. Finally, petitioners assert that the Department should base its final determination on the February 5 data file, with the exception of those changes in the March 3 data file that have been explained by Ta Chen.

Ta Chen did not comment on these issues.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 27: Exchange Rate

Ta Chen argues that the focus of a middleman dumping investigation is whether a middleman makes an actual profit or loss on the transactions, and thus, as stated in *Fuel Ethanol from Brazil,* the Department must use a proper exchange rate to make such a conclusion. Ta Chen claims that the Department should use the exchange rate for the date TCI receives payment from the U.S. customer since that rate indicates the actual profit or loss on the transaction from the perspective of a Taiwan trading company. Furthermore, Ta Chen argues that since the Department's regulations do not address the issue of middleman dumping, the Department should not use the rate from TCI's U.S. sale simply because the regulations say to do so.

Petitioners did not comment on this issue.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 28: Bank Charges

Ta Chen claims that there should be no adjustment for bank charges in the CREDIT1U and CREDIT2U data fields since they are associated with internal movement of funds received from customer payments between affiliated Ta Chen entities.

Petitioners did not comment on this issue.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 29: Interest Costs

Ta Chen claims that it would be double counting to include both TCI's and Ta Chen Taiwan's interest costs, since all of Ta Chen Taiwan's interest costs with regard to coil are passed through to TCI and affect TCI's debt burden. If, however, the Department does include Ta Chen Taiwan interest costs, Ta Chen argues that the Department should reduce those costs for short-term interest income.

Petitioners claim that the Department should calculate Ta Chen Taiwan's interest expenses for the constructed value calculation based on Ta Chen's Taiwan's financial statement because Ta Chen Taiwan was intimately involved in the purchase and resale of SSSS. Petitioners claim that the Department's allocation of Ta Chen Taiwan's total interest expenses over Ta Chen Taiwan's total cost of sales would be consistent with *SSPC from Taiwan* and the questionnaire instructions.

Department's Position: Based on our decision to apply total adverse facts available, this issue is moot.

Comment 30: Substantial Margins

Ta Chen states that the preliminary decision offers no rationale concerning why a 2.68 percent channel rate should be considered substantially below cost, given that two percent is considered *de minimis* under the current standard for dumping margins. Moreover, as in the *SSPC from Taiwan* decision, any dumping margin should only apply to Ta Chen Taiwan since TCI, a U.S. company, should be permitted to purchase direct from a Taiwan manufacturer at the manufacturer's own dumping rate.

Tung Mung also argues that the rate found by the Department for middleman dumping, 2.61 percent, is not ''substantial.'' Tung Mung argues that it would be inappropriate to find that an entity that is not involved in the substance of the transaction, but is merely acting as a communications channel, is engaged in dumping. Tung Mung asserts that, in any event, a margin of 2.61 percent cannot be considered ''substantial'' within the meaning of the statute. Tung Mung argues that under the holding of *Fuel Ethanol from Brazil,* the Department must find that a substantial portion of the middleman's sales are at prices ''substantially'' below its acquisition costs. Tung Mung notes that in the present case, the Department found that Ta Chen's losses on its sales of Tung Mung merchandise amounted to 2.61 percent, which the Department deemed to be ''substantial.'' Tung Mung argues that this margin is only a fraction over the *de minimis* limit of two percent, and thus can hardly be deemed ''substantial.''

Petitioners argue that the Department should find that Ta Chen sold a substantial portion of its resales in the United States at prices substantially below its total acquisition costs. Petitioners state that the evidence in this case points to Ta Chen's selling a substantial volume of its resales at prices substantially below its total acquisition costs, as was the case in *Mitsui*. Petitioners also state that, as in *SSPC from Taiwan*, there can be no single threshold which constitutes substantial losses with regard to middleman dumping, because each case involves a unique set of circumstances and thus a fixed numerical guideline defining substantial losses should not be created.

Department's Position: We agree with petitioners. There can be no single threshold which constitutes substantial losses with regard to middleman dumping because each case involves a unique set of circumstances. In this case, we find that 15.34 percent for Ta Chen's purchases from Tung Mung and YUSCO, as well as the 2.61 percent calculated for Ta Chen with regard to Tung Mung's merchandise in the *Preliminary Decision,* constitute substantial losses. The Department has stated its general position in *SSPC from Taiwan* at page 15504. Moreover, because we are assigning Ta Chen a significantly higher loss percentage for this final determination, we believe that there can be no question but that such losses must be considered substantial.

Comment 31: Agency

Ta Chen contends that the transactions involving the subject merchandise do not fall within the ambit of any middleman dumping provision for the following reasons: (1) the transactions involve a direct sale between a Taiwanese manufacturer and an unaffiliated U.S. buyer; and (2) the Department cannot determine that middleman dumping is occurring because there is no middleman. Ta Chen explains that Ta Chen is merely a processor of paperwork and a communications link and is acting as an agent of TCI, Ta Chen's U.S. affiliate. Ta Chen claims that TCI initiates all purchase requests from YUSCO and Tung Mung and uses Ta Chen as a facilitator due to language barriers and time zone differences. Ta Chen further claims that there is a straight pass-through of the purchase price from YUSCO to TCI such that TCI incurs both the risk and the profit or loss on the sale.

Ta Chen states that the Department must recognize commercial law principles in its administration of the antidumping laws, citing *NSK* v. *United States*, 115 F. 3d 965 (Fed. Cir. 1997). Ta Chen claims that U.S. commercial law considers the following factors in determining whether an intermediary is

acting as an agent or as a buyer: (1) (W)hether the intermediary could or did provide instructions to the seller; (2) whether the intermediary was free to sell the items at any price it desired; (3) whether the intermediary could or did select its own customers; and (4) whether the intermediary could or did order the merchandise and have it delivered for its own inventory. Ta Chen claims that the Department generally follows this analysis in determining whether sales through a U.S. subsidiary should be treated as EP or CEP transactions, citing *Stainless Steel Wire Rod from Spain,* 63 FR 40391, 40395. Ta Chen maintains that if the intermediary cannot perform these tasks and if there is a simultaneous passage of title and risk of loss from the seller to the intermediary to the buyer, then the intermediary is acting as an agent.

Ta Chen claims that an analysis of the record demonstrates that none of the aforementioned four factors exist in the instant case and thus, Ta Chen is acting as an agent. First, Ta Chen Taiwan claims that in all instances it acts on behalf of TCI with regard to U.S. sales. Second, Ta Chen claims that Ta Chen Taiwan was not permitted to sell the items to other distributors in the United States, and had no control over the U.S. prices of coil. Third, Ta Chen claims that TCI alone selected the U.S. customers to which it would subsequently sell the imported products. Fourth, Ta Chen claims that coil was shipped directly from YUSCO or Tung Mung to TCI for TCI's warehouse inventory, and therefore Ta Chen Taiwan does not maintain inventory for any products for U.S. sale. Finally, Ta Chen claims that title was transferred immediately from Tung Mung or YUSCO to TCI. Ta Chen argues that the above facts prove that TCI is the true buyer from YUSCO or Tung Mung, and Ta Chen Taiwan is merely TCI's buyer's agent. Moreover, TCI argues that the sales are direct sales between YUSCO or Tung Mung and TCI.

Ta Chen argues that the antidumping statute only applies to producers and exporters; therefore, Ta Chen contends, TCI should not be subject to the dumping determination. Ta Chen states that the Act directs the Department to determine the individual weighted average dumping margin of each known exporter and producer of the subject merchandise, and also cites *AK Steel Corp.* v. *U.S.*, Slip Op. 98–159 at 20–23 (CIT November 23, 1998) in support of this position. Ta Chen argues that it is well established under Department precedent that if suppliers sell to a trading company and had knowledge, at the time they sold their merchandise, that those sales were destined for the United States, the Department finds that suppliers are effectively acting as exporters and therefore uses their [suppliers] pricing structure to measure dumping activity, citing *Antifriction Bearings from France*, 57 FR 28360 (1992). Ta Chen argues that the manufacturers, Tung Mung and YUSCO, had knowledge that all sales to TCI were destined for the United States. In this regard, Ta Chen argues, YUSCO and Tung Mung are the exporters under Department practice.

Ta Chen argues that middleman dumping is a narrowly defined exception to the Department's general practice to use the producer's price to the U.S. in the dumping analysis. Ta Chen argues that this exception does not apply in this case. Ta Chen points to the legislative history of the Trade Agreements Act of 1979 as support that middleman dumping is limited to the issues involved in *Voss International* v. *United States*, (''Voss'') C.D. 4801 (May 7, 1979), citing *Senate Report*. Ta Chen argues that the legislative history regarding middleman dumping analysis instructs that where a producer knows that the merchandise was intended for sale to an unrelated purchaser in the United States under terms of sale fixed on or before the date of [U.S.] importation, the producer's sale price to an unrelated middleman will be used as the purchase price (''Purchase price'' may be used if transactions between related parties indicate that the merchandise has been sold prior to importation to a U.S. buyer unrelated to the producer.'' *See Senate Report*). Ta Chen argues that the instant case is distinct from *Voss* because YUSCO's and Tung Mung's terms of sale were fixed before exportation. Ta Chen concludes that the middleman dumping exception as delineated in *Voss* does not apply in the instant case, and therefore, the Department does not have the authority to investigate Ta Chen nor does it have the authority to use TCI's U.S. resale prices in the calculation of a dumping margin.

Notwithstanding this conclusion, Ta Chen argues that if the Department wishes to take on a broader view of its ability to investigate middleman dumping, in the instant case there is no sale to a middleman outside the United States who then makes the first sale to the United States. Ta Chen again cites to the *Senate Report* at 93–94:

> Regulations should be issued, consistent with present practice, under which sales from the foreign producer to middlemen and any sales between middleman *before* sale to the first unrelated U.S. purchaser are examined to avoid below cost sales by the middlemen. Emphasis added in Ta Chen brief)

Ta Chen also cites to *Fuel Ethanol* at 5577 as further support. Ta Chen claims that YUSCO and Tung Mung sell directly to TCI, an unaffiliated U.S. customer, and therefore, there is no middleman. Ta Chen argues that Department precedent demonstrates that middleman dumping is found where a foreign manufacturer sells to a trading company located in the foreign manufacturer's home market or third country which in turn is ''selling to U.S. purchasers below its acquisition or purchase cost,'' citing *Fuel Ethanol* at 5573 & 5576–77. Ta Chen asserts that the Department has never found middleman dumping where a foreign manufacturer sells to an unaffiliated U.S. company. Ta Chen argues TCI purchased coil from the Taiwan manufacturer; thus, a ''middleman'' as defined by *Fuel Ethanol* does not exist.

Ta Chen argues that the Department's decision in *SSPC from Taiwan* is contrary to the Department's own practice, U.S. commercial law principles and commercial reality. Ta Chen contends that the *SSPC from Taiwan* decision implies the finding that invoicing or transfer of title to an entity alone is sufficient to show that a sales transaction occurred. Ta Chen argues that this is contrary to law, citing *FAG (U.K.) Ltd.* v. *U.S.*, Slip Op. 98–133 at 15, n. 5 (CIT September 16, 1998) (finding that ''mere passage of title alone does not effect a sale'' if one party controls the transaction and the other to whom title passed is only acting as an agent of the controlling party, citing *AK Steel Corp., et. al.* v. *U.S.*, Slip Op. 98–159 at 7–16 (CIT Nov. 23, 1998); *J.C. Penney* v. *U.S.*, 451 F. Supp. 973, 986 (1978); and *Synthetic Methionine from Japan*, 52 FR 10600, 10601 (1987).

Second, Ta Chen charges that the decision in *SSPC from Taiwan* implies that simply because the agent is involved in the sales negotiation or initially incurs costs (which are then passed onto the buyer), it can be found that the sale is made to the agent. Ta Chen argues that this assumption found in *SSPC from Taiwan* also contradicts law and commercial reality. Ta Chen argues that the courts have acknowledged that negotiating sales and incurring expenses on behalf of the buyer are services characteristic of buying agents, citing *Jay-Arr Slimware Inc.* v. *U.S.*, 681 F. Supp. 875, 878 (CIT 1988); *J.C. Penney* v. *U.S.*, 451 F. Supp. 973, 984 (1978); *Monarch Luggage Co.* v. *U.S.*, 715 F. Supp. 1115, 116–7 (CIT 1989); and *Rosenthal-Netter, Inc.* v. *U.S.*, 679 F. Supp. 21, 23 (CIT 1988).

Third, Ta Chen finds that *SSPC from Taiwan* contradicts law by suggesting that middleman dumping can be found where there is a sale from the Taiwan producer to TCI, with Ta Chen Taiwan acting only as an agent. Ta Chen points out that *SSPC from Taiwan* cites to no supporting legal authority except *Voss*, which as argued earlier by Ta Chen, does not apply to the instant case.

Ta Chen argues that based on shipping terms, the transaction between the seller and the intermediary is not a bona fide sale. TCI argues that where the merchandise is shipped directly from the seller to the ultimate consignee, as opposed to being shipped from the seller to the intermediary and then to the ultimate consignee, the terms of sale may indicate that simultaneous passage of title occurred. According to TCI, an intermediary is considered to hold title only momentarily, if ever, and does not bear the risk of loss according to the term of sale. As such, TCI argues that based on the shipping terms, a bona fide sale would not appear to exist between the seller and intermediary, but rather between the seller and the U.S. ultimate consignee, with the intermediary potentially serving as an agent, citing *Nissho Iwai*. In addition, TCI notes that TCI's financial statements indicate that TCI is ''engaged in the business of sales of coils * * *'', citing March 3, 1999 Questionnaire Response. TCI also notes that Ta Chen Taiwan's financial statement indicate that Ta Chen Taiwan manufactures stainless steel pipe and fitting products and there is no mention that Ta Chen Taiwan sells coil, citing their February 17, 1999 submission at Exhibit 6.

Tung Mung argues that the Department should not find middleman dumping in this case because Ta Chen Stainless Steel Pipe Co., Ltd, is not a middleman. Tung Mung argues that the verifications of Tung Mung and Ta Chen made clear that Tung Mung's true customer is Ta Chen International, Ta Chen's U.S. affiliate. Tung Mung maintains that TCI makes its own decisions on what materials to purchase, based on its assessment of market conditions in the United States, and simply uses Ta Chen Taiwan as a communications link. Tung Mung asserts that verification results of Ta Chen Taiwan show that pricing decisions are being made by TCI, a U.S. corporation, rather than Ta Chen Taiwan. Tung Mung argues that the Department confirmed at verification that TCI uses Ta Chen Taiwan as an intermediary, instead of buying directly from the manufacturer, because of differences in time zones and language barriers, citing *TCI Verification Report* at p. 6.

Petitioners assert that, according to the record, the Taiwanese producers' U.S. sales of subject merchandise were in all instances to Ta Chen Taiwan, not to Ta Chen International. Petitioners point to several verification findings with regard to sales functions and corporate structure which, petitioners claim, demonstrate that Ta Chen Taiwan was intimately involved in each purchase and intra-company resale to TCI of YUSCO's and Tung Mung's products. Petitioners maintain that these verification results prove that Ta Chen Taiwan purchased the subject merchandise from YUSCO and Tung Mung and acted as a middleman in connection with the resale of YUSCO's and Tung Mung's subject merchandise in the United States.

Petitioners find suspect Ta Chen's explanation for those sales where the invoicing did not go through Ta Chen Taiwan. Petitioners note that Ta Chen claims that these sales are ''direct sales'' to TCI; however, petitioners argue that Ta Chen provides no supporting evidence for this claim. Petitioners point out that the record evidence contradicts Ta Chen's assertions that the sales at issue were direct sales to TCI. Petitioners note that Ta Chen stated that the sales in question were direct sales since a certain party directly invoiced TCI. Petitioners further note that when the Department asked TCI to prove that it directly paid the certain party, TCI could not, citing *TCI Verification Report* at page 17. Petitioners note that the documentation indicated that the party paid was in fact Ta Chen Taiwan. Moreover, petitioners maintain that other documents retrieved at verification support that the payee was in fact Ta Chen Taiwan, despite Ta Chen's claim at verification that Ta Chen Taiwan was indicated as the payee as a result of a typographical error.

Petitioners cite *Industrial Nitrocellulose from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 64 FR 6609, 6622 (February 10, 1999), where the Department found that a U.S. selling agent was substantially involved in the sale process for the foreign company because its duties as the foreign company's agent included sales and solicitation and price negotiation. Likewise in this investigation, petitioners argue, Ta Chen Taiwan negotiated with YUSCO and Tung Mung the terms of sale and performed other sales functions associated with these sales. Thus, petitioners argue, the role of Ta Chen Taiwan was substantial and entailed much more than paper processing and aiding communications between YUSCO and Tung Mung and TCI. Petitioners conclude that the Department should find that TCI therefore acted as a middleman in the resale of the subject merchandise into the U.S. and include in the Department's dumping calculations the full extent of dumping caused by Ta Chen's pricing to its unaffiliated U.S. customers.

Department's Position: We disagree with Ta Chen that it is not the middleman for resales of YUSCO's and Tung Mung's merchandise into the U.S. market. Evidence plainly establishes that for the purposes of conducting a middleman dumping investigation, there were sales of subject merchandise between YUSCO and Ta Chen and between Tung Mung and Ta Chen which, in turn, Ta Chen resold into the United States through its U.S. affiliate, TCI. We find the activity engaged in by Ta Chen as that of a classic middleman and therefore subject to our scrutiny.

Where a producer sells its merchandise to an unaffiliated middleman, it has been the Department's long-standing practice normally to select as the U.S. price the price between the foreign producer and the unaffiliated middleman, provided that the foreign producer knew or had reason to know that its merchandise was destined for export to the United States. *See Antifriction Bearings From France*, 57 FR 28360 (1992)(Comment 18). However, if the middleman is reselling below cost, the sale between the producer and the middleman may not be an appropriate basis for establishing the total margin of any dumping that may have occurred. The legislative history to the 1979 Act makes clear that Congress recognized that middlemen may also be engaged in dumping and acknowledged that the Department had authority to investigate ''sales from a foreign producer to middlemen and any sales between middlemen before sale to the first unrelated U.S. purchaser * * * to avoid below cost sales by the middlemen.'' *See* H.R. Rep. No. 317, 96th Cong., 1st Sess. 75 (1979); and the Senate Report. Therefore, there is no question that the Department has the authority to depart from its normal practice, where circumstances warrant, and investigate whether dumping is being masked or understated by middlemen. *See Fuel Ethanol* (the legislative history of the 1979 Act sustained the Treasury Department's practice of using the price between the manufacturer and unrelated trading company for exports to the U.S. when the manufacturer knew the destination at the time of sale to the exporter, but

was not intended to bar us from looking at all facets of the transaction). Where the Department determines that a substantial portion of the middleman's resales in the United States was made at below the middleman's total acquisition costs and the middleman incurred substantial losses on those resales, middleman dumping has occurred and the margin calculation is adjusted accordingly, *i.e.*, we look to the middleman's first sale to an unaffiliated customer. *See Amended Preliminary Determination; Fuel Ethanol.*

Ta Chen acknowledges that the Department has the authority to conduct middleman dumping investigations but offers various arguments against applying middleman dumping to Ta Chen. Ta Chen mainly argues that if there was not a sale between YUSCO and Ta Chen, but Ta Chen merely acted as a selling agent for its wholly-owned U.S. affiliate, TCI, there can be no middleman and thus no middleman dumping.

Here, the verified evidence establishes that YUSCO and Tung Mung made sales to Ta Chen, not directly to TCI (although Tung Mung did have a small number of direct sales to TCI, we are not considering them to be subject to our middleman investigation). Contrary to Ta Chen's assertions otherwise, Ta Chen did take legal title to the merchandise. Even though YUSCO and Tung Mung shipped the merchandise fob to TCI at a port in Taiwan, a purchaser need not take physical possession of merchandise to have legal title. Here, Ta Chen negotiated the sale with YUSCO and Tung Mung, signs a sales contract with YUSCO and Tung Mung, was invoiced by YUSCO and Tung Mung, paid YUSCO and Tung Mung for the merchandise, entered these sales into Ta Chen's book, and undertook various other activities involved in exporting and transporting the merchandise. *See* Exhibits 6 and 8 of Tung Mung's Verification Report dated April 12, 1999, page A–10 of Tung Mung's questionnaire response dated September 8, 1998. *See* also pages 5, 13 and Exhibit 9 of YUSCO's Sales Verification report dated April 12, 1999. Thus, the evidence is sufficient to establish that Ta Chen was acting as a middleman within the meaning of the antidumping law.

Further, trading companies such as Ta Chen have typically been the focus of the Department's investigation into middleman dumping allegations because most often trading companies engage in the ''successive resales from the foreign producer to the first unrelated U.S. buyer,'' thus prompting our scrutiny. *See, e.g., Electrolytic Manganese Dioxide From Japan*, 58 FR 28551 (May 14, 1993); *Fuel Ethanol; PC Strand From Japan*: Final Results of Redetermination Pursuant to Court Remand, Court. No. 90–12–00633 (August 5, 1994); see also *Consolidated International Automotive, Inc.* v. *United States*, 809 F. Supp. 125, 130 (CIT 1992).

We also disagree that we should examine Ta Chen's role in the transaction chain by applying the criteria we normally use to determine if U.S. sales are EP or CEP sales. For a more complete discussion of this issue, *see SSPC from Taiwan*, Comment 6.

Finally, given that we find that Ta Chen is a middleman, the question Ta Chen raises regarding the geographical location of the middleman is moot, since Ta Chen is located in the exporting country and hence clearly within the ambit of a middleman dumping investigation. *See e.g.*, Antidumping Manual, Chapter 7 at 5 (if the Department receives a documented allegation that the trading company located in the exporting country or a third country is reselling to the United States at prices which do not permit the recovery of its total acquisition costs, we will initiate a middleman dumping investigation).

Suspension of Liquidation

In accordance with section 735(c)(1)(B) Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register**. The all-others rate reflects an average of the corroborated non-*de minimis* margins alleged in the petition. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Tung Mung/Ta Chen	14.95
Tung Mung	14.95
Chang Mien	0.98
YUSCO/Ta Chen	34.95
YUSCO	34.95
All Others	12.61

Since the final weighted average margin percentage for Chang Mien is *de minimis*, Chang Mien will be excluded from an antidumping order, if issued, on stainless steel sheet and strip in coils from Taiwan as a result of this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation. This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–825]

Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Craig W. Matney, Gregory W. Campbell, or Alysia Wilson, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4087, 482–1778, 482–2239, or 482–0108, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of