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order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.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: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7537 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

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

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

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Michael Panfeld, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5255 or (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 of Commerce (''Department'') regulations are to the regulations at 19 CFR part 351 (April 1998).

Final Determination

We determine that stainless steel plate in coils (''SSPC'') from Taiwan is being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the amended preliminary determination (*Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, (Amended Preliminary Determination*) (63 FR 66785, December 3, 1998), the following events have occurred: We conducted a cost verification of YUSCO's questionnaire response from November 30–December 4, 1998, and a sales verification of YUSCO from December 14–17, 1998. We also conducted verifications at Ta Chen Stainless Pipe, Co. from December 18–21, 1998 and Ta Chen International from January 12–15, 1999.

Petitioners and respondents submitted case briefs on February 8, 1999. On February 11, 1999, petitioners (the only party requesting a public hearing) withdrew their request for the public hearing. Petitioners and respondents submitted rebuttal briefs on February 16, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate 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 plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 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, 7220.90.00.10, 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 written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1997, through December 31, 1997.

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 verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Facts Available

We determine that the use of facts available is appropriate for YUSCO in accordance with section 776(a) of the Act, because it failed to report all of its home market sales made during the POI.

Where necessary information is missing from the record, the Department may apply facts available under section 776 of the Act. Further, where that information is missing because a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use facts available that are adverse to the interests of that respondent, which may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As described below in detail in Comment 1, YUSCO did not act to the best of its ability in the reporting of its home market sales. We have chosen the highest of the calculated petition margins for Taiwan of 8.02 percent as total adverse facts available.

Middleman Dumping

1. Dumping Calculation

As a result of further analysis and comments raised by interested parties, we have changed our middleman dumping methodology. As in our *Amended Preliminary Determination,* for the final determination, we have determined whether a substantial portion of Ta Chen's U.S. sales were below acquisition costs by comparing the total value of stainless steel plate sold below acquisition cost to the total value of all stainless steel plate sales made by Ta Chen during the POI. We first identified sales below acquisition cost by comparing Ta Chen's resale price for stainless steel plate sold during

the POI to its total acquisition cost for this merchandise. We used YUSCO's invoice price to Ta Chen as the basis for determining acquisition cost. However, unlike our *Amended Preliminary Determination,* we added to this cost an appropriate portion of Ta Chen's interest expense and general and administrative expenses (G&A) to obtain the total acquisition cost. We based the U.S. resale prices on Ta Chen's sales to unaffiliated customers in the United States. From that starting price we have continued to deduct further processing costs, discounts, movement expenses (freight, insurance, U.S. duties, and brokerage and handling fees), and the actual selling expenses incurred by Ta Chen (commissions, warehousing charges, bank charges, and indirect selling expenses), where applicable, as in our *Amended Preliminary Determination.* We then compared that price, after deductions, to the total acquisition cost. Based on this comparison, 44.53 percent of Ta Chen's resales to the United States were at prices below total acquisition cost. Therefore, we determine that Ta Chen made a substantial portion of its sales below total acquisition cost. As a result of this determination, we have examined whether Ta Chen's U.S. prices were substantially below its acquisition costs from YUSCO to determine whether Ta Chen engaged in middleman dumping during the POI. *See Comment 9.*

As we stated in the *Amended Preliminary Determination,* Congress has left to the Department the discretion to devise a methodology which would accurately capture middleman dumping. *See* S. Rep. No. 249, 96th Cong., 1st Sess. at 94 (1979) (''Senate Report''). To determine the magnitude of the losses incurred by Ta Chen in selling YUSCO's subject merchandise to the United States during the POI, we divided the amount of losses by the total sales value of all sales.

In the *Amended Preliminary Determination,* we calculated the amount of losses by comparing a weight-averaged adjusted U.S. price to the individual acquisition cost by model. We now believe this to be in error. Therefore, for the final determination, we are comparing a weighted-average adjusted U.S. price (as described above) to a weighted-average total acquisition cost (*i.e.,* invoice price plus an appropriate portion of Ta Chen's interest and G&A expenses). A weighted average to weighted average comparison is consistent with our methodology for calculating a margin in a less-than-fair-value investigation. *See* section 777A(d)(1)(A)(i).

Therefore, for the final determination, we multiplied the difference between the weighted-average adjusted U.S. price and the weighted-average total acquisition cost by the respective quantity of each U.S. model to determine the ''amount of losses.'' Based upon this calculation, we have determined that Ta Chen's losses on U.S. sales of subject merchandise during the POI are 2.18 percent, which we deem to be substantial. *See* Comment 11. Therefore, we find that Ta Chen engaged in middleman dumping during the POI.

2. Cash Deposit Rate

Where a producer sells through an unaffiliated trading company and has knowledge that the merchandise is intended for the United States, we normally focus only on the producer's sales to the trading company to determine the margin of dumping. However, as we stated in our *Amended Preliminary Determination,* a producer may sell to an unaffiliated reseller, such as a trading company which in turn sells the producer's merchandise at prices below the trading company's acquisition costs, thereby engaging in middleman dumping. Where we find middleman dumping in an investigation, as here, we must calculate a cash deposit rate that reflects that middleman dumping, as well as any dumping which occurs from the producer to the trading company. Therefore, we have assigned a cash deposit rate of 10.20 percent to sales produced by YUSCO and sold to the United States through Ta Chen. This reflects YUSCO's margin on U.S. sales to Ta Chen as well as the middleman dumping by Ta Chen. *See* 19 CFR 351.106. Any sale of subject merchandise by YUSCO other than through Ta Chen will be subject to a deposit at the rate determined for YUSCO alone.

Interested Party Comments: YUSCO

Comment 1: Petitioners contend that a group of YUSCO's ''indirect export sales'' (which we call ''scenario two'' sales) are, in reality, unreported home market sales. Petitioners note that these sales differ from export sales in four respects: (1) These sales are not packed in the manner usually required for export; (2) these sales are shipped to the customer's warehouse in Taiwan; (3) these sales do not have a completed shipping number (unlike direct export sales); and (4) these sales are subject to domestic value-added tax (VAT) (unlike direct export sales). Moreover, petitioners maintain that YUSCO was unable to support its claim of knowledge that the merchandise was exported. Petitioners assert that without such proof and in light of the evidence gathered at verification, the Department should include these sales in YUSCO's home market database. Petitioners further argue that the Department should not allow any deductions from the gross unit price because these sales were unreported and YUSCO has not made a timely claim for adjustments.

YUSCO argues that the Department should treat YUSCO's scenario two sales as third country sales. The determining factor, according to YUSCO, is the extent of the producer's knowledge of the final destination of these sales at the time of sale. Respondent explains that the Department and the courts have, in similar cases, considered sales to home market customers as export sales when the producer knew at the time of sale that the merchandise would be exported. Respondent cites to several cases to illustrate its point, including *Certain Hot-Rolled Carbon Steel Flat Products from Korea*, 58 FR 37176 (July 9, 1993) (finding that a sale to a home market customer was an export sale where the customer had knowledge of export, but no specific knowledge of the customer's further manufacturing).

YUSCO claims that the Department verified that YUSCO did indeed know at the time of the sale that the scenario two sales were for export to third countries. YUSCO argues that the Department verified that YUSCO used information provided by customers at the time of order to assign order numbers, the prefix of which always begins with ''U'' (for export) and a country code, effectively labeling these sales as export sales, and that YUSCO's customers for scenario two sales handled Taiwan custom clearance, further demonstrating exportation.

YUSCO claims that contrary to petitioners' assertion, every government uniform invoice (''GUI'') for scenario two sales has a shipping number followed by an asterisk, and that the asterisk is additional evidence that shows specific knowledge that the SSPC was destined for export. With regard to petitioners' claim that scenario two sales do not require any special export packing, YUSCO claims that nothing on the verified record indicates that packing specifications for scenario two sales were different from the packing specifications for direct export sales.

YUSCO argues that its collection of VAT from scenario two customers, and place of delivery of scenario two sales, are both irrelevant to the determination of the ultimate market for these sales, because, while it is YUSCO's responsibility to collect VAT from a

Taiwan company, in the end there is actually no VAT paid because the customer obtains a refund from the government. YUSCO cites *Antifriction Bearings (Other than Tapered Roller Bearings) an Parts Thereof from France, et al,* 60 FR 10900 (February 28, 1995), a case in which the Department determined that with regard to indirect export sales, the collection of VAT by the respondent is ''not a determinant of the ultimate destination of the merchandise.''

Department's Position

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 776(a), 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.

We find, based on the evidence set out below, that by not reporting a large portion of the home market database (so-called scenario two sales), 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 this information. Because the Department discovered the existence of these sales only at verification, this information was 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. Moreover, the Department cannot consider the information presented at verification because : (1) The information was not submitted by the established deadline; (2) the information discovered at verification is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; and (3) the information cannot be used without undue difficulties. As a result, we must rely on the facts otherwise available. 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 (Nov. 16, 1998); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (Oct. 16, 1997). We have determined, as described below, that YUSCO failed to cooperate within the meaning of Section 776(b) and have applied as facts available the highest petition margin, 8.02%. *See e.g., Notice of Final Determination of Sales at Less than Fair Value: Certain Preserved Mushrooms from Chile,* 63 FR 56613, 56620 (October 22, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain,* 63 FR 40391, 40396 (July 29, 1998) (applying adverse facts available when certain requested information is withheld by an interested party in its questionnaire response, but discovered at verification). *See* Facts Available Memorandum from Rick Johnson to Edward Yang, March 19, 1999 for full discussion.

Total Facts Available

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. *See* Questionnaire at B–1.

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 the 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 consumed by home market customers. Moreover, YUSCO failed to identify these customers and explain how it determined what sales to report. As a result, the Department was unaware of the existence of these so-called scenario two sales until verification. *See* Verification Report at 6. At verification, we found that YUSCO erroneously considered a substantial portion of its sales as third country export sales, even though they were sales to unaffiliated home market customers. *See* Verification Report at 6–7.

Further, we learned for the first time at verification that in determining that these scenario two sales were for export, YUSCO relied solely upon its internal classifications. Under YUSCO's system, sales with order numbers starting with ''D'' are home market sales and order numbers starting with ''U'' are destined for export. However, verification revealed that at least some portion of sales classified under ''U'' were consumed in the home market. YUSCO merely relied upon customers' statements that a product would be exported, without taking into account whether the customer would consume the SSPC by using it to produce non-

subject merchandise prior to export. YUSCO's internal classifications were therefore insufficient and unreliable in this regard.

We found at verification that one group of these scenario two sales, classified by YUSCO as ''UZ sales,'' accounted for a substantial portion of all scenario two sales. We found that all the customers which made up this subgroup of UZ sales were pipe manufacturers located in the home market. *See* Verification Report at 7 and Exhibit 7. Therefore, it is clear that YUSCO knew or had reason to know that the sales of SSPC to these pipe customers would be used in Taiwan to manufacture non-subject merchandise (*i.e.*, consumed in Taiwan). *See* Verification Report at 7. The other scenario two sales (also substantial in number), which were coded by YUSCO with a ''U'' at the beginning of the order numbers, were also sales made to companies in Taiwan. *See* Verification Report at 6–7. YUSCO provided no information about these customers, except for one customer, which YUSCO stated generally further manufactures SSPC into sheet, *i.e.*, non-subject merchandise, before export. *See* September 4, 1998 YUSCO supplemental questionnaire response. Therefore, from what information was provided, YUSCO knew that at least some ''U'' sales of SSPC were consumed in the home market by Taiwan manufacturers of downstream products. Although we took as exhibits sales listings of UZ sales and other ''U'' sales, and while they provided information as to gross unit prices and quantity, YUSCO did not provide us with sufficient product or customer information to allow us to determine if the merchandise sold was exported or further manufactured into non-subject merchandise in Taiwan. *See* Verification Exhibits 7 and 8.

YUSCO argues that the so-called scenario two sales were ''indirect export sales'' ultimately destined for export to third countries by YUSCO's Taiwanese customers. Because, according to YUSCO, at the time of sale YUSCO had knowledge that these sales were ultimately for export to third countries, YUSCO claims that it was correct in not reporting these sales as home market sales, even though sales were made to home market customers and shipped within the home market. As noted above, the Department's questionnaire requires that *all* sales of the foreign like product in the home market be reported (except as specifically provided for in the questionnaire which do not obtain here) and places an obligation on the respondent to identify customers that export and explain how it determined sales were for consumption in the home market.

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 should 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 (CIT 1997). Therefore, only if YUSCO could demonstrate that it knew or had reason to know that merchandise subject to investigation was not sold for consumption in the home market under section 773(a)(1)(B) might it have been appropriate for YUSCO to omit these so-called scenario two sales as home market sales. In this case, substantial evidence establishes that this was not the case. It is without question that merchandise sold in the home market, even if ultimately destined for export, is consumed in the home market in producing non-subject merchandise prior to exportation. *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 as home market sales at least the portion of the scenario two sales (UZ sales) that were consumed in the home market, regardless of whether the non-subject merchandise made by these customers from YUSCO's merchandise was later exported, because YUSCO knew or had reason to know that its pipe customers would consume the SSPC in Taiwan to manufacture pipe.

With regard to the remaining high percentage of the non-reported ''U'' sales, it was incumbent upon YUSCO to demonstrate that it knew or had reason to know that such sales to Taiwan customers were not destined for home consumption. Because the Department first learned of these sales during verification, it was compelled to review very limited information. *See* Verification Report at 6. There was no information concerning the customers involved in these ''U'' sales from which we could determine if such customers were merely Taiwanese resellers of SSPC for export or producers which had used YUSCO's merchandise to manufacture non-subject merchandise in Taiwan. YUSCO had no sales contracts or commercial invoices for ''U'' sales to demonstrate its claim. The only evidence to which YUSCO could point to establish that these sales were destined for export was YUSCO's internal classifications, which categorized the sales as export sales. *See* Verification Report at 7. Although YUSCO's invoices did have an asterisk in the shipping number which we were told signified ''indirect export'', as stated, all sales were made to Taiwan customers, and YUSCO's classifications did not sufficiently describe the types of customers. *See* Verification Report at 7. Thus, from such classifications, one cannot distinguish whether the customer is a manufacturer (*e.g.* pipe producer) or a mere reseller. Moreover, no evidence at verification revealed that YUSCO packed such sales for export. *See* Verification Report at 7. Again, these same internal forms also characterized the other portion of the scenario two sales, ''UZ'' sales (which, as stated, were in and of themselves a substantial percentage of home market sales), as destined for export, while verification revealed that UZ sales were for consumption in the home market in producing non-subject merchandise (pipe) prior to export. *See* Verification Report at 7.

Because YUSCO's classification was inadequate, by relying on it YUSCO failed to comply to the best of its ability with the Department's instructions. Moreover, what information it did possess regarding its Taiwan customers indicates that its merchandise was consumed in the home market. Therefore, YUSCO should have reported such sales to the Department in its questionnaire response. Because of its failure to report a substantial portion of its home market sales to the Department, which the Department did not learn until verification, it was too late for the Department to verify and use these sales in determining normal value. The information available to the Department at verification only included gross prices and quantity; the merchandise sold was not sufficiently described to permit model-matching to U.S. sales (although the Department took a computer diskette containing information about physical characteristics of the scenario two sales at verification, the information was incomplete, not verified, and in any event could not be utilized without undue difficulty by the Department because it would have to be input manually). Therefore, we determine that the information is so incomplete that it cannot serve as a reliable basis for reaching our determination of normal value.

We note that petitioners' argument regarding VAT is not valid since although YUSCO collects VAT from Taiwan companies involved in indirect

exports, its customers are reimbursed by the Taiwan government upon exporting the merchandise.

We also note that the circumstances of this case are different from those articulated in *Certain Cut-To-Length Carbon Steel Flat Products from Korea,* 58 FR 37176, 183 (July 9, 1993), which YUSCO cites for support in deeming the scenario two sales as export sales. The crucial distinction is that, in that proceeding, the respondent had timely reported the sales at issue to the Department. Thus, the Department was able to collect information, later verified, which established that the sales at issue were home market sales because the respondent did not know or have reason to know at the time of sale that its merchandise was destined for export. The present case, to the contrary, involves a large number of unreported sales which the Department was unaware of until verification, and so was unable to verify the nature of the sales to determine whether to use the sales in calculating normal value. Moreover, what the Department did uncover at verification indicated that YUSCO was aware that, at a minimum, a substantial portion of scenario two sales (''UZ'' sales) were for consumption in producing non-subject merchandise by YUSCO's Taiwan customers.

Adverse Facts Available

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition. Section 776(c) 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. While we rejected the petition margins based on cost, we determined that the price to price comparisons constituted sufficient evidence of dumping to justify initiation. *See Antidumping Investigation Initiation Checklist; Stainless Steel Plate in Coils from Belgium, Canada, Italy, South Africa, South Korea and Taiwan, pages 14–16* (estimated margins for Taiwan ranged from .29% to 8.02%); *see also* petitioners' submission dated April 17, 1998 (amendment to petition regarding price information).

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. *See* Facts Available Memorandum.

Therefore, we have chosen the highest of the calculated petition margins for Taiwan of 8.02 percent as total adverse facts available.

Comment 2: YUSCO argues that even if the Department makes an affirmative finding on middleman dumping by Ta Chen, the Department should assign and calculate an independent dumping margin for YUSCO based on the one reported U.S. sale made through a company in Taiwan other than Ta Chen. Ta Chen makes the same assertion. YUSCO claims that the Department verified that the sale in question was, in fact, a U.S. sale and that this sale was not made through Ta Chen. According to YUSCO, its order acceptance sheet for this sale shows its limited knowledge of the Taiwan company's further processing, as well as its knowledge that the merchandise would ultimately be sold to a U.S. customer. YUSCO argues that its lack of specific knowledge about its customer's further processing does not meet the Department's standard for ''consumption'' of SSPC in the home market.

YUSCO cites several instances in which it claims that the Department has considered a sale to a local customer as a U.S. sale where the respondent ''is aware at the time of sale that the merchandise is ultimately destined for the United States'': *Fresh Atlantic Salmon from Chile,* 63 FR 31411 (June 9, 1998); *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea,* 63 FR 50867 (September 23, 1998); *Yue Pak, Ltd.* v. *United States,* Slip. Op. 96–65 at 9 (CIT), aff'd. 1997 U.S. App. LEXIS 5425 (Fed. Cir. 1997); *Peer Bearing Co.* v. *United States,* 800 F. Supp. 959, 964 (CIT 1992).

YUSCO also cites the final determination in the LTFV investigations of *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea* (58 FR 37176 (July 9, 1993)) to support its argument that the Department considers a sale to a local customer as an export sale where the respondent has specific knowledge that the merchandise would be exported, but had no specific knowledge regarding the customer's further manufacturing. YUSCO distinguishes these circumstances from those addressed in the preliminary determination in the LTFV investigation of *Stainless Steel Sheet and Strip in Coils from Korea,* (64 FR 137 (January 4, 1999)), in which sales to a further manufacturer/exporter in Korea were deemed home market sales because the respondent had specific knowledge that the subject merchandise would be further manufactured into non-subject merchandise prior to exportation. YUSCO concludes that since Ta Chen was not involved in this U.S. sale, the Department should assign and calculate an independent dumping margin rate for YUSCO based on this sale.

Petitioners argue that sales to home market customers that are further manufactured prior to export are reportable home market sales. In this case, continue petitioners, the sale in question should be considered a home market sale since YUSCO knew at the time of sale that the merchandise would be further manufactured in Taiwan into non-subject merchandise and then sold to the United States. Petitioners cite the preliminary determination in *Stainless Steel Sheet and Strip in Coils from Korea* (64 FR 137) in which the Department included as home market sales those sales of subject merchandise to Korean companies that respondent knew would further manufacture the subject merchandise into non-subject merchandise for export. Petitioners also point to two of YUSCO's submissions in which YUSCO stated that it knew at the time of sale that the SSPC would be consumed prior to exportation. *See* YUSCO's September 22, 1998 letter to the Department and YUSCO's September 4, 1998 supplemental questionnaire response.

Petitioners also claim that the sale in question should be classified as a home market sale because YUSCO considered it a domestic sale in its normal course of business, it did not require special export packing, it was shipped to a customer in Taiwan prior to export, it

did not have a complete shipping number in the Government Uniform Invoice (''GUI''), and the sale was subject to a value-added tax (VAT). Petitioners also refer to a Department memorandum to the file dated November 25, 1998 which states that evidence established that YUSCO knew that the SSPC would be further manufactured into non-subject merchandise.

Petitioners conclude that, even if the Department continues to classify this sale as a U.S. sale, it should disregard this sale for the final determination since it is an ''outlier'' sale, and thus not representative of YUSCO's normal selling behavior. Petitioners cite several cases in which the Department ruled similarly; including *Ipsco, Inc.* v. *United States,* 714 F. Supp. 1211, 1216 (CIT 1989); *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6305 (February 9, 1999); and *Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, from Japan; Final Results of Antidumping Duty Administrative Review,* 57 FR 4960 (February 11, 1992).

Department's Position: The accurate determination of which sales should be classified as home market sales and used to calculate normal value, and which sales should be classified as U.S. sales and used to calculate export price, is central to accurately determining antidumping margins. In determining whether a sale made prior to importation to a customer outside the United States should be considered a U.S. sale, section 772(a) requires that respondent know that subject merchandise, purchased by an unaffiliated reseller, is destined for exportation to the United States. Because the statute does not address how the Department is to determine if a respondent knew whether home market sales of subject merchandise were destined for the U.S. market, the Department has discretion in making this determination. It has been the Department's practice to examine the evidence on a case-by-case basis to determine whether the respondent knew or had reason to know that its sales of subject merchandise to an unaffiliated company in the home market were destined for export to the United States. *See, Ina Walzlager* v. *United States,* 957 F. Supp. 251 (CIT 1997)(standard for determining knowledge under section 773(a) is imputed knowledge, not actual knowledge); *Yue Pak* v. *United States,* Slip Op. 96–65 at 9 (CIT) (upholding the Department's interpretation of ''for exportation to the United States'' to mean that the reseller or manufacturer from whom the merchandise was purchased knew or should have known at the time of sale that the merchandise was being exported to the United States).

Based on the record evidence, it is clear that YUSCO knew or had reason to know that its sale of subject merchandise to a certain customer was not for export to the United States because it would be further manufactured in Taiwan into non-subject merchandise. The non-subject merchandise was then to be exported to the United States. *See* September 4, 1998 Supplemental Questionnaire Response, September 22, 1998 letter to the Department, and October 19, 1998 letter to the Department in which YUSCO states that it had general knowledge and an understanding that the SSPC would be used to manufacture non-subject merchandise prior to export to the United States. Therefore the sale in question is in fact a home market sale. *See Memorandum to Edward Yang: Stainless Steel Plate In Coils from Taiwan; YUSCO Sales,* November 25, 1998. Nevertheless, as we have applied total adverse facts available to YUSCO (see Comment 1), the classification of this sale as either U.S. or home market is irrelevant to the calculation of YUSCO's margin.

Comment 3: YUSCO states that the Department should calculate YUSCO's dumping margins incorporating its corrections to minor errors that it submitted at the commencement of both cost and sales verification. Petitioners state that the Department should include an unreported discount for one YUSCO U.S. sale, as noted in the verification report.

Department's Position: We agree with both YUSCO and petitioners. However, we have not made these corrections for the final determination, since we have applied total adverse facts available to YUSCO, as described in Comment 1.

Comment 4: Petitioners claim that during YUSCO's cost verification YUSCO failed to quantify differences between the reported and booked costs of manufacture. Although YUSCO offered ''three contributing factors,'' state petitioners, YUSCO was unable to quantify the amounts related to each of the claimed reconciling items. Petitioners claim that the Department must thus adjust the reported total manufacturing costs (''TOTCOMs'') to reflect the unreconciled difference.

YUSCO contends that the Department should reject petitioners' argument to increase YUSCO's TOTCOM since all elements of YUSCO's production costs were verified to have been included in YUSCO's calculation of TOTCOM by control number (''CONNUM''). YUSCO argues that the difference between the reported TOTCOM and the booked TOTCOM is a result of the exclusion of beginning work-in-process prices from the reported TOTCOM, and from the allocation of processing costs by processing time for the purpose of this investigation, and these adjustments have been quantified in the verified record. Furthermore, YUSCO claims that during verification it was not asked to quantify the difference between the reported and booked TOTCOMs by item, so it is not fair to say that the company was unable to quantify the difference by item.

Department's Position: We agree with petitioners that the unreconciled difference found between the costs in the accounting records and the reported costs should be included in the revised reported costs. As articulated in *Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review,* 64 FR 77, 78 (January 4, 1999) (Comment 1), 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 because it did not identify and quantify all differences shown on the reconciliation. As stated in *Certain Cut-to-Length Carbon Steel Plate From Mexico,* ''[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 to YUSCO's argument that it was never asked to identify and quantify the unreconciled differences in its cost reconciliation, the Department requested YUSCO to quantify differences between its accounting records and reported costs in step III.D. of the cost verification agenda. While we agree with petitioners that the unreconciled difference found between the costs in the accounting records and the reported costs should be included in

the revised reported costs, based on our decision to apply total adverse facts available, this issue is moot.

Comment 5: Petitioners argue that the Department should include exchange gains and losses associated with notes payable instruments in YUSCO's net interest expense. According to petitioners, the Department discovered at the cost verification that YUSCO had excluded these exchange gains and losses from its financial expense rate, and that since net exchange losses related to notes payable is a cost incurred by the company as a whole for financing purposes, it should be included in the net interest expense calculation. Petitioners also assert that this result is consistent with the Department's cost questionnaire.

Respondents did not comment on this issue.

Department's Position: The Department agrees 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. For this final determination, we would have amortized the net exchange losses generated from debt over the current maturities of the debt and included the amortized portion in YUSCO's financial expenses. However, based on our decision to apply total adverse facts available, this issue is moot.

Interested Party Comments Re: Ta Chen

Comment 6: Ta Chen contends that the transactions involving the subject merchandise do not fall within the ambit of any middleman dumping provision because: (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 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 and follow commercial law in its administration of the antidumping laws. *See NSK* v. *United States,* 115 F. 3d 965 (Fed.Cir. 1997). Ta Chen claims that, under commercial law, a four-pronged test exists for determining whether an intermediary is acting as an agent or as a buyer. The test analyzes: (1) Whether 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. *See 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 states that an analysis of the record will show that the answers to these questions are negative and thus, Ta Chen is acting as an agent. Moreover, Ta Chen claims that based on the terms of sale from YUSCO to Ta Chen and from Ta Chen to TCI, there is a simultaneous transfer of title from YUSCO to TCI. In addition, Ta Chen claims that the terms of payment from TCI to Ta Chen are such that TCI assumes all risk of loss, and that furthermore, petitioners point to these same facts in their case brief. Thus, Ta Chen concludes that Ta Chen is acting as an agent of TCI.

Ta Chen states that the Tariff Act of 1930 allows only for dumping margin calculations with regard to producers and exporters. Ta Chen states that it is the Department's practice to treat manufacturers who have knowledge that the merchandise was exported to the United States as exporters, citing *AFBs from France,* 57 FR 28360 (Comment 18)(1992). According to Ta Chen, the record shows that the manufacturer, YUSCO, had such knowledge and therefore, would be treated as the exporter under the Department's normal practice. However, Ta Chen notes that the above practice has one exception, namely, middleman dumping.

Ta Chen argues that middleman dumping is a narrowly defined exception and does not apply in this case. Ta Chen points to the legislative history of the Trade Agreements Act of 1979 as evidence that middleman dumping is limited to the issues involved in *Voss International* v. *United States,* (*Voss*) C.D. 4801 (May 7, 1979), citing S. Rep. 249, 96th Cong., 1st Sess. 93–94 (''Senate Report'')(July 17, 1979). Ta Chen argues that the authority to perform a middleman dumping analysis, borne out of the legislative history, does not operate as a broader grant of authority beyond the issues presented in *Voss* and the issues in *Voss* are not present in the instant case, citing *PQ Corp.* v. *United States,* 652 F. Supp. 724, 734, 11 CIT 53 (1987), because YUSCO did not make a sale to Ta Chen. Therefore, Ta Chen concludes, 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 asserts that this sentiment is repeated in the Statement of Administrative Action of the Trade Agreements Act of 1979, H. Doc. No. 153 (Pt.II), 96th Cong., 1st Sess. At 412, in the Department's determination in *Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value,* (*Fuel Ethanol*) 51 FR 5572, 5577 (Feb. 14, 1986), and in the Department's own *Antidumping Manual.* Ta Chen claims that YUSCO sells directly to TCI, an unaffiliated U.S. customer, and therefore, there is no middleman.

Ta Chen argues that the Department has *not* considered a U.S. distributor which buys from a foreign manufacturer to be an ''exporter'' on the basis that the U.S. distributor is foreign-owned. Ta Chen states that to conclude otherwise would be contradictory because the U.S. distributor is clearly an ''importer.'' Ta Chen points to the Department's statements in its middleman dumping initiation memorandum in the investigation of *Stainless Steel Sheet and Strip in Coils from Taiwan,* as suggesting that TCI could be subject to a middleman dumping investigation by virtue of the collapsing doctrine. Ta

Chen argues that if the Department applied the collapsing doctrine in this manner, it would render moot all EP/CEP analyses of sales between a foreign parent and its U.S. subsidiary. Because this is clearly not the case, Ta Chen argues that the collapsing analysis does not apply to a U.S. importer and its foreign-owned parent. Rather, Ta Chen states that the collapsing doctrine applies to situations where two producers, with their own production facilities, are considered to be one entity for purposes of issuing a duty margin. Finally, Ta Chen argues that to discriminate against U.S. corporations that are foreign-owned would be bad policy and contrary to free trade policies.

Petitioners argue that the Department should take into account Ta Chen's dumping of YUSCO's SSPC since the Department has the authority to consider and include in its dumping calculations price discrimination by a middleman who can be located anywhere in the world. Petitioner claims that the Department should follow standard procedures as employed in *Mitsui & Co.* v. *United States,* Court No. 90–12–00633 at 9–10 and in *Fuel Ethanol,* and compare the foreign manufacturer's net U.S. price to its normal value, compare the middleman's net U.S. price to its normal value, and then sum the dumping margins.

Petitioners cite the legislative history of section 772 of the Tariff Act of 1930, H.R. Rep. No. 317, 96th Cong., 1st Sess. 75 (1979); and the Senate Report to illustrate that Congress gave the Department the authority to investigate resales by middlemen. Petitioners further cite the Statement of Administrative Action of the Trade Agreements Act of 1979, H. Doc. No. 153 (Pt. II), 96th Cong., 1st Sess. 412 (1979) reprinted in 1979 U.S.C.C.A.N. at 682. They argue that this Statement reiterated that resales by middlemen are to be examined as possible below-cost sales, regardless of the location of the middleman.

Furthermore, petitioners claim that Ta Chen is incorrect in asserting that the Department should not consider Ta Chen's resales of YUSCO's SSPC to Ta Chen's unaffiliated U.S. customers. Petitioners point to the Trade Agreements Act of 1979, accompanying legislative history, and *Voss,* and claim that the legislative history at H.R. Rep. No. 317, *supra* at 75 and the Senate Report at 94 explicitly state that sales involving middlemen are to be examined to avoid below cost sales by middlemen. When middlemen sell above their costs, the courts and the legislative history state, according to petitioners, that the producer's price to the first unrelated middleman may be used as a purchase price, as found in *Sharp Corp.* v. *United States,* 63 F.3d 1097, 1093–94 (Fed. Cir. 1995); *Smith Corona Group* v. *United States,* 713 F.2d 1568, 1572 (Fed. Cir. 1983); *PQ Corp.* v. *United States,* 652 F. Supp. 724, 735 (CIT 1987), and H.R. Rep. No. 317, *supra* at 75; and the Senate Report at 94. In these cases, according to petitioners, sales to middlemen were not to be examined when any sales involving them appeared to be below cost. Petitioners claim the Department's decision in *Fuel Ethanol* was consistent with these authorities and precedents.

Petitioners hold that for these reasons, Ta Chen is in this case a middleman, not YUSCO's first unaffiliated U.S. customer as Ta Chen claims, and that the Department should reject Ta Chen's contentions that the middleman dumping provision is inapplicable here.

Alternatively, if the Department concludes that middleman dumping refers solely to middlemen outside of the United States, petitioners argue that the Department should still find that Ta Chen acted as a middleman for YUSCO and ascribe middleman dumping accordingly. Petitioners believe that, contrary to Ta Chen's claim that YUSCO sold its SSPC directly to TCI, the record shows that YUSCO's sales were to Ta Chen, which then resold the SSPC to TCI. *See* Petitioner's Rebuttal Brief at 15–17 (proprietary version). Petitioners claim that the verified record shows that Ta Chen was intimately involved in the purchase and intra-company resale to TCI of YUSCO's product, and that the verification report did not conclude that TCI buys plate from YUSCO, but merely states that Ta Chen officials claimed such during verification.

Petitioners claim that the three-pronged test which Ta Chen discusses and bases on AK *Steel Corp.* v. *United States,* Slip Op. 98–159 at 15 (Nov. 23, 1998), is not applicable here. They argue that this test is used merely to classify sales as CEP or EP, and that in either instance, the Department uses sales to unaffiliated U.S. customers. In this case, according to petitioners, the Department can determine whether a middleman has dumped only by examining each middleman resale leading to the ultimate sale to the unaffiliated U.S. customer. Petitioners further argue that even if this test were to be used, it would result in the Department's finding that Ta Chen was substantially involved in the purchase and resale of SSPC because its role in the sales process was similar to that of a selling agent in *Industrial Nitrocellulose from the United Kingdom,* who was deemed to be substantially involved in the sales process because its duties included sales solicitation and price negotiation.

Department's Position: We disagree with Ta Chen that it is not the middleman for resales of YUSCO'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 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;* and Comments 9 and 13.

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 made sales to Ta Chen, not directly to TCI. Contrary to Ta Chen's assertions otherwise, Ta Chen did take legal title to the merchandise. Even though YUSCO 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, signed a sales contract with YUSCO, was invoiced by YUSCO, paid YUSCO for the merchandise in Taiwan dollars, paid bank charges on payments to YUSCO, entered these sales into Ta Chen's books, signed the export declaration, invoiced TCI, and undertook various other activities involved in exporting and transporting the merchandise. *See* Ta Chen's Verification report at 3, and YUSCO's Verification Report at 3 and Exhibit 11 (both reports dated January 28, 1999); *see also* Petitioners' Rebuttal Brief (proprietary version) at 15–17 (dated Feb. 16, 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. The EP/CEP analysis is used to determine if the selling activities of parties in the United States are more than ancillary to the transaction, in which case CEP methodology is warranted to take into account the selling expenses incurred in the United States when calculating the dumping margin. In contrast, the middleman dumping analysis is used to determine whether a transaction with a middleman is masking or understating any dumping. Regardless of whether Ta Chen calls itself an agent, it is a middleman and an appropriate subject of a middleman dumping inquiry. YUSCO invoiced Ta Chen for the merchandise and it was subsequently resold to an unaffiliated purchaser at less than the acquisition cost. This is precisely the type of situation cited by Congress when it addressed the middleman dumping concern. *See* H.R. Rep. No. 317 at 75. (*Voss* also involved the sale of subject merchandise by a producer to an unaffiliated trading company in the exporting country, which was then exported to the middleman's wholly-owned U.S. affiliate for resale to an unrelated U.S. customer). Therefore, Ta Chen's assertion that the Department's authority is limited to the issues presented by *Voss* is misplaced, because the issues in the instant case mirror those in *Voss.* YUSCO sold its merchandise to Ta Chen which, as the middleman, in turn sold it to the first unaffiliated U.S. customer through TCI.

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).

Comment 7: Ta Chen states that this middleman dumping investigation was unlawfully initiated. Ta Chen states that the Department's standards for initiating such an investigation requires timely and convincing evidence of middleman dumping, citing *e.g., Certain Forged Steel Crankshafts From Japan,* 52 FR 36984, 36985, *Consolidated Int'l Automotive* v. *U.S.,* F. Supp. 125, 129–30 (CIT 1992), and *Mitsui & Co., Ltd.* v. *U.S.,* 18 CIT 185 (1994). Further, Ta Chen states that the petitioners have an obligation to submit such evidence that is reasonably available to them, citing *Electrolytic Manganese Dioxide From Japan,* 58 FR 28551 and *Certain Stainless Steel Cooking Ware From Korea,* 51 FR 24563–64. Ta Chen argues that there was no convincing evidence of actual middleman dumping nor did petitioners submit evidence reasonably available to them on the subject and thus, the Department's standards have not been met.

Ta Chen contends that the record does not establish that the alleged lost sale was due to a sale of Taiwanese-origin product. Ta Chen asserts that in petitioner's September 21, 1998 submission, petitioners acknowledged that the alleged lost sale possibly due to a sale of both (or, as respondents believe petitioners' statement implies, either) Taiwanese and Korean product. Ta Chen also argues that the product alleged to have been sold to Company X was T04L 3⁄16 to ½ inch plate. However, respondent argues that petitioners misstated this specification in its middleman dumping allegation as 0.1875 to 0.3125 inch product. *See, e.g.,* paragraph 5 of Exhibit 1 of petitioner's August 25, 1998 submission and petitioner's August 11, 1998 submission at 10. Regardless, Ta Chen argues that its sole Taiwanese supplier, YUSCO, does not produce or sell a product above ¼ inch plate. Thus, Ta Chen argues that the alleged sale could not have been a sale of Taiwanese product. Thus, Ta Chen concludes, the convincing evidence standard has not been met.

Ta Chen also states that the Department initiated this middleman investigation based on a claim by petitioners that Ta Chen actually sold subject merchandise to Company X in October 1997. Ta Chen argues that both petitioners and the Department had available to them the knowledge that there was no such sale. Ta Chen states that this same ''lost sale'' was previously alleged in petitioner's March 31, 1998 antidumping petition to both the Department and the International Trade Commission (ITC). Ta Chen stated that the petition also included a contact name and phone number at Company X. Ta Chen claims that it made no sales whatsoever to Company X in October 1997 or at any other time. Moreover, Ta Chen suggests that a review of its sales listing will show that in October 1997, its lowest sales price was well above both the alleged price to company X and petitioner's alleged acquisition costs. Finally, Ta Chen states that the ITC contacted Company X regarding the alleged ''lost sale'' and that Company X denied the sale took place. Ta Chen

argues that because the results of the ITC's phone call were known to petitioners before it used this ''lost sale'' in its request to initiate a middleman dumping investigation, counsel for petitioners submitted a false representation to the Department.

Moreover, Ta Chen claims that petitioners did not satisfy their requirement to utilize sources readily available to them. Ta Chen states that the petitioners made only a single attempt to contact Company X themselves but were unsuccessful in attempting to reach a certain contact at Company X. Ta Chen asserts that it had subsequent contact with this individual and was aware of that individual's ready availability to speak with petitioners. However, respondent argues that petitioners never attempted to call back this individual. Thus, Ta Chen argues, petitioners did not make use of the sources readily available to them.

Petitioners argue that they met the Departmental requirement of ''timely and convincing evidence that the trading company is in fact dumping.'' *See* Petitioners' Rebuttal Brief at page 27. Moreover, petitioners assert that evidence may be only that which is reasonably available to Commerce. On these accounts, petitioners defend their submissions as consistent with the standard required by the Department. Petitioners also assert that their evidence was advanced in good faith as the best information reasonably available to petitioners that pointed toward middleman dumping by Ta Chen, and furthermore, that Ta Chen has not shown this information to be false. Petitioners conclude that the reasonableness of the evidence provided is borne out by the fact that the Department indeed found middleman dumping in its *Amended Preliminary Determination*.

Department's Position: We disagree with Ta Chen that our initiation of a middleman dumping investigation was illegal and should be rescinded. As stated, Congress plainly intended for the Department to have the authority to both investigate middlemen and to avoid below cost sales by middlemen. *See Senate Report* at 412, (''successive resales from the foreign producer to the first unrelated U.S. buyer are examined to avoid sales by middlemen below their costs''). Through its administrative practice, the Department has developed a reasonable standard for analyzing allegations of middleman dumping.

As we stated in our memorandum initiating this middleman dumping investigation, the standards for initiating a middleman dumping allegation are similar to those of initiating a traditional antidumping investigation, in that we must have evidence to suspect that middleman dumping is occurring. *See Memorandum for Joseph Spetrini: Stainless Steel Plate in Coils From Taiwan: Whether To Initiate a Middleman Dumping Investigation* (Middleman Initiation Memo)(Aug. 25, 1998)(non-proprietary version on file in Rm. B–099 at the Department of Commerce). In analyzing whether to initiate we will evaluate information, either direct or circumstantial, and will require that petitioners provide supporting data on prices and costs which are reasonably available to them and that this information is convincing. *See Consolidated International Automotive, Inc.* v. *United States,* 809 F. Supp. 125, 130 (CIT 1992)(upholding the Department's refusal to initiate a middleman dumping investigation where petitioner only offered a theory, but no sufficient data); *Preliminary Determination of Sales at Less Than Fair Value; Stainless Steel Cooking Ware From the Republic of Korea,* 51 FR 24563 (July 7, 1986)(refusing to initiate because no documents submitted contained pricing or cost data); *Electrolytic Manganese Dioxide (EMD) From Japan; Final Results of Antidumping Administrative Review;* 58 FR 28551 (May 14, 1993)(the Department will not initiate on mere conjecture but requires convincing evidence presented by petitioners). Here, petitioners provided both timely price and cost information, reasonably available to them, which was supported by affidavits and which the Department reviewed and found credible and convincing. *See Middleman Initiation Memo.*

First, we disagree with Ta Chen's claim that the sale (which we viewed as an offer, see below) described in petitioner's affidavit to Company X was not of Taiwanese origin, and that the Department should have recognized this as the case because the ''weekly report'' (sales call report) attached to the affidavit described a product which was not in the range of thickness produced by YUSCO, Ta Chen's supplier. We looked at the grade, thickness, width and surface finish of the U.S. sale referred to in the affidavit, compared its characteristics to those of the three YUSCO reported control numbers (CONNUMS) which petitioner had relied upon in their analysis and found two of YUSCO's sales that were comparable. *See* Middleman Initiation Memo at 5. Further, contrary to Ta Chen's assertions otherwise, the product dimensions for the price quoted in the affidavit covered a product with a thickness between .1875 and *either* .3125 or .50. Ta Chen admits that YUSCO produced subject merchandise up to .25 inches in thickness. *See* Ta Chen Case Brief at 31 (Feb. 9, 1999). Therefore, regardless of the upper end of this product's thickness range, YUSCO produced product within the ranges described in both the affidavit and the accompanying weekly report. The affidavit clearly indicated that this alleged sale took place within the POI, and thus the information submitted by petitioners was also relevant to this investigation. As a result, the Department had reasonable evidence from which to conclude that this was merchandise produced by YUSCO.

Second, with regard to whether the sale alleged in the affidavit occurred, Ta Chen argues that this sale was never made and, as a result, the Department could have learned this had it contacted the affiant directly. However, we initiated our middleman dumping investigation on the basis that this was a price quote, but not necessarily a sale. *See* Middleman Initiation Memo at 4. The affidavit submitted by petitioners stated that the affiant believed there was a sale by Ta Chen of subject merchandise on a date within the POI; it did not say unequivocally that there was a completed sale. As in an antidumping investigation, the Department has the authority to initiate a middleman dumping investigation based upon an offer for sale. *See* section 731(1) (''a class or kind of foreign merchandise is being or is likely to be sold''); section 771(14) (''sold, or in the absence of sales, offered for sale''). Ta Chen has not argued that the transaction at issue was not an offer, but argues only that it was not a completed sale.

Moreover, at the time of the investigation, there was no reason for the Department to go beyond the affidavit and supporting weekly report as submitted by petitioners to confirm whether there was an offer for sale. As a matter of practice, when initiating an antidumping investigation the Department regularly relies upon U.S. price quotes (whether sales or offers) submitted in affidavits, provided the affidavit supplies sufficient and credible information. Here, the affidavit was submitted with a supporting call report by a U.S. customer in the business of selling the domestic like product who was generally familiar in the marketplace with Ta Chen and its 100 percent-owned U.S. affiliate, TCI, and with their U.S. pricing.

Further, Ta Chen did not raise its concerns to the Department regarding the alleged lost sale listed in the petition

for ITC purposes until after our initiation. *See* Letter from Ta Chen dated September 14, 1998 (Ta Chen claims that it did not receive the information it needed until after our initiation because it had not applied for an APO earlier, but we note that its wholly-owned affiliate, TCI, as the importer of record, is an interested party and it is incumbent upon an interested party to timely avail itself of access to proprietary information). However, there was no reason for the Department to have reviewed that information when it initiated the middleman dumping claim. The Department viewed this as an offer for sale and therefore evidence of a lost sale would not have been material. Additionally, as stated, there was no indication before the Department that the affidavit was untrustworthy or lacked merit. Finally, with regard to any information that petitioners may have possessed through the ITC proceeding that the price quote at issue was a lost sale prior to submitting it to the Department, we are not permitted access to proprietary ITC information, and therefore we have no means to arrive at the true state of the facts in this regard. However, as discussed, even if there was not a sale, it does not necessarily follow from Ta Chen's allegations that there was not an offer for sale and Ta Chen has not argued otherwise. As a result, we believe the middleman dumping investigation was properly initiated.

Comment 8: Ta Chen states that the bank charges reported under CREDIT1U and CREDIT2U fields are associated with the movement of funds between affiliated parties. Ta Chen argues that the Department does not deduct these in a below cost of production analysis because these charges are incurred as a result of internal business decisions. As such, the Department should not consider these in its below acquisition cost analysis.

Petitioners did not comment on this issue.

Department's Position: In the Department's *Memorandum to Edward Yang, Office Director: Analysis for the Amended Preliminary Determination of Stainless Steel Plate from Taiwan: Middleman Dumping Investigation,* November 25, 1998, at 1, we agreed with petitioners' allegation that a ministerial error had been made by failing to account for bank fees incurred in Taiwan and the United States. As we stated in the *Amended Preliminary Determination, ''actual* selling expenses should be deducted in the middleman dumping analysis.'' *See Mitsui & Co., Ltd.* v. *United States,* Slip-Op. 97–49 (April 1997)(*Mitsui 1997*).

While Ta Chen argues that these bank charges are for movement of funds within Ta Chen, we note that these charges are incurred with respect to sales of subject merchandise. As Ta Chen stated on page 20 of its November 23, 1998 supplemental response, the bank charge incurred and paid in the United States has been calculated based on the Ta Chen invoice by actual weight, and is a fixed amount which does not vary with transaction value. For the bank charge incurred and paid in Taiwan, Ta Chen stated that this bank charge varies with the value of the transaction and thus is allocated over value.

The fact that these bank charges are costs that Ta Chen argues are ''associated with internal movement of funds between affiliated parties'' does nothing to negate the fact that these are actual costs incurred with respect to the sale of subject merchandise. These bank charges were actually incurred and would not have been incurred but for the fact that Ta Chen made U.S. sales of subject merchandise. Therefore, they are properly considered as direct selling expenses, and must be deducted from U.S. price in conducting our middleman dumping analysis.

Comment 9: Ta Chen argues that the Department should not consider Taiwanese-based selling expenses incurred prior to importation in its final determination since Ta Chen is a pipe manufacturer and is not in the coil business. Ta Chen bases its argument on the Department's precedent in *Fuel Ethanol.* If, however, the Department chooses to use Taiwanese general and administrative expenses, Ta Chen argues that the Department could add the additional expenses presented at the start of verification and could also increase this sum by the ratio of total administration expenses to total selling departmental expenses. Ta Chen points out that it is not unreasonable to believe that only two clerks in Taiwan are involved in SSPC since there were only a small number of invoices and the clerks acted merely as paper processors.

Petitioners argue that the Department should base Ta Chen's general and administrative expenses (G&A) for constructed value on Ta Chen's audited financial statement since this is required by the Department's questionnaire. Petitioners claim that the G&A that Ta Chen calculated is significantly understated because it only includes expenses associated with two clerks involved in SSPC sales and does not include expenses associated with Ta Chen's accounting, general management and legal departments. Petitioners cite *Mitsui 1997* as precedent for using constructed value in calculating normal value (and therefore, applying G &A) in a middleman dumping case. They continue by claiming that Ta Chen incorrectly relied on a statement in *Fuel Ethanol,* and that in *Fuel Ethanol* the Department did actually include the foreign G&A in the constructed value used in calculating the middleman dumping margin.

Department's Position: As we stated in our *Amended Preliminary Determination,* Congress has left to the Department the discretion to devise a methodology which would accurately capture middleman dumping. See Senate Report. In our *Amended Preliminary Determination,* to determine if Ta Chen's U.S. sales prices were substantially below its acquisition prices from YUSCO, we divided the amount of the losses by the total sales value for all sales. In our *Amended Preliminary Determination,* we calculated the amount of losses by taking the sum of the invoice price from YUSCO to Ta Chen, minus the adjusted U.S. sales price of each below cost sale. However, at that time we did not add any additional costs incurred by Ta Chen in purchasing YUSCO's merchandise. We now believe this was an error. Because Ta Chen incurred G&A expenses (including interest expenses) on its purchases of YUSCO merchandise, such costs must be added to the acquisition price (which is analogous to an input cost) from YUSCO in order to calculate Ta Chen's total acquisition costs regarding purchases of YUSCO's product. Only in this way can we determine the magnitude of losses Ta Chen absorbed in selling such merchandise in the United States and thus calculate the full extent of middleman dumping. This comports with how the Department determines whether sales are made below cost. *See* section 773(b)(3). Our antidumping manual also indicates that middleman dumping occurs where the middleman is not recovering its acquisition and selling costs. *See* Antidumping Manual Chapter 7. Therefore, to the extent that this methodology conflicts with our earlier approaches in *Fuel Ethanol* and *Mitsui 1997,* our determination supersedes both.

In *Fuel Ethanol,* after determining that the middleman was selling below acquisition cost by comparing its acquisition cost from unrelated suppliers to U.S. resale prices to the first unaffiliated customers, minus all costs and expenses incurred in selling the merchandise by the middleman and its U.S. affiliate to the United States, we found all home market sales by the middleman's parent to be below cost

and then calculated foreign market value based upon constructed value. However, it is the middleman's acquisition cost for purchases of subject merchandise and resales of that merchandise into the United States that are under scrutiny. Thus, the proper comparison is between the acquisition costs and the price of those resales. Comparing the middleman's home market sales of the foreign like product from all producers to U.S. resales is inappropriate. In *Mitsui 1997,* although we indicated that to complete our analysis we would require additional information about the middleman and its suppliers regarding sales, expenses and cost information to calculate foreign market value, we did not indicate that we would follow our approach in *Fuel Ethanol* in calculating the magnitude of losses to determine middleman dumping. We found that, based upon comparing the supplier's invoice price to the U.S. resale prices, the trading company had not made a substantial portion of resales at below acquisition cost.

Because we have Ta Chen's verified financial statements, we have Ta Chen's total expenses for all sales and its total cost of all goods. Relying upon this data, we arrived at a percentage of G&A expenses (including interest) for Ta Chen's purchases of YUSCO's merchandise which we have used in our calculation to determine middleman dumping, *i.e.*, the magnitude of losses sustained by Ta Chen in selling YUSCO's product into the United States. We do not agree with Ta Chen that it merely undertook minimal activities on behalf of TCI and, therefore, reject its call to add on G&A expenses only incurred for two clerks (See Comment 6).

Finally, as discussed in a previous portion of this notice (''Middleman Dumping'') we note that we are also changing the methodology used to identify whether there was a substantial portion of resales by Ta Chen sold below its acquisition costs to mirror the methodology used to determine the magnitude of losses. In the *Amended Preliminary Determination,* we compared the U.S. resale price (after deductions as described) to the supplier's invoice price. However, as discussed above, we now believe that the acquisition price alone does not reflect all the costs associated with Ta Chen selling the foreign producer's merchandise to the United States. Because Ta Chen also incurred G&A and interest expenses, we will add such expenses to the acquisition price to arrive at the total acquisition cost (acquisition price plus associated G&A and interest costs) incurred by Ta Chen in selling this merchandise. We will continue to compare the total value of all sales below acquisition cost to the total value of all Ta Chen's resales to determine if there were a substantial portion of resales below acquisition cost. Our change in methodology results in a finding that 44.53 percent of resales were sold below acquisition cost, which we find is a substantial portion of Ta Chen's resales.

Comment 10: Ta Chen requests that the Department use YUSCO's selling prices rather than Ta Chen's reported acquisition costs in the final determination. Ta Chen makes this request based on a comparison of these costs and prices noted in the verification report, which revealed certain differences between YUSCO's selling price and Ta Chen's reported acquisition cost.

Petitioners argue that the Department should disregard Ta Chen's request for the Department to use YUSCO's reported selling prices to TCI rather than TCI's reporting of such prices since at verification the Department found no discrepancies with regard to Ta Chen's constructed value methodology.

Department's Position: We agree with petitioners and are continuing to use Ta Chen's reported acquisition prices. At verification, we found a significant number of discrepancies in attempting to verify Ta Chen's acquisition prices. However, because overall Ta Chen's reporting represents a conservative approach, we will continue to use Ta Chen's reported acquisition costs for this final determination.

Comment 11: Ta Chen argues that although the Department preliminarily determined that Ta Chen sold subject merchandise in substantial quantities and substantially below its cost of acquisition, the Department never articulated the rationale or the standard it used in determining what is substantial. Ta Chen contends that given a *de minimis* level of two percent, and given that ''recognized authorities'' and ITC Commissioners have observed that margins are not considered substantial until they exceed the 10 to 20 percent levels, a determination by the Department that three percent represents a substantial loss must be explained. Ta Chen also argues that since trading companies ''typically'' operate at low margins, and because TCI held the merchandise in inventory in the United States for a substantial amount of time, a three percent loss is reasonable given a (purported) 12 to 23 percent drop in the prices of subject merchandise during the POI.

Petitioners argue that the Department should not set a fixed numerical guideline to determine the existence of substantial losses since each case has its own circumstances. Additionally, Ta Chen has not demonstrated a meaningful correlation between the two percent *de minimis* standard for dumping margins and the middleman dumping criterion of substantial losses. Petitioners continue by claiming that contrary to Ta Chen's claim, Ta Chen should not be allowed to sell at below cost merely because it was following a downward market, and that Ta Chen's selling prices actually contributed to this downward market.

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 2.18 percent, as well as the three percent calculated in the *Amended Preliminary Determination,* constitutes substantial losses. As an initial matter, it is undisputed by both parties that such losses are above *de minimis.* See 19 CFR 351.106. Secondly, we note that Ta Chen's assertion that trading companies ''typically'' operate at low margins indicates that losses which may, on an absolute basis, be at seemingly lower levels may still be considered ''substantial''. Thirdly, it is our understanding that SSPC is traded as a commodity. Therefore, it is price sensitive and sales are thus often made or lost based on relatively small differences in price. Hence, such a percentage likely is significant in this industry.

Comment 12: Ta Chen requests that the Department clarify its instructions to the U.S. Customs Service to indicate the full name of Ta Chen Stainless Pipe, Ltd. because the *Amended Preliminary Determination* stated that ''this investigation covers two respondents, Yieh United Steel Corporation and Ta Chen Stainless Steel Pipe, Ltd.'' However, the Department has established a deposit rate for Yieh United/Ta Chen.

Petitioners argue that the language should remain the same because the reference to ''Ta Chen'' is inclusive of both Ta Chen Stainless Pipe, Ltd. and TCI. Petitioners assert that this is appropriate given that these two companies are affiliated and that section 772 of the Tariff Act directs the Department to ''examine sales from the foreign producer to middlemen (trading companies) and any sales between middlemen before sale to the first unrelated U.S. purchaser to avoid below cost sales by the middlemen.''

Department's Position: We disagree with petitioners. Although in antidumping investigations we do assign channel-specific deposit rates on occasion, these are producer-exporter specific rates. While we believe that a rate including both YUSCO and Ta Chen is appropriate, as discussed in other sections of this notice, we do not believe it is appropriate to include TCI, because TCI is an importer and if it imports from another producer or reseller, it should, as any other importer, be subject to the cash deposit rate for that producer/reseller or the all others rate. Moreover, the importer-specific rates we calculate in an annual review are for purposes of assessing duties. Since we do not order the final assessment of duties in an investigation, this calculation does not apply. Therefore, for the final determination, we will continue to assign a deposit rate to ''Ta Chen'' with the understanding that this refers to only Ta Chen Stainless Pipe Co., Ltd. We also note that any sales by Ta Chen of subject merchandise produced by any party other than YUSCO will be subject to the all others rate.

Comment 13: Petitioners argue that the Department should recalculate Ta Chen's U.S. credit and U.S. inventory carrying expenses. Petitioners contend that Ta Chen failed to account for compensating balances required on its loans in Ta Chen's calculation of its short-term interest rate. In addition, petitioners request that the Department increase Ta Chen's credit expenses to account for the interest expenses and bank charges discovered at verification. Petitioners cite *Mitsui 1997* as a precedent for calculating normal value based on constructed value in a middleman dumping case.

Petitioners argue that the Department should calculate inventory carrying costs for the time the merchandise is in transit from Ta Chen's warehouse in Taiwan to the time of entry into TCI's inventory. Petitioners assert that this cost must be deducted from U.S. price as U.S. inventory carrying costs. This claim is based on Ta Chen's statements that title of the merchandise passes instantaneously from YUSCO to Ta Chen to TCI. Thus, the merchandise is in the inventory of TCI during shipment.

Ta Chen requests that, for reasons indicated in *Mitsui 1997*, the Department continue not to deduct imputed costs. Ta Chen claims that the concern related to middleman dumping is only whether the middleman is selling below cost, and thus any attempt to include constructed value or other imputed costs would be unlawful. Thus, since the interest expenses and inventory carrying costs (which are not even incurred in the United States, but rather on the ocean) that petitioners mention are only used in calculating imputed costs, Ta Chen argues that petitioners' argument is irrelevant.

Department's Position: As in our *Amended Preliminary Determination,* we have not included imputed credit expenses and inventory carrying costs in calculating U.S. resale prices because, as we stated, these expenses represent opportunity costs, not actual costs to the company. *See also Mitsui 1997.* In addition, as set out in our *Amended Preliminary Determination,* we will deduct from Ta Chen's U.S. resale the actual expenses incurred in selling the product in the United States. *See* Comment 9. We will not include imputed costs and expenses because we continue to believe that middleman dumping involves sales below the middleman's actual total acquisition costs and expenses and therefore to include imputed costs and expenses would be inappropriate. Similarly, because the focus of middleman dumping is solely on whether the merchandise was sold to the first unaffiliated party in the United States at prices below the middleman's total acquisition costs and expenses, instead of using constructed value, in calculating a middleman dumping margin, we have used a middleman acquisition price which, as stated, is analogous to the input cost, and the middleman's actual G&A and interest expenses. Taken together, these items encompass all costs associated with purchasing the merchandise.

As discussed in other sections of this notice, we will add to Ta Chen's acquisition price a portion of its total G&A expenses, including interest (allocable to sales of subject merchandise), because these are actual costs incurred by Ta Chen in purchasing YUSCO's merchandise. *See* Comments 9 and 20. This is also consistent with constructing costs in lieu of prices under section 773(b)(3), where only actual G&A including interest is used (and will not, therefore, include profit, see Comments 9 and 20).

Comment 14: Petitioners argue that the Department should recalculate Ta Chen's reported warehousing expenses to include building depreciation expenses and total interest for land and buildings associated with TCI's Los Angeles warehouse and then deduct these as direct selling expenses. With regard to the interest for land and building, petitioners' claim that this expense was calculated only for the square footage specifically attributable to coil, but that the Los Angeles warehouse expense was allocated over all merchandise.

Ta Chen states that the correct building depreciation expense for coil shipments from the Los Angeles warehouse can be calculated by multiplying the warehouse building mortgage interest rate by petitioners' estimate of 1997 warehouse building depreciation and then dividing by total pounds shipped.

Ta Chen points to the verification exhibits to show that, contrary to petitioners' claims, the Los Angeles warehouse interest expense was calculated correctly because both the mortgage interest and warehouse expense were allocated over only coil shipments.

Department's Position: Regarding the inclusion of building depreciation expenses, we agree with both Ta Chen and petitioners and have recalculated TCI's warehousing expenses accordingly. We also agree with Ta Chen with regard to the calculation of mortgage interest since, as seen in the verification exhibits, both the interest expense and warehouse expense were allocated over shipments of SSPC.

Comment 15: Petitioner claims that, in the final determination, we should deduct expenses related to an unreported Chicago warehouse discovered at verification.

Ta Chen argues that petitioners erroneously allocate the unreported Chicago warehouse's charge to the amount stored at the reported warehouse, and the fact that this one Chicago warehouse was not reported actually results in over-reported Ta Chen warehouse expenses.

Department's Position: We agree with Ta Chen. Petitioners' recalculation of per unit Chicago warehouse expenses does not account for the quantity stored at the unreported warehouse. Based on an exhibit taken at verification, we conclude that, in fact, Ta Chen's reported warehousing expenses for its warehouse activities in Chicago were conservative. We thus have not adjusted Ta Chen's warehousing expenses.

Comment 16: Petitioners argue that Ta Chen failed to account for all of its overhead expenses in calculating indirect selling expenses. Petitioners cite such expenses as utilities, property taxes, and security expenses as items which are general in nature. Petitioners request that the Department recalculate Ta Chen's indirect selling expenses as total selling expenses, including interest expenses, as a percentage of sales.

Ta Chen acknowledges that perhaps it should have allocated, to SSPC, expenses for charitable contributions,

postage & delivery, security, taxes & licenses, property taxes, and utilities. Ta Chen also claims, however, that for the other indirect expenses mentioned by petitioner there is no evidence that they are related to sales of SSPC, as the verification findings show, and that petitioners should have raised this argument before verification.

Department's Position: We agree with petitioners. In Exhibit 11 of its November 23,1998 supplemental, Ta Chen reported both an overall ratio of U.S. selling expenses for sales of all products and a ratio it represented as appropriate to sales of stainless steel coils. In its data submission, Ta Chen reported the latter. However, Ta Chen stated that ''* * * it does not matter which figures are used, as far as the final dumping margin.'' *See*, November 23, 1998 submission at 24.

While the Department reviewed a portion of TCI's reported indirect selling expenses attributable to coil at verification, the nature of any verification includes the employment of spot-checking techniques, which are necessary given the extreme time constraints for a verification. Therefore, while the Department will generally find an item to be successfully ''verified'' based on successful spot-checks of data, such a conclusion becomes open to rebuttal if compelling evidence is presented after verification which calls into question any calculation. In this respect, in its rebuttal brief, TCI now admits that certain expenses had been erroneously excluded from its selling expense allocation for stainless steel coil. Thus, by Ta Chen's own admission, its calculation of indirect selling expenses for coils is flawed. Therefore, for this final determination, we have used TCI's overall operating costs as a percentage of sales as previously reported in Exhibit 11 of Ta Chen's November 23, 1998 supplemental response. This is in accordance with our normal practice. *See Yieh United Steel Corporation (YUSCO) and Ta Chen Stainless Pipe Co., Ltd. Analysis Memorandum for the Final Determination of the Less-Than-Fair-Value Investigation of Stainless Steel Plate in Coil from Taiwan* (''*Ta Chen Final Analysis Memo*''), March 19, 1999 at 3.

Comment 17: Petitioners argue that the Department should recalculate one CONNUM's acquisition cost in Ta Chen's constructed value worksheet to exclude the warranty claim since the payment of the warranty claim could not be verified and YUSCO stated that it did not accept any such warranty claim.

Ta Chen claims that this is irrelevant since the Department did not use constructed value in its middleman dumping margin analysis.

Department's Position: We agree with petitioner and have recalculated Ta Chen's acquisition price, accordingly. This so-called warranty claim is actually an offset to Ta Chen's acquisition price and is analogous to a billing adjustment on an input. Because we were unable to verify this offset claim, we are calculating a weighted-average acquisition price that excludes this offset.

Comment 18: Petitioners assert that although none were reported, Ta Chen's interest expenses for the constructed value calculation should be calculated by dividing the company's total net interest expense divided by its cost of sales, as required by the Department's questionnaire.

Ta Chen argues that an adjustment should not be made for Ta Chen's interest expenses based on the fact that Ta Chen guarantees TCI's loans. Ta Chen states that, as the record shows, Ta Chen never paid any of TCI's interest expense on TCI's loans.

Department's Position: We agree with petitioners. As described above (*see* Comment 6), Ta Chen plays an integral role in the purchase and resale of SSPC and therefore its interest expenses must be taken into account as part of total G&A expenses. *See* Comments 8, 13. As petitioners suggest and as the questionnaire prescribes, we have calculated Ta Chen's interest expenses by dividing the company's total net interest expense divided by its cost of sales. *See Ta Chen Final Analysis Memo*, at 2–3.

Comment 19: Petitioners state that the Department should correct Ta Chen's errors found at verification. Petitioners also contend that Ta Chen's latest submitted data is missing field INDIRS2U representing U.S. warehousing expenses. Petitioners request that the Department utilize all appropriate expenses in its final determination.

Ta Chen states that U.S. warehousing expenses were reported in field DIRSEL2U and that field INDIRS2U was erroneously included in its initial dataset.

Department's Position: We agree with petitioners and have corrected Ta Chen's errors found at verification. These errors include recalculation of U.S. repacking expenses, U.S. commissions, international freight, credit expenses and U.S. indirect selling expenses. However, we have not deducted the INDIRS2U field because the record does not support a conclusion that this field represents U.S. warehousing expenses or any other expense that has not already been accounted for in this final determination. In fact, the Department included the field INDIRS2U in its *Amended Preliminary Determination* calculations, since this field was included in the database which the Department used in its preliminary calculations. However, such inclusion was in error, because this information constituted unsolicited (as well as unexplained) new data (submitted October 14, 1998, in response to the Department's October 9, 1998 letter requesting unrelated information). Indeed, we note that Ta Chen excluded this field in its supplemental sales submission to the Department of November 23, 1998. However, due to time constraints, we were unable to use the November 23, 1998 database (*i.e.*, an updated database which excluded the field INDIRS2U) for the *Amended Preliminary Determination*. *See Ta Chen Final Analysis Memo*, at 3.

Comment 20: Petitioners argue that the Department should correct the ''ministerial errors'' found in the preliminary determination. One such alleged error is that the Department did not use the correct exchange rate in its analysis of whether Ta Chen engaged in middleman dumping. Petitioners contend that in that part of its analysis, the Department should have chosen, as the exchange rate, the date of YUSCO's sale to Ta Chen rather than on the date of TCI's resale in the United States. Petitioners support their argument by stating that the focus in middleman dumping is on whether Ta Chen covered its cost of acquisition with respect to the price paid by Ta Chen to YUSCO. Furthermore, they point to the *Amended Preliminary Determination* in which, the Department selected, as the exchange rate, the date of YUSCO's sale to Ta Chen in calculating the dumping margin attributable to YUSCO. Petitioners request that the Department consistently employ the date of sale for the transactions between YUSCO and Ta Chen in evaluating the extent of Ta Chen's middleman dumping.

Petitioners also argue that the Department did not correctly calculate the overall dumping margin for YUSCO/Ta Chen since the margin calculation on the sales between Ta Chen and its unaffiliated U.S. customers inadvertently omitted U.S. credit expenses, U.S. inventory carrying costs, CEP profit, inventory carrying costs incurred in Taiwan for U.S. sales, and indirect selling expenses incurred in Taiwan for U.S. sales. Additionally, claim petitioners, with regard to Ta

Chen's constructed value, the Department failed to include indirect selling expenses, G&A, interest expenses, and constructed value profit.

Ta Chen argues that the Department should use the exchange rate on the date TCI receives payment from its unaffiliated U.S. customer in converting Taiwanese acquisition costs and expenses into U.S. dollars. Ta Chen argues that use of this exchange rate would indicate the true profitability of the transaction because the SSPC was actually purchased from YUSCO in Taiwanese currency. To obtain the actual profit or loss from the perspective of a Taiwanese trading company, one would have to convert the U.S. dollars received and convert that to Taiwanese dollars based on the existing exchange rate to determine if the resale price was more than the acquisition price.

Department's Position: With respect to the appropriate exchange rate, we disagree with both petitioners and Ta Chen and have continued to apply the same currency conversion as that applied in our *Amended Preliminary Determination*. In that determination, we selected the exchange rate for converting the acquisition cost as the rate in effect on the date of Ta Chen's resales (through its 100 percent-owned affiliate, TCI) to its first unaffiliated U.S. customers. Using the same exchange rate for both transactions is in keeping with the statute and our normal practice of making an apples-to-apples comparison between prices and costs. *See* section 773A and *Mitsui 1997*. When calculating a constructed normal value, the Department uses the exchange rate based upon the date of the U.S. sale. *See* section 773A. In the case of middleman dumping, we are attempting to compare costs with prices—the acquisition costs, including actual G&A and interest expenses (*see* Comment 9)—with the resale price to the first unaffiliated U.S. customer (minus actual movement and selling expenses associated with selling the product in the United States). Therefore, because we are comparing costs with prices it is appropriate to follow our standard practice.

Moreover, it is only on the date of sale to the first unaffiliated U.S. customer that the middleman, in this case Ta Chen, will know whether or not it will recover its total acquisition costs on resale. It cannot know this on the date it acquires the merchandise. Therefore, because the basis of middleman dumping is to determine if the middleman is selling below its acquisition costs, the date of sale to the first unaffiliated U.S. customer is the appropriate date upon which to convert Ta Chen's acquisition costs into U.S. dollars.

Although Ta Chen acknowledges that to ensure an apples-to-apples comparison the Department must convert one side of the equation so that both are in the same currency, Ta Chen's suggestion to use the exchange rate on the date *payment is received* for the U.S. sale from the first unaffiliated customer is without merit. The suggestion ignores the statute, the regulations and our standard practice. In constructing a normal value in lieu of actual prices, the Department does not use the date of payment, but rather, as discussed, the date of the actual U.S. sale to the first unaffiliated customer. *See* section 773A; 19 CFR 351. 415(a)(''in an antidumping proceeding, the Secretary will convert foreign currencies into United States dollars using the rate of exchange on the date of sale of subject merchandise'').

We also disagree with respect to petitioners suggestion to deduct imputed selling expenses and CEP profit. Petitioners' argument that we must make these deductions in order to correctly calculate an overall dumping margin is misplaced because, although our calculations contain parallels to a ''normal'' dumping calculation, here, we are not trying to calculate a constructed normal value or an overall dumping margin. Rather, we are determining the magnitude of losses incurred by Ta Chen in selling the merchandise below its total acquisition cost. Likewise, we will not add to the total acquisition cost the profits gained by Ta Chen, as that would be contrary to the rationale for determining middleman dumping, which is solely to determine the extent of the losses the middleman is absorbing in selling merchandise from an unaffiliated supplier into the United States (*see* Comment 9). Finally, with respect to indirect selling expenses incurred in Taiwan, we note that Ta Chen reported that it had none. Therefore, as we describe in Comments 9 and 18, we are including G&A and interest expenses in calculating Ta Chen's total acquisition costs.

Comment 21: Ta Chen infers that petitioners are arguing that the Department should add YUSCO's and TCI's dumping margins together and base TCI's dumping margin on constructed value, including profit, for the final determination. Ta Chen argues that such a methodology leads to the double counting of margins since it adds the difference between normal value and the price paid by Ta Chen and the difference between normal value and the price paid to the first unaffiliated U.S. customer.

Department's Position: We disagree with Ta Chen and find that adding YUSCO's margin to Ta Chen's margin accurately calculates the extent of middleman dumping. Contrary to Ta Chen's claims, by adding the margins, we are adding the difference between normal value and the price paid by Ta Chen to the difference between Ta Chen's total acquisition cost and the price paid to the first unaffiliated U.S. customer. Doing so accounts for all transaction and all expenses, resulting in an accurate middleman dumping margin.

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 that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the amended preliminary determination in the **Federal Register**. The all others rate reflects an average of the non-de minimis margins alleged in the petition. 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
YUSCO	8.02
YUSCO/Ta Chen	10.20
All Others	7.39

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 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 directing Customs officials 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: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7538 Filed 3–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–823]

Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy

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

EFFECTIVE DATE: March 31, 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, NW, Washington, DC 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 stainless steel plate in coils from Italy. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

The Petitioners

The petition in this investigation was filed by Armco, Inc., J&L Specialty Steels, Inc., Lukens Inc., AFL–CIO/CLC (USWA), Butler Armco Independent Union and Zanesville Armco Independent Organization (the petitioners).

Case History

Since our preliminary determination on August 28, 1998 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Plate in Coils from Italy,* 63 FR 47246, (September 4, 1998) (*Preliminary Determination*), the following events have occurred:

Between September 21 and October 16, 1998, we issued supplemental questionnaires to the Government of Italy (GOI), the European Commission (EC) and Acciai Speciali Terni (AST). We received responses to these requests between October 9 and November 4, 1998. We conducted verification in Belgium and Italy of the questionnaire responses of the EC, GOI, and AST from November 11 through November 24, 1998. On January 5, 1999, we postponed the final determination of this investigation until March 19, 1999 (*see Countervailing Duty Investigations of Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa: Notice of Extension of Time Limit for Final Determinations,* 64 FR 2195 (January 13, 1999)). The petitioners and AST filed case and rebuttal briefs on February 17 and February 23, 1999. A public hearing was held on February 25, 1999. After the hearing, at the Department's request, additional comments were submitted by petitioners and respondents on March 2, 1999. On March 12, 1999, the EC submitted additional comments.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate 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 plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 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, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute

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

Injury Test

Because Italy is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On May 28, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Italy of the subject merchandise (*see Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, Korea, South Africa, and Taiwan,* 63 FR 29251 (May 28, 1998)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Corporate History of AST

Prior to 1987, Terni, S.p.A, (Terni), a main operating subsidiary of Finsider, was the sole producer of stainless steel plate in coils in Italy. Finsider was a holding company that controlled all state-owned steel companies in Italy. Finsider, in turn, was wholly-owned by a government holding company, Istituto per la Ricostruzione Industriale (IRI). As part of a restructuring in 1987, Terni transferred its assets to a new company, Terni Acciai Speciali (TAS).

In 1988, another restructuring took place in which Finsider and its main operating companies (TAS, Italsider, and Nuova Deltasider) entered into liquidation and a new company, ILVA S.p.A., was formed. ILVA S.p.A. took over some of the assets and liabilities of the liquidating companies. With respect to TAS, part of its liabilities and the majority of its viable assets, including