Independence Ave., S.W., Washington, D.C. 20250–1042.

Dated: July 7, 1997.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 97–18383 Filed 7–11–97; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Quarterly Summary of State, and Local Tax Revenue.

Form Number(s): F–71, F–72, F–73.

Agency Approval Number: 0607–0112.

Type of Request: Extension of a currently approved collection.

Burden: 6,057 hours.

Number of Respondents: 6,006.

Avg Hours Per Response: 15.1 minutes.

Needs and Uses: State and local government tax collections amount to about 700 billion dollars annually and represent almost half of all governmental revenues. Quarterly measurement of and reporting on these massive fund flows provides valuable insight into trends in the national economy and that of individual states. Information collected on the type and quantity of taxes collected gives comparative data on how state and local governments fund their public sector obligations. These data are used in the National Income and Product Account quarterly estimates developed by the Bureau of Economic Analysis and are widely used by state revenue and tax officials, academicians, media representatives, and others.

This program formerly included federal as well as state and local government tax data. We eliminated the federal data since this information is available elsewhere. However, the respondent burden remains unchanged because we obtained the federal data from public records.

Most of the data for this program are gathered by mail canvass of appropriate state and local government offices. In some instances, data are compiled by trained representatives of the Bureau of the Census from official records.

Affected Public: State, local or tribal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–18427 Filed 7–11–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1997 Business Expenditures Survey.

Form Number(s): B–450(S), 451(S), 151(S), 151A(S), 151D(S), 153(S), 153D(S), 500(SA), 500(SE).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 72,100 hours in FY 1998.

Number of Respondents: 57,700.

Avg Hours Per Response: 1.25.

Needs and Uses: The Census Bureau plans to conduct the 1997 Business Expenditures Survey (BES), previously known as the Assets and Expenditures Survey (AES), as part of the 1997 Economic Censuses. This information collection will supplement basic economic statistics produced by the 1997 Censuses of Wholesale Trade, Retail Trade, and Service Industries with estimates of operating expenses. It will also provide measures of value produced for wholesale trade and retail trade. This survey is the sole source of expense input data for domestic merchant wholesale, retail, and service businesses. Detailed inquiries on fixed assets and capital expenditures, included in the 1992 survey, have been dropped.

Data will be collected only from employer businesses included in the business current sample surveys (BSR–97) database. This information will be used by the Bureau of Economic Analysis to benchmark national economic accounts such as the input-output account, and to derive economic measures of value produced, such as value added. Other government agencies, private industry, and academia also will use these data for policymaking, market and economic research, and planning.

Affected Public: Businesses or other for-profit, Not-for-profit institutions.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131, 193, 195, and 224.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–18428 Filed 7–11–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan; Final Results of Administrative Review

July 8, 1997

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

ACTION: Notice of Final Results of Administrative Review.

SUMMARY: On January 10, 1997 the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1994—1995 administrative review of the antidumping duty order on certain welded stainless steel pipe from Taiwan (A–583–815). This review covers one

manufacturer/exporter of the subject merchandise during the period December 1, 1994 through November 30, 1995.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in our preliminary results of review.

EFFECTIVE DATE: July 14, 1997.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the 1995 regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1992, the Department published in the **Federal Register** the antidumping duty order on welded stainless steel pipe (WSSP) from Taiwan (57 FR 62300). On December 4, 1995, the Department published the notice of ''Opportunity to Request Administrative Review'' for the period December 1, 1994 through November 30, 1995 (60 FR 62070). In accordance with 19 CFR 353.22(a)(1) (1995), respondent Ta Chen Stainless Pipe Co., Ltd. and its wholly-owned U.S. subsidiary, Ta Chen International (collectively, Ta Chen), requested that we conduct a review of its sales. On February 1, 1996, we published in the **Federal Register** our notice of initiation of this antidumping duty administrative review covering the period December 1, 1994 through November 30, 1995 (61 FR 3670).

We published the preliminary results of this review in the **Federal Register** on January 10, 1997 (Certain Welded Stainless Steel Pipe From Taiwan; Notice of Preliminary Results of Administrative Review, 62 FR 1435 (Preliminary Results)). Because it was not practicable to complete this review within the normal time frame, on February 27, 1997, we published in the **Federal Register** our notice of extension of time limits for these final results (62 FR 11825). The Department held a hearing on April 28, 1997; at petitioners' request, a portion of this hearing was held in camera. Because we determined that the case briefs filed by both parties, and petitioners' rebuttal brief, contained new factual information, we returned these documents to the parties. As instructed, both parties timely submitted corrected versions of their case briefs, and petitioners resubmitted their rebuttal brief.

Furthermore, on June 11 and 12, 1997, the Department conducted a verification of Ta Chen's U.S. sales data at the premises of Ta Chen International. Due to our findings during that verification we have amended our application of facts available for these final results (see ''Results of Verification,'' below). The full results of our verification are detailed in the Department's verification report. A public version of this, and all public information referenced in this notice, is on file in Room B–099 of the Main Commerce Building.

The Department has now completed this review in accordance with section 751 of the Tariff Act.

Scope of the Review

The merchandise subject to this administrative review is certain welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTS) subheadings: 7306.40.5005, 7306.04.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

The period for this review is December 1, 1994 through November 30, 1995. This review covers one manufacturer/exporter, Ta Chen.

Results of Verification

On June 11 and 12, 1997, the Department conducted a verification of Ta Chen's U.S. sales data at the headquarters of Ta Chen International (TCI) in Long Beach, California. In discussing its U.S. sales process with the Department's verifiers, Ta Chen revealed for the first time that some of its sales to one U.S. customer (not the ''Company B'' discussed later) were, in fact, to another person, with the reported U.S. customer acting as a commissionaire. The actual, final customer is not among those listed in Ta Chen's U.S. sales data nor did Ta Chen previously identify the named customer as a commissionaire. In addition, no commission amounts were reported for these sales. Therefore, as a result of our findings at verification, we have concluded that Ta Chen misreported an unknown number of sales to this customer. We find that Ta Chen failed to act to the best of its ability in reporting its U.S. sales to these persons and, in fact, by its own admission withheld the identity of the second person until six months after our preliminary results of review. Because Ta Chen's data do not permit us to identify which sales were made to which person, we cannot segregate the misreported sales for purposes of our final margin calculation. Therefore, we have determined to apply adverse facts available to all of Ta Chen's sales made to this customer, pursuant to section 776(b) of the Tariff Act. For further discussion of this issue, see the public version of the Department's final analysis memorandum.

Analysis of Comments Received

We received case briefs from Ta Chen and petitioners on April 10, 1997. Ta Chen and petitioners timely filed rebuttal briefs on April 24, 1997. We returned both parties' case briefs and petitioners' rebuttal brief and asked that the parties remove certain information inappropriate for the record of this review. Both parties complied with our request; our analysis addresses the issues raised in these revised briefs below.

Many of the comments that follow concern two of Ta Chen's U.S. customers, referred to here as Company A and Company B. According to Ta Chen, prior to June 1992, Ta Chen had sold pipe from the U.S. inventory of its subsidiary, TCI. In June 1992, TCI and Company A (a U.S. company established in 1988 by the president of another Taiwanese firm), signed an agreement whereby Company A would purchase all of TCI's U.S. inventory and would effectively replace TCI as the principal distributor of Ta Chen pipe products in the United States. Company A also committed itself to purchasing substantial dollar values of Ta Chen products over the next two years. According to Ta Chen, in September 1993, a member of Ta Chen's board of directors sold all of his Ta Chen stock, severed all ties with Ta Chen, and incorporated a new entity, Company B. This new Company B purchased all of Company A's assets, including inventory, and assumed all of Company A's obligations regarding its lease of space from Ta Chen's president, purchase commitments, credit arrangements, etc. The Department cited Ta Chen's affiliation to Company B, and Ta Chen's failure to report sales made by Company B to the first unaffiliated customer in the United States as grounds for the use of adverse facts available as to these sales in our Preliminary Results for the instant period of review (62 FR 1435, January 10, 1997). A more detailed discussion of these issues, which necessitates extensive reference to business proprietary information, is included in the Department's Final Results Analysis Memorandum, a public version of which is on file in Room B–099 of the Main Commerce Building.

Comment 1: Ta Chen asserts that since the events of the third period of review (POR) took place prior to enactment of the URAA, ''fundamental fairness'' demands that the Department use the statutory and regulatory provisions in force at that time (*i.e.*, in 1994). Because its sales to Company B pre-dated enactment of the URAA, Ta Chen argues, application of the URAA's definition of affiliation through control represents an unfair, retroactive application of a new statutory provision. Ta Chen notes that all of its sales to Company B in this third POR occurred in August 1994 and were subject to this third review only because the merchandise did not enter the United States until after December 1, 1994 (*i.e.*, after the start of the third POR). Therefore, Ta Chen argues, its August 1994 sales should be examined under the statutory provisions in effect at the time of the sales. Ta Chen insists that under the pre-URAA statute, two parties could only be deemed related if common equity ownership were found. Ta Chen further argues that its actions during the third review were based on its best understanding of U.S. antidumping law then in force. The retroactive application of statutory revisions which came into effect four months after the sales at issue is, Ta Chen believes, manifestly unfair.

Ta Chen further insists that Company B is not a ''related party'' as defined by the pre-URAA statute which was in effect at the time of all of Ta Chen's sales to Company B. First, Ta Chen maintains that under the 1994 statute, section 771(13) of the Tariff Act defines an ''exporter'' as including ''the person by whom or for whose account the merchandise is imported into the United States, and the exporter, manufacturer, or producer owns or controls * * * any interest in the business conducted by such person * * *''. Under this statutory framework, Ta Chen argues, the inquiry should focus upon whether Ta Chen as the foreign exporter and Ta Chen International (TCI) as the importer of record are related, not whether Ta Chen and TCI's customer, Company B, are related. This latter question ''is not relevant for purposes of U.S. dumping law.'' According to Ta Chen, TCI, not Company B, is the person ''by whom'' the subject merchandise was imported. Because Company B is not ''the person by whom or for whose account the merchandise is imported into the United States,'' Ta Chen claims that a threshold condition for application of the related-party provisions of the pre-URAA statute has not been met. See Ta Chen's Case Brief at 3.

Further, Ta Chen maintains that Ta Chen and Company B cannot be considered related because Ta Chen did not own or hold any part of Company B, nor did Company B own any part of Ta Chen, nor did the two firms share common directors or officials. Ta Chen cites Dynamic Random Access Memories from Korea; Final Results of Administrative Review, 58 FR 15467 (March 23, 1993) (DRAMs), and Disposable Pocket Lighters from Thailand; Final Results of Administrative Review, 60 FR 14263, 14268 (March 16, 1995) as supporting its contention that, under the pre-URAA statute, two parties cannot be considered related absent common stock ownership. Ta Chen also notes to the Department's findings in several cases that despite the close operational control of parties linked through a Japanese keiretsu, these parties were not related for purposes of the statute. See Ta Chen's Case Brief at 6, citing Cellular Mobile Telephones and Subassemblies from Japan, 54 FR 48011, 48016 (November 20, 1989).

Ta Chen also notes judicial precedent supporting its interpretation of the related-party provision of the pre-URAA statute, including the Court of International Trade's (the Court's) decision in *Zenith* v. *United States* 606 F. Supp. 695, 699 (CIT 1985), aff'd *Zenith* v. *United States*, 783 F. 2d. 184 (Fed. Cir. 1986) (Zenith). There, the Court found that ''the requirements of our law are satisfied when (the Department) investigates whether there is any financial relationship * * *. The discernment of relationships which do not find expression in concrete financial terms is not something which can be posited as a mandatory duty, and is not required by [the statute].'' Ta Chen's Case Brief at 5. And, Ta Chen maintains, in *Torrington Company* v. *United States,* Slip Op. 97–29 (CIT March 7, 1997), the Court found there was no requirement for the Department to look beyond the statute's ''bright-line test for defining related parties.''

Ta Chen argues that its interpretation of the related-party provisions of the pre-URAA statute is further supported by the Statement of Administrative Action (SAA) which accompanied the URAA. In explaining the need for refining the statutory definition of affiliated persons, Ta Chen continues, the SAA stressed that ''including control in the definition of 'affiliated' will permit a more sophisticated analysis which better reflects the realities of the marketplace.'' Ta Chen's Case Brief at 7, quoting the SAA at 78; see also Large Newspaper Printing Presses and Components Thereof From Japan; 61 38139 (July 23, 1996) and Engineering Process Gas Turbo-Compressor Systems from Japan, 61 FR 65013 (December 10, 1996).

Further, Ta Chen argues that when the pre-URAA statute refers to related parties controlling, through stock ownership, directly or indirectly, ''any interest'' in the business of the other, the interest referred to is stock ownership. According to Ta Chen, the Department has consistently defined an ''interest'' as representing ''no less than five percent ownership.'' Ta Chen's Case Brief at 10, quoting from a February 1, 1996 Concurrence Memorandum in Certain Fresh Cut Flowers from Colombia. Ta Chen maintains that petitioners' cites to pre-URAA determinations are not on point; each of these cases involved either equity ownership or common directors. For

example, in Roller Chain, Other Than Bicycle Chain, From Japan, 57 FR 43697 (September 22, 1992), Ta Chen claims that the parties were related through common directors, and, in fact, through common ownership by the respondent of 60 percent of the related firm's stock. Ta Chen avers that petitioners' reliance on Fresh Cut Flowers from Colombia (61 FR 42833, 42861 (August 19, 1996)) (Flowers) is also misplaced. While the Department found in that case that control was sufficient to establish affiliation, Ta Chen stresses that the control at issue consisted of common board members controlling voting power in both entities, a situation which, Ta Chen asserts, does not obtain in the instant review.

As to the proper statutory provisions governing this administrative review, petitioners suggest that ''Ta Chen's assertions are inconsistent with the plain language of the statute and must be rejected.'' Petitioners note that section 291 of the URAA mandates that this review be conducted according to the Tariff Act, as amended by the URAA, since the review was initiated after January 1, 1995 (the effective date for the changes mandated by the URAA). Further, petitioners aver that all administrative reviews conducted pursuant to U.S. law involve the retrospective examination of sales made; the URAA did not alter this aspect of the antidumping statute. Petitioners also note that Ta Chen requested the instant administrative review in December 1995, or nearly a year after the URAA took effect; Ta Chen was ''on full notice'' as to the applicable statutory provisions.

Finally, petitioners maintain that since Ta Chen is both an ''affiliated person'' under section 771(33) of the URAA-amended statute and a ''related party'' in accordance with section 771(13) of the pre-URAA statute, Ta Chen's complaint about fairness is infirm. Petitioners note that the definition of ''exporter'' for purposes of determining U.S. price found at section 771(13) of the pre-URAA statute refers explicitly to one person controlling ''through stock ownership or control or otherwise'' any interest in the business conducted by the other person. Petitioners' Rebuttal Brief at 29, quoting section 771(13)(B) and (C) of the Tariff Act. Thus, petitioners assert, under ''the plain terms'' of the pre-URAA statute, ''stock ownership was not the *sine qua non* to finding parties to be related for purposes of identifying the U.S. party as an 'exporter.'''

Petitioners further assail Ta Chen's ''quest to prove that Ta Chen was not related to (Company B) by virtue of its control over (Company B's) activities under the pre-1995 law.'' According to petitioners, the focus of the related-party definition of ''exporter'' is not solely upon the person by whom the merchandise is imported into the United States, but also upon the person ''for whose account'' the merchandise is imported. In the instant case, petitioners argue, Company B was the person ''for whose account'' subject WSSP was imported during the POR. Additionally, Ta Chen's own representations during this review that TCI was a mere ''facilitator'' for its U.S. sales is, petitioners believe, further proof that TCI was not the party ''for whose account'' the merchandise was imported.

As to the need for an equity ownership to demonstrate two parties are related, petitioners concede that in the past the Department has focused primarily upon stock ownership in rendering its related-party determinations. However, petitioners aver that Ta Chen's interpretation ''carefully omits the statutory reference to control outside equity ownership.'' Petitioners' Rebuttal Brief at 31. According to petitioners, the reference to control of a company other than through stock ownership makes clear that equity ownership was not the sole prerequisite to finding two parties related.

Petitioners cite to past Departmental and judicial determinations as supporting a conclusion that parties may be found to be related absent equity ownership. Petitioners point to Flowers, where the Department ''recognized that section 771(13) ''establishes a standard for relationship based on association, ownership or control.' '' Petitioners' Case Brief at 32. Petitioners also cite to the Court's decision in *E.I. DuPont de Nemours & Co.* v. *United States (*841 F. Supp. 1237, 1248 (CIT 1993)) wherein the Court found that ''[t]he ITA is not constrained to examine only financial relationships in making the determination,'' and that ''[t]he requirements of U.S. law were satisfied when the ITA investigated both financial and non-financial connections.'' Id.; see also *Sugiyama Chain Co., Ltd.* v. *United States*, 852 F. Supp. 1103, 1110 (CIT 1994).

Department's Position: We agree with petitioners that the Tariff Act, as amended by the provisions of the URAA, clearly governs this third administrative review. As the URAA and its accompanying SAA make clear, ''amendments to the (Tariff) Act will apply to investigations and reviews based on petitions or requests received after the WTO Agreement enters into force with respect to the United States,'' *i.e.*, January 1, 1995. See SAA at 225. Therefore, the Department has no discretion to apply selectively the amendments effected by the URAA. As petitioners note, Ta Chen was the sole party to request this administrative review, which it did on December 12, 1995, or nearly one year after the URAA took effect. Thus, any argument that Ta Chen is being subjected to an unfair, retroactive application of the statute is clearly without merit.

Furthermore, we have preliminarily determined in the first and second administrative reviews of this order, conducted under the pre-URAA Tariff Act, that Ta Chen is, in fact, related to Company A and Company B, using the definition of ''related'' found in Section 771(13) of the old statute. See Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Reviews, 62 FR 26776 (May 15, 1997); see also Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan; Preliminary Results of Administrative Review, 62 FR 26773 (May 15, 1997). As we note in those reviews, section 771(13) of the Tariff Act defines the ''exporter'' as including the ''person by whom or for whose account the merchandise is imported into the United States if * * * the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business conducted by such person.'' Section 771(13)(C) of the 1994 Tariff Act (emphasis added). Thus, the plain language of the statute clearly authorizes the Department to consider relationships other than those arising through direct equity ownership. Our preliminary determination in the first and second reviews of WSSP is that Company B should properly be included as the ''person by whom or for whose account'' the merchandise was imported into the United States during the relevant periods of review.

In addition, Ta Chen's reliance on the Court's finding in Zenith is misplaced. There, the Court found that there was no statutory requirement that the Department examine ''relationships which do not find expression in concrete financial terms.'' Nowhere in its decision, however, did the Court suggest that the Department was statutorily barred from an examination of such non-financial relationships. Nor could it be so barred, as the statute expressly permits such an examination.

Ta Chen also exaggerates the changes in the statutory treatment of ''related parties'' versus ''affiliated persons'' under the URAA. As Ta Chen notes, the

SAA stresses that subparagraph (G) of the new section 771(33) provides for situations wherein one person ''controls'' another, and explains that this addition ''will permit a more sophisticated analysis which better reflects the realities of the marketplace.'' Contrary to Ta Chen's argument, however, subparagraph (G) of section 771(33) does not represent a fundamental change in the statute's intent. Rather, this subparagraph merely reinforces the old statute's definition of parties being ''related'' when one ''controls, directly or indirectly, through stock ownership or control or otherwise'' an interest in the other. This comports with past Departmental precedent on this issue. For example, in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al., we noted that we could find parties related if ''the nature of their relationship allows the possibility of price and cost manipulation.'' 60 FR 10900, 10945 (February 28, 1995). Likewise, in Certain Iron Construction Castings From Canada, we stated explicitly that our related party determinations were ''not based solely on the extent of [the parties'] financial relationships.'' 60 FR 9009 (February 16, 1995); see also Final Determination of Sales at Less Than Fair Value; Coated Groundwood Paper From Finland, 56 FR 56363, 56369 (November 4, 1991).

Comment Two: Ta Chen maintains that, even if the URAA-amended Tariff Act controls this administrative review, the Department nevertheless erred in concluding that Ta Chen and Company B are ''affiliated persons.'' Ta Chen insists that the Department's preliminary determination that ''Ta Chen effectively exercised operational control over this putatively unaffiliated customer'' is contrary to the record evidence, the statute, the Department's regulations, and Departmental practice on this issue. Citing the Department's proposed regulations, Ta Chen notes four factors the Department will consider in determining affiliation. These are: (i) Corporate or family groupings; (ii) Franchise or joint venture agreements; (iii) Debt financing; and (iv) Close supplier relationships. See Notice of Proposed Rulemaking, Section 351.102, 61 FR 7308, 7310 (February 27, 1996). Ta Chen insists that the first two are irrelevant, as the Department has not suggested that Ta Chen and Company B are constituents of a single corporate or family group. Likewise, Ta Chen argues, Company B is not a franchisee of Ta Chen, nor has it entered into a joint venture arrangement with Ta Chen. Ta Chen dismisses the third point, stating that Ta Chen did not finance any debt of Company B. Thus, Ta Chen maintains, only the last indicium, close supplier relationships, is relevant in this review, and this factor, as it is commonly interpreted by the Department, also does not support the preliminary finding of affiliation.

Ta Chen argues that in the instant case the Department's concern is whether one party enjoys ''the ability to exercise restraint or direction over another party's pricing, cost, or production decisions.'' 61 FR 7308, 7310 (February 27, 1996). Because Company B is a pipe distributor, Ta Chen avers, control over cost and production decisions is not at issue; therefore, the Department's present inquiry focuses solely upon control over pricing. Ta Chen claims that the Department did not explain in its Preliminary Results any such control exercised by Ta Chen over Company B. According to Ta Chen, the ''lack of an adequate connection between a crucial determination and the record evidence renders the determination unlawful.'' Ta Chen's Case Brief at 18; see also *Daewoo Electronics Co., Ltd.* v. *United States* 760 F.Supp. 200 (1991). Ta Chen maintains that the Department's *dictum*, without sufficient explanation, that Ta Chen's control of Company B was ''clearly evident'' runs counter to past judicial instruction. *Id.* at 19, citing *NACCO Materials Handling Group* v. *United States*, 932 F.Supp. 304, 312 (CIT June 18, 1996), and FAG Kugelfischer Georg Schafer KGaA v. United States, Slip Op. 96–108 (CIT July 10, 1996).

Ta Chen further argues that the factors which the Department does cite in its Preliminary Results do not support a finding of affiliation. For example, Ta Chen maintains that, contrary to our preliminary determination, Ta Chen did not control the disbursements of Company B. Ta Chen claims that physical custody of Company B's signature stamp did not constitute control over Company B's disbursements. Rather, Ta Chen argues, custody of the signature stamp merely permitted Ta Chen's bookkeeper, with prior authorization from Company B, to sign checks for Company B when its executives were ''otherwise occupied.'' According to Ta Chen, Company B could, and did, write checks without first seeking Ta Chen's permission, nor could Ta Chen prevent such disbursements. Thus, Ta Chen insists, physical custody of the signature stamp permitted Ta Chen to monitor, not control, Company B's disbursements.

Ta Chen also avers that its credit monitoring ''is typical of that found between unaffiliated parties.'' Pointing to statements provided by Ta Chen on the record of this review, Ta Chen insists that pipe distributors typically allow their unaffiliated suppliers complete and unfettered access to every aspect of their business operations. Ta Chen further argues that the published literature on the Uniform Commercial Code makes clear that creditors often employ monitoring of a debtor's activities as ''the only effective mechanism'' for uncovering misfeasance by the debtor which would harm the creditor's interests. Besides, Ta Chen concludes, the Department ''has never found credit monitoring relevant for purposes of determining if parties are affiliated.'' Ta Chen's Case Brief at 23.

Ta Chen also disagrees with the Department's preliminary finding that Ta Chen's computer monitoring of Company B constituted an element of control over this customer. Ta Chen avers that as it extends ''substantial credit'' to Company B, it is necessary for Ta Chen to institute such monitoring to ''provide early warning of cash flow problems which could adversely affect ability to pay debt.'' Ta Chen's Case Brief at 28, citing to Ta Chen's January 13, 1997 submission. Further, according to Ta Chen, such access facilitated ''just-in-time'' deliveries of merchandise. Ta Chen claims that Ta Chen's monitoring of Company B's inventory did ''not provid[e] any information that is not publicly provided in the metals industry anyway.'' And the ''just-in-time'' delivery arrangements have never been grounds for finding two parties affiliated, Ta Chen argues, citing to Steel Wheels From Brazil, 54 FR 21456, 21457 (1989), and Polyethylene Terephthalate Film, Sheet, and Strip From Japan, 56 FR 16300 (1991). Finally, such computer links do not constitute control of prices, and are, in Ta Chen's view, irrelevant.

As to shared sales department personnel, Ta Chen states that ''Ta Chen and Company B had no common employees, at any time.'' *Id.* Ta Chen asserts that its assistance to Company B was limited to ''clerical assistance,'' performed for Ta Chen's benefit and only incidentally for Company B's benefit. Furthermore, Ta Chen argues, such assistance is not sufficient grounds for finding parties affiliated. Ta Chen cites the following examples of the assistance these parties provided for each other: clerical assistance, training, use of office equipment, answering inquiries and forwarding messages, accounting training and assistance, suggestions on working with customs

brokers, training on shipping procedures, data entry, and ''other clerical book-keeping type [sic] assistance.'' *Id.* at 24. According to Ta Chen, ''the Department has never found such cooperation is control.'' *Id.*, citing Large Newspaper Printing Presses and Components Thereof From Japan, 61 FR 38139, 38156 (1996). Ta Chen asserts that for the Department to find affiliation, the common employees must ''share in the day-to-day management.'' In fact, the Department's standard antidumping questionnaires asks respondents to address ''computer, legal, accounting, audit and or business system development assistance, personnel training, personnel exchange and manpower assistance'' in making level-of-trade determinations; this indicates the Department's recognition that respondents will provide such services to unaffiliated persons.

With respect to the participation of Ta Chen's president in negotiating prices between Company B and its subsequent customers, Ta Chen argues that ''a distributor's credibility significantly depends upon its customers' belief that the mill supports the distributor.'' Ta Chen's Case Brief at 30. In that capacity, Ta Chen asserts, Ta Chen officials would meet with Company B's customers. Ta Chen also states that ''Ta Chen officials knew the prices which would be accepted by Ta Chen's distributor,'' (*i.e.*, Company B). According to Ta Chen, if the distributor's customer indicated interest in purchasing Ta Chen products at prices it knew were acceptable to Company B, the Ta Chen official would instruct the customer to prepare a purchase order for Company B. See Ta Chen's Case Brief at 30, citing to its January 13, 1997 submission. In these contacts, Ta Chen insists, Ta Chen was acting solely on its own behalf, as was Company B. Such activities as cited, Ta Chen argues, do not ''constitute negotiation or control of prices.'' Ta Chen maintains that there are no Departmental determinations on this point pursuant to the URAA statute. Old-law precedent, Ta Chen suggests, favors Ta Chen's interpretation. In Certain Residential Door Locks From Taiwan, for example, the Department concluded that despite one party's ability to exercise control over prices, the entities were unrelated because they operated as ''separate and distinct entities,'' and were ''separately owned and operated.'' *Id.*

As to the debt financing arrangement, Ta Chen claims that ''(Company B) did not offer its accounts receivable and inventory as security for a loan obtained by TCI. Rather, Ta Chen requested, and (Company B) agreed to grant, a UCC security interest in (Company B's) accounts receivable in addition to the inventory which was the subject of the credit arrangement.'' Ta Chen's Case Brief at 33. Ta Chen argues that the fact that the lien was intended to secure TCI's debt ''is not relevant to these proceedings.'' According to Ta Chen, the UCC recognizes the assignability of security interests by contract. Ta Chen further argues that Company B's assigning its inventory to TCI's creditor had the same effect as if TCI had exercised its right to assign its security interests to the bank. Furthermore, Ta Chen insists, such assignments ''occur between, and are consistent with the actions of, unaffiliated parties.'' *Id.* Under the URAA-amended statute, the Department has not held that a respondent's loans to a customer make the parties affiliated for purposes of the Tariff Act.

Furthermore, as to close supplier relationships, Ta Chen argues that while Company B may have relied exclusively upon Ta Chen as a supplier of WSSP, it was free to do business with other companies. Ta Chen asserts that under the URAA, the Department has never found an exclusive-supplier relationship sufficient to deem the supplier and customer affiliated. See Ta Chen's Case Brief at 40, citing Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea, 61 FR 51882, 51885 (October 4, 1996) (Carbon Steel Flat Products); Open-End Spun Rayon Singles Yarn From Austria, 62 FR 14399, 14403 (March 26, 1997) (Rayon Yarn); Melamine Institutional Dinnerware From Indonesia, 62 FR 1719, 1726 (January 13, 1997) (Melamine Dinnerware). With respect to old-law precedent, Ta Chen argues that, *a fortiori,* exclusive-supplier relationships do not render two parties related. Portable Electric Typewriters From Japan, 48 FR 7768, 7770 (1983); Certain Residential Door Locks From Taiwan, 54 FR 53153 (Comment 18) (1989).

Finally, Ta Chen notes that its audited financial statements do not treat Company B as a related party, and that its prices to Company B were ''always less than its net ex-factory price to other U.S. customers.'' *Id.* at 43 (emphasis in original). Ta Chen continues: ''[i]f Ta Chen had wanted to use an affiliated party to manipulate its dumping margin, * * * Ta Chen would have charged that party more than the average. It did not.'' *Id.* at 44.

Petitioners maintain that the Department correctly determined that Ta Chen and Company B were affiliated during the third administrative review, arguing that the evidence of affiliation presented by Ta Chen in its November 12, 1996 supplemental questionnaire response is ''clear and overwhelming.'' Petitioners' Case Brief at 3. Petitioners assert that Company B ''was not at liberty to act in any meaningful commercial sense apart from Ta Chen,'' and that the record evidence demonstrates that Ta Chen, in fact, ''completely directed (Company B's) operations.'' *Id.* Petitioners note that Ta Chen's attempts to buttress its assertion that its ties to Company B are common in the welded stainless steel pipe trade consist solely of ''statements'' from various individuals; each of these statements lack any examples demonstrating where other unaffiliated companies were so inextricably linked. Thus, the Department should treat these ''statements'' as ''baseless *ipse dixits*'' and should continue to treat Ta Chen and Company B as affiliated persons. *Id.* at 4. According to petitioners, Ta Chen has failed to show how any of the circumstances cited by the Department in its Preliminary Results as indicia of Ta Chen's affiliation to Company B are typical practices in the stainless steel pipe industry; in fact, petitioners maintain, these practices are not typical. Rather, petitioners charge, Ta Chen continues to dissemble in arguing that all of its U.S. sales in this review were to unaffiliated persons.

Furthermore, petitioners aver, the Department's conclusion that Ta Chen and Company B are affiliated persons is supported by the plain language of the Tariff Act and the SAA which accompanied the URAA. According to petitioners, Ta Chen, in referring to the four indicia of control cited in the SAA (see above), does violence to the actual meaning of that passage by omitting the words ''for example.'' Thus, the four factors listed are ''not intended to identify the only means by which control could occur.'' Petitioners' Rebuttal Brief at 23. Rather, petitioners contend, the statute and SAA direct the Department to base its determinations of affiliation on the specific facts of each case, with an emphasis upon whether one person was ''legally or operationally in a position to exercise restraint or control over the other person.''

Petitioners also take issue with Ta Chen's characterization of the affiliated persons provisions of the Tariff Act. Contrary to Ta Chen's assertions, petitioners argue, the statute does not require a demonstration that one person set prices or costs for the other, but only that one person be ''in a position'' to control prices or costs. Evidence of this operational control, petitioners contend, is clear in Ta Chen's exclusive-supplier

relationship with Company B, in its control over Company B's disbursements through physical custody of Company B's signature stamp, in the two entities' shared sales department personnel, in Ta Chen's complete access to Company B's computer system, in Ta Chen's direct participation in negotiating subsequent resales by Company B, and in Company B's assigning its inventory and accounts receivable to TCI's creditor. Petitioners aver that these ties ''establish[ ] a degree of control that is un-paralleled, to petitioners'' knowledge, in any other case.'' Petitioners' Rebuttal Brief at 27. Even where the Department previously has found any one of these ties insufficient to establish affiliation, petitioners conclude, ''in no case has there ever been this collection of activities demonstrating operational control by a supplier over its customer.'' *Id*. (original emphasis). Petitioners suggest that this combination of factors ''more than satisfies the statutory requirement that Ta Chen be in a position to exercise legal or operational control over (Company B).'' *Id*.

Department's Position: We disagree with Ta Chen's analysis of the affiliated persons provisions of section 771(33) of the Tariff Act. Ta Chen, through selective quotes from the SAA and our Notice of Proposed Rulemaking attempts to posit a bright-line standard to which the Department must adhere in analyzing the relationships between entities. However, as the Notice of Proposed Rulemaking makes clear, the Department has deliberately refrained from establishing any precise thresholds for a finding of control:

> some indicia of the ability to exercise restraint or direction over another party's pricing, cost, or production decisions may not lend themselves to the use of simple black-and-white thresholds. Therefore, the Department intends to apply this new definition on a case-by-case basis considering all relevant factors including the indicia included in the regulatory definition. Mere identification of the presence of one or more of these or other indicia of control does not end our task. We will examine these indicia in light of business and economic reality to determine whether they are, in fact, evidence of control.

Notice of Proposed Rulemaking at 61 FR 7310 (emphases added).

Thus, it is clear that neither the statute, the SAA, nor the Department's proposed regulations restrict the Department's inquiry to four specific factors. Rather, these were listed as illustrative examples of the types of relationships which might lead to a determination that two or more parties are affiliated within the meaning of section 771(33) of the Tariff Act. This is borne out by the limited corpus of Departmental precedent under the 1995 statute. Thus, in Certain Cut-to-Length Carbon Steel Plate From Brazil (62 FR 18486, 18490 (April 15, 1997)) we stated the statute requires the Department ''to base its findings of control on several factors, not merely the level of stock ownership.'' And in Large Newspaper Printing Presses and Components Thereof From Japan, after noting that close supplier relationships could be sufficient evidence of control, we stated that the Department would make its affiliated party determinations after taking ''into account all factors which, by themselves, or in combination, may indicate affiliations.'' 61 FR 38139 (July 23, 1996); see also Notice of Final Determination; Engineered Process Gas Turbo-Compressor Systems From Japan, 62 FR 24394, 24403 (May 5, 1997).

In addition, as we explained in the Preliminary Results, we conclude that the record evidence amply supports our determination that Ta Chen was affiliated with Company B. In reviewing the record, the Department finds no evidence of any distinct operational personality for Company B apart from Ta Chen and Ta Chen International: Company B was established at Ta Chen's behest, by current or former managers and officers of Ta Chen; was staffed entirely by current or former Ta Chen employees; and distributed only Ta Chen products in the United States.

With respect to Ta Chen's physical custody of Company B's signature stamp, Ta Chen's custody of this stamp is *prima facie* evidence that it either exercised, or was in a position to exercise, control over Company B's disbursements. Ta Chen has not presented any evidence to the contrary.

As for the credit monitoring of Company B by Ta Chen, we agree that it is common for a creditor to obtain reports regarding the status of a debtor's business activities. See, e.g., Nassberg, Richard T. The Lenders Handbook, American Law Institute, American Bar Association Committee on Continuing Professional Education, Philadelphia, 1994 at Chapter 7. However, we reject Ta Chen's claim that its dedicated computer connection to Company B represented a common example of such monitoring. Rather, the full-time and unlimited access to Company B's computer system afforded Ta Chen a far more invasive mechanism for monitoring than would be expected between unaffiliated parties. We note further that Ta Chen officials stated at the Department's recent verification at TCI that Company B maintained no security system or passwords with which to limit or terminate Ta Chen's access to its records; Ta Chen's access to Company B's accounting system was complete.

With respect to common employees, in its case brief Ta Chen attempts to minimize this sharing of personnel. However, in its November 12, 1996 supplemental questionnaire response, Ta Chen stressed that Company A and Company B had no experience or knowledge regarding the U.S. market for WSSP. Ta Chen also claimed that ''TCI provided [Company A] with assistance from its personnel and, from time to time, the use of TCI office equipment,'' and noted that TCI ''could help fill any gaps in the know how or experience of the back-office personnel,'' dealing with such vital activities as billing, invoicing, accounts receivable, assistance in Customs matters, ''and other clerical functions.'' Ta Chen's November 12, 1996 Response at 51 and 53. We also note the movement of Ta Chen's former sales manager among Ta Chen, Company A, and Company B. Given the longstanding and intimate business dealings between this individual and the president of Ta Chen, we must question the degree of operational autonomy of Company A and Company B while under this individual's stewardship. We also note that this individual received substantial compensation from Ta Chen well after his claimed severance date of 1992. Further, Ta Chen's president met with Company B's customers, and participated directly in the negotiation of prices for Company B's subsequent resales of WSSP. Ta Chen's statement that it ''knew the prices which would be accepted by Ta Chen's distributor'' raises additional questions about the extent to which Company B was free to act in its own interest.

With respect to debt financing (an indicium specifically mentioned in the SAA and Notice of Proprosed Rulemaking), whether Company B can be said to have ''offered'' its accounts receivable and inventory as collateral for a bank loan to TCI, or that TCI ''requested'' and Company B ''agreed'' to take such a step is not germane to our analysis. Either way, as we stated in our Preliminary Results, Company B ''placed its continued ability to operate in the hands of a putatively unaffiliated party.'' Preliminary Results at 1436. Despite the statements of various individuals which Ta Chen has placed on the record of this review, neither Ta Chen nor any of these individuals is able to cite to a single case where an unaffiliated party would accept this risk. We also disagree with Ta Chen's claim that Company B's pledging its

accounts receivable and inventory to TCI's bank was essentially akin to TCI securing a lien upon Company B and, in turn, assigning its rights to the bank. We note that the actual transaction involved a significant qualitative difference. In the latter case, TCI's security interest would be limited to the amount Company B owed against purchases of inventory. In the former case, Company B unilaterally, and without consideration, assigned its entire inventory and accounts receivable directly to TCI's bank to facilitate a loan for TCI. That Company B would accept this risk without any consideration—without even a written agreement memorializing the terms and duration of the agreement—does not comport with the commercial realities of dealings between unaffiliated companies. Nor has Ta Chen offered convincing evidence that this arrangement is, in fact, commonplace. As a final note, Ta Chen itself undermines the stated reason for this arrangement: to ensure payment by Company B to Ta Chen for purchases of stainless steel products. In its November 12, 1996 submission, Ta Chen asserts that the risk of default by Company B ''was not significant, since bad debt has not been a problem.'' The absence of a genuine credit risk would, in fact, attenuate the need for this extraordinary financial relationship. See Ta Chen's November 12, 1996 Supplemental Response at 81.

The existence of close supplier relationships is another factor specifically mentioned in the SAA. Here, too, our examination of Ta Chen's role as supplier to Company B supports a finding of affiliation. While Ta Chen claims that Company B was free to purchase stainless steel pipe from other suppliers, Ta Chen has not provided evidence to suggest that Company B ever looked to any producer other than Ta Chen as its supplier. In fact, Ta Chen has allowed that ''to the best of its knowledge'' (which we must presume was extensive, given Ta Chen's computer access and custody of the signature stamp), Ta Chen was the exclusive supplier of stainless steel pipe products to Company B. Furthermore, the cases Ta Chen cites on this point are inapposite. In each case, we did not conclude that a close supplier relationship was insufficient grounds for a finding of affiliation; rather, we concluded that no close supplier relationship of any kind existed. In Carbon Steel Flat Products, for example, we found that no exclusive supplier relationship existed between the respondents and the named entities. See Final Results of Administrative Review, 62 FR 18404, 18417 (April 15, 1997). Likewise, in Rayon Yarn and Melamine Dinnerware, the Department found that, unlike in the instant review, there were no close supplier relationships. Furthermore, the Department has stated explicitly that it may consider close supplier relationships sufficient basis for a finding of affiliation. See Large Newspaper Printing Presses and Components Thereof From Japan, 61 FR 38139 (July 23, 1996).

Comment Three: Ta Chen maintains that the Department's use of adverse facts available was unlawful. Ta Chen insists that it cooperated fully with the Department throughout these proceedings and responded immediately to each of the Department's requests for information. The new information Ta Chen provided in its November 12, 1996 Supplemental Response was in direct response to the Department's request, made for the first time, that Ta Chen explain ''all relationships'' between Ta Chen and Company B. Ta Chen cites to the Department's verification reports issued in the first administrative review as evidence of its complete cooperation with the Department; ''[n]o verifier question went unanswered.''

Furthermore, Ta Chen submits, even if the Department concludes that Ta Chen and Company B were affiliated during this third review, Ta Chen had a reasonable basis for believing that no such affiliation existed under the law in effect at the time of the relevant sales to Company B (*i.e.*, in August 1994). In four separate verifications the Department limited its related party inquiries to common equity ownership or shared directors. Thus, Ta Chen argues, it had ''well-founded and reasonable'' grounds for believing that Ta Chen and Company B were unaffiliated for purposes of the Tariff Act.

As to the Department's choice of facts available, Ta Chen avers that Ta Chen's current cash deposit rate (from the less than fair value [LTFV] investigation) would provide ''sufficient motivation'' for Ta Chen to cooperate fully with the Department. Ta Chen reasons that it requested the three pending administrative reviews in order to lower its antidumping liabilities; if the Department continued its imposition of its existing cash deposit rate of 3.27 percent, ''Ta Chen's purpose in participating in these reviews will have been completely undermined.'' Ta Chen's Case Brief at 48. Ta Chen draws a distinction between the pending reviews of WSSP and other cases wherein a respondent is required to participate in an administrative review sought by a petitioner; in the latter case, Ta Chen argues, the threat of a higher margin suggested by petitioner serves to induce respondents' cooperation. In light of these facts, Ta Chen argues, use of the 31.90 percent margin from the Preliminary Results is entirely inappropriate.

In addition to being unduly punitive, Ta Chen continues, use of adverse facts available is especially unwarranted where ''novel, vague issues are involved.'' Ta Chen insists that adverse facts available would be called for only if three conditions had been met: (i) the respondent could reasonably have been expected to know that the data it did not provide had been requested by the Department, (ii) the requested data were not a new requirement of the 1995 statute, nor a new concept under the statute, and (iii) the questionnaire was not vague. See Ta Chen's Case Brief at 43, citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al. (AFBs From France) 62 FR 2081, 2088, 2090 (January 15, 1997); Fresh Cut Flowers From Colombia 62 FR 16772 1776 (1997). Pointing to the Court's decision in *Daewoo Electronics Co., Ltd.* v. *U.S.* 712 F. Supp. 931, 945 (CIT 1989), Ta Chen maintains that the Department must engage in ''clear and adequate communication'' with a respondent before applying facts available. Ta Chen stresses that prior to the Department's issuance of its Preliminary Results Ta Chen could not foresee that the Department would consider Ta Chen and Company B to be affiliated persons. Thus, Ta Chen argues, it had no reason to report Company B's sales to its customers, rather than Ta Chen's sales to Company B.

Ta Chen argues that the Department has applied ''cooperative'' facts available in another case involving the failure properly to report subsequent U.S. sales made by an affiliated person. See Ta Chen's Case Brief at 51, citing Certain Small Business Telephones From Taiwan, 59 FR 66912 (December 28, 1994) and Certain Fresh Cut Flowers From Colombia, 59 FR 15159 (March, 31, 1994). Despite the respondents in these cases having clear knowledge that they were related, and failing to report properly their U.S. sales, the Department responded with ''second-tier'' BIA. Here too, Ta Chen argues, the Department should treat Ta Chen with non-adverse facts available.

Ta Chen also maintains that the judicial precedents cited by petitioners do not support the use of adverse facts available. In *Sugiyama Chain* v. *United States,* 852 F. Supp. 1105, 1111 (CIT 1994), for example, Ta Chen notes that

the Department applied cooperative BIA to a respondent in six of the seven administrative reviews at bar, despite the Department's belief that the respondent ''attempted to intentionally deceive the Department.'' Ta Chen's Case Brief at 54. The application of non-cooperative BIA in the seventh review was based on the respondent's failure at verification, and refusal to supply other requested information (including the subsequent home market sales to unrelated customers). Ta Chen holds that none of these conditions exists here. At worst, Ta Chen submits, it ''mischaracterized the situation'' with respect to Company B; it did not ''misrepresent the situation.'' *Id.* at 55 (original emphasis).

In addition, Ta Chen notes that while petitioners cite to Certain Stainless Steel Wire Rod From India (58 FR 54110, 54111 (October 20, 1993)) (Steel Wire Rod) as supporting the use of adverse facts available, petitioners do not mention the respondent's numerous shortcomings in that review. In that case Ta Chen points out that the respondent Mukand initially and repeatedly denied any relationship with the related customer, claimed that the customer was free to purchase from others and later retracted that claim, first denied control over the customer and later admitted the same, contradicted almost all of the information in its earlier submissions, and failed to state initially that one of its officials ran the customer's day-to-day business operations. Furthermore, the same Mukand official certified as correct certain inconsistent and contradictory responses.

Petitioners, on the other hand, ask that the Department look beyond the ''factually unsubstantiated and legally unsound'' arguments presented in Ta Chen's case brief, and look instead to the chronology of events unfolding throughout the five-year history of this case. According to petitioners, this chronology demonstrates that Ta Chen repeatedly and deliberately lied to the Department regarding its sales in the United States; this pattern of dissembling warrants assignment of total adverse facts available. Petitioners dismiss Ta Chen's suggestions in its case brief that this review involves ''novel, vague issues,'' and that the Department itself is struggling to interpret the affiliated persons provisions of section 771(33) of the Tariff Act. Petitioners also contend that, contrary to Ta Chen's arguments, Ta Chen ''has been on notice at least since verification ... in October 1994 of the Department's intense interest in Ta Chen's relationship with certain customers in the United States.'' Petitioners' Rebuttal Brief at 2. Therefore, petitioners aver, it is ''farcical'' for Ta Chen to insist that it ''had absolutely no reason to think the Department would consider Ta Chen and [certain U.S. customers] affiliated parties.'' *Id.*, (quoting from Ta Chen's Case Brief). Rather, petitioners claim, the unique facts of this case permit no doubt that Ta Chen is affiliated with these U.S. customers, which were, for all intents and purposes, ''Ta Chen's alter ego and tool.'' *Id.*

Petitioners assert that the Department's interest in Ta Chen's affiliated entities in this review is evident from the Department's initial antidumping questionnaire, which quotes from section 771(33) of the Tariff Act in defining ''affiliated person.'' Petitioners also note that the Department's questionnaire queries the respondent specifically as to affiliations ''through means other than stock ownership,'' thus leaving no doubt that the Department did not define affiliation as being limited to, *per se*, an equity interest in the other person.

Furthermore, petitioners maintain, the Department's intense scrutiny of these specific customers was clearly evident during the still-pending first and second reviews, as well. According to petitioners, the Department's reports on the verifications of Ta Chen and TCI, conducted in October 1994, detail at length the extraordinary attention focused by the Department on these customers. Therefore, petitioners argue, it is absurd for Ta Chen to profess, as it has in its case brief, that Ta Chen had no indication that the Department might consider these U.S. customers as ''affiliated persons.'' Rather, petitioners insist, Ta Chen's grudging disclosure of information, and its active efforts to misrepresent the information it has disclosed, are indicative of a pattern of ''fraudulent deception.'' *Id.* at 6.

For example, petitioners continue, Ta Chen concealed the significant role of Company A in Ta Chen's activities during the first review until petitioners uncovered Company A's existence and insisted on a full discussion of its relationships with Ta Chen. And, petitioners observe, just three weeks after petitioners' disclosure of Company A's existence, the firm's corporate charter was dissolved, and Company A was effectively replaced by Company B.

Furthermore, petitioners argue that Ta Chen has consistently withheld vital information from the Department, disclosing piecemeal its affiliations only under duress. Petitioners maintain that, rather than volunteering key information concerning its relationships with U.S. customers, Ta Chen has instead divulged this information only following petitioners' allegations that Ta Chen was related to, or affiliated with, these parties. According to petitioners, ''Ta Chen has quickly reacted to cover its fraud and thereby has compounded its fraud ... . In essence, the same group of individuals ... have simply used different corporate names to conduct their common business, jettisoning one name and moving on to the next whenever their charade was in jeopardy of being uncovered.'' Petitioners' Rebuttal Brief at 11.

Were Ta Chen genuinely cooperating with the Department, petitioners argue,

- Ta Chen would have volunteered the existence of Company A and its ''dba''s, rather than waiting until petitioners ferreted out this information on their own;
- Ta Chen would have provided a truthful explanation concerning Company A and its ''dba''s, rather than claiming, falsely, that the ''dba'' names were prior customers of Ta Chen's;
- Ta Chen would have ''had Company A come forth and answer questions ... as Ta Chen has asked others ... to do,'' rather than dissolving Company A's corporate charter roughly two weeks after petitioners' first calling attention to Company A's existence;
- Ta Chen would not have precipitously rerouted its business away from Company B, with sales to this customer dropping sharply between the second and third periods of review. As with Company A's dissolution, petitioners maintain, the shifts in Ta Chen's U.S. sales pattern were ''undoubtedly reactions by Ta Chen'' to petitioners'' allegations concerning Company A, its ''dba''s, and Company B;
- Ta Chen would have volunteered information at the October 1994 verification in the first review concerning its extensive commercial and financial ties to Company B, which were clearly relevant to that extraordinary verification. Likewise, Ta Chen would have volunteered this information in the body of its second and third review questionnaire responses. Petitioners aver that Ta Chen did not do so.

Petitioners' Case Brief at 9 and 10.

According to petitioners, the record before the Department with respect to Ta Chen is so replete with inconsistencies, unsubstantiated claims, ''gaps in logic,'' and the withholding of accurate information, that the only proper course for the Department is to apply total adverse facts available. Petitioners assert that Ta Chen's U.S.

sales database is ''both incomplete and untrustworthy,'' and that Ta Chen's protestations that it has cooperated with the Department are ''unpersuasive.'' *Id.* at 11. Petitioners claim that the situation in the instant review is akin to that of respondent Nippon Pillow Block Sales (NPB) in Antifriction Bearings From France, 62 FR 2081, 2086 (January 15, 1997). In that review the Department applied facts available to NPB for its failure to report accurately all home market and U.S. sales of subject merchandise. Because of omissions by NPB in its sales listings the Department determined that NPB's questionnaire responses were unreliable *in toto* and disregarded all of NPB's sales data. Further, the Department concluded that NPB had not acted to the best of its ability in reporting the relevant sales data and, thus, applied an adverse inference in choosing the facts otherwise available.

Petitioners also object to Ta Chen's efforts to ''maintain the fiction'' that the extraordinary ties detailed in the Department's preliminary results are commonplace between unaffiliated persons. With respect to TCI's physical custody of certain customers' signature stamps, dedicated modem lines to the customers' computerized accounting systems, shared sales department personnel, TCI's direct negotiations with these distributors' subsequent customers, and the distributors' pledging of their inventory to secure TCI's debts, petitioners insist that these practices ''are not common and do not exist,'' nor has Ta Chen been able to point to a single instance of such intimate ties between unaffiliated entities. Petitioners suggest that Ta Chen's arguments are ''laughable'' and ''ludicrous.'' Petitioners' Rebuttal Brief at 14. Petitioners suggest that the reason the Department has never found parties to be affiliated based on these facts is not because these ties are insufficient to establish affiliation but, rather, because the Department has never before been confronted with a similar fact pattern. Petitioners brand as ''specious'' Ta Chen's ''discrete parsing'' of the Department's preliminary finding of affiliation. Petitioners assert that Ta Chen's interpretation is thrice-flawed in its assumptions that (i) Ta Chen's ties with certain U.S. customers, including Company B, are common in the industry, (ii) Ta Chen has cooperated with the Department in all three administrative reviews, and (iii) Ta Chen's unsubstantiated and unsupported claims establish that it had no affiliation with Company B. Petitioners claim that Ta Chen's statement that physical custody of distributors' signature stamps does not indicate control over these distributors' disbursements is ''nonsense.'' Similarly, Ta Chen's claim that its computer access to these distributors' financial records is common is not supported by any other instance of unaffiliated parties being so linked. Furthermore, in response to Ta Chen's argument that Ta Chen had no control over these distributors' prices, petitioners note that Ta Chen has stated that ''Ta Chen officials knew the prices which would be accepted by Ta Chen's distributor.'' Petitioners' Rebuttal Brief at 17 (quoting Ta Chen's Case Brief). ''Arm's-length companies do not and are not supposed to operate in this manner.'' *Id.* at 18. Further, Ta Chen has not provided a single instance of these distributors rejecting the price Ta Chen established for subsequent re-sales of WSSP.

Finally, petitioners assail Ta Chen's characterization of its credit arrangements as ''absurd.'' Asserting that the pledging of one's inventory and accounts receivable ''are not normal between arm's-length parties,'' petitioners point to Ta Chen's failure to provide any documentation of an agreement establishing these arrangements and conclude that the suggestion that an unaffiliated party would voluntarily accept such an obligation is ''preposterous in itself.'' *Id.* at 19.

Department's Position: In this third review Ta Chen concealed relevant information pertaining to its sales to Company B, and only revealed other relevant information concerning sales to another U.S. customer when the Department opted to verify Ta Chen's U.S. questionnaire responses. Furthermore, this is a respondent which has on three occasions made substantial changes to its U.S. sales operations (in 1992, 1993 and 1994); Ta Chen has acknowledged that it made many of these changes as a direct result of the order. Given the sophistication of its behavior and its legal arguments before the Department, we find unpersuasive Ta Chen's assertion that it ''had absolutely no reason to think the Department would consider Ta Chen'' and certain of its U.S. customers as affiliated persons.

We also disagree with Ta Chen's suggestion that this review addresses ''novel, vague issues.'' The governing statutory provisions for this review took effect on January 1, 1995. Our Notice of Proposed Rulemaking, with its exhaustive commentary and analysis, appeared in February, 1996, or fully two months prior to Ta Chen's initial questionnaire response in this review. Thus, the affiliated party provisions of section 771(33), as well as the Department's proposed interpretation of these provisions, had been comprehensively vetted before Ta Chen submitted any factual information in this third review. Further, the Department's February 13, 1996 questionnaire specifically asked Ta Chen to report its first sales to unaffiliated customers in the United States. Appendix I of the questionnaire provided the new definition of ''affiliated person'' found at section 771(33) of the Tariff Act, including the new emphasis on affiliation through ''control.'' See the Department's questionnaire at Appendix I–1. The request to provide the first U.S. sales to unaffiliated customers imposed no new reporting burden upon Ta Chen. Finally, as noted above, there was no ambiguity in the questionnaire's language as to which sales the Department sought.

We also find that Ta Chen's citations to past Departmental determinations in support of using cooperative, non-adverse facts available are not on point. In Fresh Cut Flowers From Colombia, for example, the respondent's related entities had either gone out of business entirely, or were in the process of liquidation, and thus the firms were unable to provide sales data to the Department. Similarly, in Certain Small Business Telephones From Taiwan, the affiliated U.S. customer of respondent Bitronics was out of business. We concluded that ''(s)ince Bitronics made substantial attempts to submit information to the Department,'' second-tier, or cooperative, BIA would be most appropriate. See Certain Small Business Telephones From Taiwan; Final Results of Administrative Review, 60 FR 16606 (March 31, 1995). In the instant case, despite the 1995 sale of Company B to another party, Ta Chen has never indicated any such difficulty in accessing Company B's records, and has even submitted Company B's federal income tax returns in the record of this review.

As to Ta Chen's argument that it merely ''mischaracterized'' (as distinguished from ''misrepresented'') its sales to Company B, Ta Chen's distinction is without a difference. The facts remain that Ta Chen misled the Department as to the nature of its transactions with Company B and that it failed to report properly Company B's sales to the first truly unaffiliated person in the United States.

With respect to the precedent set in Steel Wire Rod, we disagree with Ta Chen's interpretation of this case. In fact, we find a number of similarities between Ta Chen's summary of the

Department's findings in that case and the facts of the instant review. Like Mukand in Steel Wire Rod, Ta Chen initially and repeatedly denied any relationship with Company B, claimed that Company B was free to purchase from others but later acknowledged that it never attempted to do so, and submitted certain contradictory information. All of this information was certified as accurate by the same official, the president of Ta Chen. While we cannot state authoritatively that a Ta Chen official ran Company B, as was the case with Mukand in Steel Wire Rod, the individual who did run Company B formerly worked for Ta Chen and continued to have intimate business ties to Ta Chen before and after his employment with Company B. Unlike Mukand in Steel Wire Rod, however, Ta Chen has never admitted any control over Company B, nor has it attempted to correct its earlier misreporting of its U.S. sales data.

We also disagree with petitioners' argument that the record evidence supports use of total adverse facts available for Ta Chen's margin. We verified Ta Chen's U.S. sales questionnaire responses after issuing the Preliminary Results and examined Ta Chen's customer relationships in detail. While we did find misreported sales to one previously-unnamed customer, we did not find evidence to suggest that Ta Chen is affiliated in a fashion similar to the relationships between Ta Chen and Companies A and B with any of its other U.S. customers in this review. Therefore, while we have applied adverse facts available to those misreported sales, we have not based Ta Chen's margin on total adverse facts available. We agree with petitioners, however, that there is an issue concerning the reliability and consistency of the information supplied by Ta Chen dating back to the first administrative review (see Certain Welded Stainless Steel Pipe From Taiwan; Preliminary Results of Administrative Reviews, 62 FR 26776 (May 15, 1997)). Accordingly, we will address the specific circumstances surrounding Ta Chen's relationships with Company A and Company B within the context of the ongoing reviews which cover periods predating this POR. In addition, we intend to closely scrutinize this issue within the context of the pending fourth review of this order.

Comment Four: Ta Chen argues that the margin used as adverse facts available in the Preliminary Results ''is not relevant, calculated or corroborated, and thus is unlawful.'' According to Ta Chen, the Department's proposed regulations and the SAA both call for the Department, when using facts available which are based on secondary information, to corroborate these facts as such information ''may not be entirely reliable because, for example, as in the case of a petition, it is based on unverified allegations, or * * * it concerns a different timeframe than the one at issue.'' Ta Chen's Case Brief at 58, quoting the SAA at 870. Ta Chen insists that the Department has already ''verified'' that the facts available margin is wrong. In the underlying LTFV investigation, Ta Chen argues, the Department calculated a margin of 3.27 percent for Ta Chen, based on data which were subject to verification. Ta Chen maintains that the 31.90 percent margin (the ''all others'' rate from the LTFV investigation) resulted from the Department's rejection of one respondent's data in favor of best information available.

In addition, Ta Chen argues that the facts available margin was applied to producers other than Ta Chen and is, thus, ''irrelevant and unlawful.'' Ta Chen cites to an antidumping case from Canada wherein Canada's International Trade Tribunal noted Ta Chen's lower margins (and the refusal of other Taiwanese respondents to participate in the proceeding) as indicative of a pattern of lawful and cooperative behavior by Ta Chen which resulted in lower dumping margins.

Ta Chen also faults the 31.90 percent facts available margin as being unrepresentative of current conditions in the stainless steel pipe market. Ta Chen insists that the Department must use the most up-to-date information as facts available as it carries greater probative value. In addition, Ta Chen notes what it sees as significant changes in the U.S. market since publication of the antidumping duty order. According to Ta Chen, Ta Chen is no longer forced to compete against other Taiwanese producers of WSSP, who largely withdrew from the U.S. market after the imposition of antidumping duties. In support of this contention, Ta Chen quotes from a 1996 determination by the Canadian International Trade Tribunal which concludes that ''Taiwanese producers other than Ta Chen have been excluded from the U.S. market.'' Ta Chen's Case Brief at 63. Ta Chen also insists that the health of the U.S. industry has improved markedly since the original investigation in this case. *Id.* at 64, citing Welded Stainless Steel Pipe From Malaysia, ITC Pub. No. 2744 (March 1994).

According to Ta Chen, the Department erred by disregarding independent sources for more probative dumping margins for use as facts available. Ta Chen suggests that petitioners in the investigation of welded stainless steel pipe from Malaysia testified to the International Trade Commission that the imposition of antidumping duties on WSSP from Taiwan had effectively eliminated dumping by Taiwanese producers. See ITC Pub. No. 2744 (Final) (March 1994). In a similar vein, Ta Chen cites the testimony of an official of Bristol Metals, a U.S. producer of WSSP, insisting that ''Taiwan imports have been checked by the antidumping laws.'' Ta Chen's Case Brief at 67, quoting from Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, ITC Pub. No. 2900 (June 1995). Ta Chen argues that these statements offered by representatives of the U.S. pipe industry ''support a [zero] percent dumping finding for Ta Chen.'' *Id.* at 68. Furthermore, Ta Chen suggests that these statements, coming after the original petition in this case, are more indicative of present market conditions. Ta Chen also cites to statements submitted by Ta Chen into the record of this review, one from the same individual from Bristol Metals, and another by a U.S. purchaser of WSSP and stainless steel butt-weld pipe fittings, both claiming that Ta Chen was not dumping at 31.90 percent margins through Company A and Company B.

Ta Chen also suggests that the failure of petitioners in this case to request a review of Ta Chen for the first three PORs is indicative of petitioners' belief that Ta Chen is not dumping WSSP into the U.S. market. ''By reason of their failure to act, it is a fair inference that the [petitioners] do not believe that Ta Chen is dumping in the USA beyond the previously found dumping margin( ) of 3.27%.'' Ta Chen's Case Brief at 69.

Ta Chen next turns to what it views as ''other independent sources'' for Ta Chen's dumping margins. Ta Chen notes that for its remaining U.S. sales, the Department's preliminary margin calculation found dumping margins of zero percent. Ta Chen submits that similar analysis in the first two PORs will, likewise, result in margins of zero percent. Finally, Ta Chen suggests, the Department could turn to antidumping proceedings in other countries as evincing Ta Chen's ''proclivity not to dump.'' Ta Chen cites to a margin of 3.5 percent found in an Australian investigation of WSSP, and zero percent margins found in similar investigations conducted by Canada and the European Union. Further, in its investigation of Class 150 Pound Fittings From Taiwan, Ta Chen notes, the Department found a

zero-percent margin for Ta Chen. Ta Chen suggests using these margins to determine the facts available margin to apply in this third administrative review.

Further, Ta Chen argues, since it is a fungible, commodity product, the market for A–312 WSSP is driven primarily by price. Had Ta Chen been dumping through Company B at 31.90 percent margins, Ta Chen reasons, ''there would have been a ''giant sucking sound,'' as all the business went to Company B. There was no such sound.'' Ta Chen's Case Brief at 75. Finally, Ta Chen asserts that petitioners have consistently overestimated the actual margins in cases involving Taiwan. As proof of this, Ta Chen notes that the final margins published in the Department's LTFV determination were consistently much lower than those originally presented in the petition. Therefore, a margin drawn from the petition should not serve as the basis for facts available in the instant review.

Petitioners counter that the URAA ''expressly approves of the use of data from the petition and an original investigation's final determination for facts available,'' and note that the LTFV investigation is the only source of margins for use as facts available. Petitioners maintain that ''[t]he Department is not required to conduct an economic analysis of the industry whenever it determines that dumping margins should be based on facts available,'' and argues that Ta Chen's citations to ITC testimony in an unrelated case, and to antidumping proceedings in other nations, are ''not relevant.'' Noting that the Department has not completed either the first or second administrative reviews in this case, petitioners aver that the Department has little choice but to turn to the highest margin from the original LTFV investigation (*i.e.*, 31.90 percent) as adverse facts available. Petitioners also dismiss Ta Chen's argument that petitioners themselves have concluded that Ta Chen was not selling merchandise at dumped prices during the instant POR. Ta Chen's argument, petitioners insist, is based upon statements made before the ITC in an injury investigation concerning pipe from Malaysia; that proceeding had nothing to do with calculating dumping margins with respect to sales of WSSP from Taiwan.

Petitioners also dismiss Ta Chen's argument that the 31.90 percent margin is flawed because this margin is significantly higher than the calculated rates for respondents during the LTFV proceeding. Petitioners aver that ''cooperative respondents that timely and completely submit verifiable data are entitled to whatever rates result,'' whereas in the instant case, Ta Chen has ''lie(d) to the Department and * * * fraudulently pose[d] as being cooperative.'' Where, as here, the Department has determined that the withholding of information is deliberate, petitioners stress, the Department has '' 'heavily favored using alternative ''best information available'' least favorable to a respondent.' '' Petitioners' Rebuttal Brief at 48 (quoting from *Chinsung Industries Co., Ltd.* v. *United States*, 705 F. Supp. 598, 600 (CIT 1989)). Furthermore, petitioners argue, use of the highest margin from the LTFV investigation is fully consistent with the Department's longstanding practice of applying a two-tiered BIA methodology whereby an uncooperative respondent will receive a higher margin than would a respondent who genuinely cooperated with the Department but failed to timely submit requested factual information. Finally, petitioners argue that in the absence of rates issuing from any administrative review the highest margin from the LTFV investigation stands as ''most probative of current conditions.'' Reliance upon Ta Chen's own rate from the original investigation, petitioners maintain, would ''essentially reward Ta Chen for withholding information from the Department.'' *Id.* at 49.

Department's Position: We agree with petitioners and disagree, in part, with Ta Chen. We cannot accede to Ta Chen's suggestion that we apply its existing cash deposit rate as adverse facts available, as this would amount to rewarding Ta Chen for its failure to disclose essential facts to the Department and to report the proper body of its U.S. sales. Were we to consider Ta Chen's existing margin, which was calculated in a segment of these proceedings wherein Ta Chen was deemed cooperative and its responses fully verified, as adverse facts available, we would effectively cede control of this review to Ta Chen. The respondent would be free to submit selective, misleading, or inaccurate information, secure in its knowledge that the worst fate it could expect would be to receive its existing cash deposit rate as facts available. See *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565, 1571 (Fed. Cir. 1990). As the Court stated in *Industria de Fundicao Tupy, et al.* v. *United States* 936 F. Supp 1009 (CIT 1996), ''the Court will not allow respondent to cap its antidumping rate by refusing to provide updated information to the (the Department).'' Similarly, margins from other Departmental proceedings or from Canadian or European antidumping cases, wherein Ta Chen cooperated fully, are likewise irrelevant to this third administrative review where Ta Chen impeded our investigation. Contrary to Ta Chen's suggested approach, our aim in selecting facts available for non-cooperative respondents is to choose a margin which is sufficiently adverse ''to induce respondents to provide (the Department) with complete and accurate information in a timely fashion.'' See *National Steel Corp., et al.*, v. *United States*, 13 F. Supp 593 (CIT 1996).

We also reject Ta Chen's assertion that the 31.90 percent facts available margin is inappropriate because it was drawn from an earlier segment of these proceedings. In *Mitsuboshi Belting Corp., Ltd.* v. *United States*, the Court, relying upon the findings in *Rhone Poulenc Inc.* v. *United States* (899 F.2d 1185 (Fed Cir. 1990)), found that the Department's use of a margin drawn from a LTFV investigation was reasonable and, further, that ''best information'' doesn't necessarily mean ''most recent information.'' The Court also rejected plaintiff's claim that the Department's choice of BIA was unreasonably harsh:

> to be properly characterized as ''punitive,'' the agency would have had to reject low margin information in favor of high margin information that was demonstrably less probative of current conditions. Here, the agency only presumed that the highest prior margin was the best information of current margins. * * * We believe a permissible interpretation of the statute allows the agency to make such a presumption and that the presumption is not ''punitive.'' Rather, it reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.

Mitsuboshi Belting Ltd. and MBL (USA) Corp. v. *United States.*, Court No. 93–09–00640 (CIT March 12, 1997).

Likewise, in *Sugiyama Chain Co., Ltd. et al.*, v. *United States*, the defendant contested our selection of best information available as having no probative value concerning Sugiyama's current margins because the rate taken from the LTFV investigation had ''only a tenuous link to Sugiyama Chain's margins in the instant review.'' The Court approved of our use of the highest prior margin as BIA, noting that the Department ''can make a common sense inference —indeed, there is a rebuttable presumption—that the highest prior margin is the most probative evidence indicative of the current margin.'' *Sugiyama Chain Co., Ltd., et al.* v.

United States, 13 CIT 218; see also *Rhone Polenc, Inc., et al.* v. *United States,* 710 F. Supp. 341 (CIT 1989) (''There is no mention in the statute or regulations that the best information available is the most recent information available.''). Furthermore, our use of a margin drawn from data supplied by the petitioners comports fully with section 776(b) of the 1995 Tariff Act.

In addition, we note that in the instant review we have calculated individual transaction margins for Ta Chen which are comparable to the 31.90 percent, which was chosen from the LTFV investigation as facts available. See the Department's Final Margin Program, ''Minimum and Maximum Margins.'' Thus, we have available contemporaneous and calculated margins, based on Ta Chen's own third POR data, which serve to corroborate the petition margin, and which reflect Ta Chen's practices during this third administrative review. For the purpose of these final results, therefore, we have continued to use 31.90 percent as adverse facts available.

As to Ta Chen's comments regarding the present state of the market for Taiwanese stainless steel pipe, we find these comments irrelevant in this review. Ta Chen stresses its claim that the antidumping duty order has driven other Taiwanese pipe producers from the playing field, eliminating the need for Ta Chen to sell WSSP at less than normal value. However, Ta Chen's continued presence in the United States market cannot be seen as indicative that it has not engaged in dumping of WSSP in this country.

We also find inapposite Ta Chen's argument that, since petitioners did not request this third review, petitioners are satisfied with Ta Chen's existing cash deposit rate. Whether or not petitioners requested this review is, at this point, irrelevant, and cannot be construed in any way as evidence of Ta Chen's present dumping activities, or lack thereof. Furthermore, any number of factors may lead a domestic industry to eschew the administrative review process, including, for example, insufficient resources to participate in a review, or a belief that it cannot ''prevail'' in an administrative review.

Finally, as to ''Ta Chen's proclivity not to dump,'' Ta Chen could best have demonstrated such proclivity by extending its full cooperation in the first three reviews of this antidumping duty order. We can only conclude in this third review, as we have preliminarily determined in the first and second reviews, that Ta Chen's refusal to provide the complete body of appropriate U.S. sales, as requested, is because these sales represent significant dumping margins. As it is, the Department has no choice but to make the negative inference specifically called for by the facts available provisions of the Tariff Act.

Comment Five: Petitioners argue that if the Department continues to use the bulk of Ta Chen's sales data for its final results of review, the Department must adjust its cost-of-production (COP) test to account for import duties paid by Ta Chen on its imports of stainless steel coil (the raw material used in the production of A–312 welded stainless steel pipe). According to petitioners, the Department in its preliminary results increased U.S. price by the amount of home market import duties rebated or not collected by reason of exportation of the finished WSSP to the United States. This was necessary, petitioners suggest, because Ta Chen's home market prices were inclusive of import duties. However, Ta Chen's COP data were reported exclusive of import duties, because Ta Chen's mill is a customs bonded facility. The Department, therefore, compared COP amounts which do not include import duties to home market prices which do. This had the effect, petitioners conclude, of ''understating the extent that Ta Chen's home market sales were made at prices that were below the cost of production.'' Petitioners' Case Brief at 14. Petitioners suggest that the Department either deduct home market import duties from home market sales prices, or add these duties to Ta Chen's reported COP prior to conducting our cost test.

In rebuttal, Ta Chen confirmed that it paid import duties on imports of stainless steel coil, and that its home market prices include these import duties.

Department's Position: We agree with petitioners. In conducting our cost test, we inadvertently compared net home market prices inclusive of import duties on stainless steel to COP totals exclusive of these duties. We have adjusted our calculation of the net home market price used in our COP test to deduct the amount of the import duties.

Comment Six: Ta Chen urges the Department to correct two ''clerical errors'' in the preliminary results margin program. The first involves the Department's calculation of Ta Chen's COP. Ta Chen suggests that the Department inadvertently double-counted Ta Chen's indirect selling expenses in calculating total COP. The preliminary margin program includes two variables, ISELCOP and INDSELEX, both of which represent indirect selling expenses. At different points in the preliminary margin program, Ta Chen notes, the Department added both to Ta Chen's COP, thereby overstating these expenses.

Ta Chen also argues that the Department double-counted Ta Chen's U.S. packing expenses by subtracting these expenses from U.S. price while adding them to foreign unit price in dollars (FUPDOL). Ta Chen suggests altering the calculation of net U.S. price to eliminate the deduction for U.S. packing expenses.

Department's Position: We agree with Ta Chen on both points. With respect to indirect selling expenses, we inadvertently double-counted these expenses in calculating Ta Chen's COP. As for packing expenses, we erroneously subtracted these from U.S. price while simultaneously adding them to FUPDOL. We have corrected both errors for these final results of review.

Comment Seven: Ta Chen maintains that it has not been dumping for three consecutive periods of review and, therefore, requests that the Department revoke Ta Chen from the antidumping duty order covering welded stainless steel pipe from Taiwan.

Petitioners, in a footnote in their rebuttal brief, maintain that, ''viewed overall,'' Ta Chen's behavior throughout these proceedings demonstrates that Ta Chen is not entitled to revocation from the antidumping duty order.

Department's Position: Given the existence of a calculated margin for Ta Chen in these third review final results, we determine that Ta Chen has not met the requirements of three consecutive years of zero (or *de minimus*) margins as called for in section 19 CFR 353.25 of the Department's regulations. Therefore, we cannot consider a partial revocation of the antidumping duty order as to Ta Chen at this time.

Comment Eight: Ta Chen, noting the three ongoing administrative reviews of WSSP, asks that the Department use the final results dumping margin from the third administrative review to establish Ta Chen's cash deposit rate for future entries of subject merchandise. Ta Chen cites the Department's approach in Silicon Metal From Brazil, where the Department issued final results of several ongoing reviews simultaneously, using the margins calculated for the most recent POR as the respondents' new cash deposit rates.

Petitioners argue that the Department should assign Ta Chen a margin in all three administrative reviews of 31.90 percent as total adverse facts available, thus obviating the need to address the issue of which final results margin should establish Ta Chen's new cash deposit rate.

Department's Position: Consistent with past Departmental practice, we will use as Ta Chen's new cash deposit rate the weighted-average dumping margin found in these final results of the third POR. Our practice is to adopt the dumping margin from the final results for the most recent POR to serve as a respondent's new cash deposit rate.

Final Results of Review

Based on our review of the arguments presented above, for these final results we have made changes in our margin calculations for Ta Chen. After comparison of Ta Chen's EP to normal value (NV), we have determined that Ta Chen's weighted-average margin for the period December 1, 1994 through November 30, 1995 is 6.06 percent.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of WSSP from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Ta Chen will be the rate established in the final results of this administrative review;

(2) For previously reviewed or investigated companies other than Ta Chen, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.84 percent. See Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Taiwan, 57 FR 62300 (December 30, 1992).

All U.S. sales by the respondent Ta Chen will be subject to one deposit rate according to the proceeding. The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, we will use the entered value of the subject merchandise to determine the appraisement rate.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 8, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18448 Filed 7–11–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program (NVLAP), NVLAP Information Collection System

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 12, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Vanda R. White, National Voluntary Laboratory Accreditation Program, Building 820, Room 282, National Institute of Standards and Technology, Gaithersburg, MD 20899; phone, (301) 975–3592; fax (301) 926–2884; e-mail, vanda.white@nist.gov.

SUPPLEMENTAL INFORMATION:

I. Abstract

This information is collected from all laboratories, testing and calibration, that apply for NVLAP accreditation. Applicants provide the minimum information necessary to evaluate the competency of laboratories to carry out specific tests or calibrations or types of tests or calibrations. The collection is mandated by 15 CFR 285.

II. Method of Collection

An application for accreditation is provided to each applicant laboratory. The laboratory completes the written application, providing such information as name, address, phone and fax numbers and contact person, and selects the test methods or parameters for which it is seeking accreditation. The application must be signed by the Authorized Representative of the laboratory, committing the laboratory to comply with NVLAP's accreditation criteria. The completed application is mailed to NVLAP.

III. Data

OMB Number: 0693–0003.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Testing and calibration laboratories, including commercial (for-profit), not-for-profit institutional, and federal, state and local government laboratories.
Estimated Number of Respondents: 1,000.
Estimated Time Per Response: Ranges between 15 minutes for respondents verifying information on a preprinted form and 3 hours for those providing an initial application.
Estimated Total Annual Burden Hours: 2,750.
Estimated Total Annual Cost to Respondents: There are no capital or start-up costs to respondents.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information