KCNC stated that CNC transferred Daesang's INC business to KCNC, which CNC had newly established for that purpose. KCNC requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Act to determine whether KCNC should properly be considered the successor firm to Daesang. KCNC stated that it operates the Chonju factory without change. Production continues with the same equipment, the same workers, the same raw materials purchased from the same suppliers, and the same production process. KCNC stated that it continues to sell the same products to the same customers to which Daesang previously sold. Further, the organizational and management structure of Daesang's INC business has essentially remained intact, except that KCNC has appointed a new president. All management and employees at the plant manager level and below are the same as when the factory was managed by Daesang, while the managing director was formerly employed by Daesang in another capacity. In addition, KCNC provided a copy of the Closing of the Asset Purchase and Sale Agreement. KCNC also submitted a copy of the relevant schedules to the sales agreement between Daesang and CNC, showing the transfer to KCNC of Daesang's INC assets, contracts, customers, and suppliers.

On October 26, 1999, the Department published in the **Federal Register** (63 FR 57628) the notice of initiation and preliminary results of its changed circumstances antidumping duty administrative review of INC from Korea. We have now completed this changed circumstances review in accordance with section 751(b) of the Act.

On November 26, 1999, KCNC submitted comments with regard to the Department's October 26, 1999, preliminary results. KCNC stated that it believes that the Department's preliminary results are correct in all respects. No comments were filed by the petitioner or any other interested party.

**Scope of the Review**

Imports covered by this review are shipments of INC from Korea. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (''HTS'') subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

**Successorship**

In considering questions involving successorship, the Department examines several factors including, but not limited to, changes in (1) management, (2) production facilities, (3) supplier relationships, and (4) customer base. *See, e.g.*, Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is essentially the same as its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review,* 59 FR 6944 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the successor company the same as the predecessor for antidumping purposes, *e.g.*, assign the same cash deposit rate or, if appropriate, apply any relevant revocation.

We have examined the information provided by KCNC in its August 25, 1999, letter and determined that KCNC is the successor-in-interest to Daesang. The management and organizational structure of the former Daesang have essentially remained intact under KCNC, and there have been no changes in the production facilities, supplier relationships, or customer base. Therefore, we determine that KCNC has maintained essentially the same management, production facilities, supplier relationships, and customer bases as did Daesang.

**Final Results of Changed Circumstances Review**

We determine that KCNC is the successor-in-interest to Daesang for antidumping duty cash deposit purposes. KCNC, therefore, will be assigned Daesang's antidumping duty cash deposit rate of 2.10 percent. This deposit requirement will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(c) of the Act. This deposit rate shall remain in effect until publication of the final results of the next administrative review.

This changed circumstances review and notice are in accordance with section 751(b) of the Act, as amended (19 U.S.C. 1675(b)), and 19 CFR 351.216.

Dated: January 7, 2000.

**Robert S. LaRussa,**

*Assistant Secretary, Import Administration.*

[FR Doc. 00–874 Filed 1–12–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–816]**

### Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan; Final Results of Administrative Review

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

**ACTION:** Notice of Final Results of Administrative Review.

**SUMMARY:** On May 15, 1997, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1992–1994 administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings (pipe fittings) from Taiwan (A–583–816). This review covers one manufacturer/exporter of the subject merchandise during the period December 23, 1992 through May 31, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received we have not changed the results from those presented in our preliminary results of review.

**EFFECTIVE DATE:** January 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert James at (202) 482–5222, 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) and to the Department's regulations are in reference to the

provisions as they existed on December 31, 1994.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on pipe fittings from Taiwan (58 FR 33250). On June 7, 1994, the Department published the notice of ''Opportunity to Request Administrative Review'' for the period December 23, 1992 through May 31, 1994 (59 FR 29411). In accordance with 19 CFR 353.22(a)(1), respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen) requested that we conduct a review of its sales for this period. On July 15, 1994, we published in the **Federal Register** a notice of initiation of an antidumping duty administrative review covering the period December 23, 1992 through May 31, 1994.

We published the preliminary results of this review in the **Federal Register** on May 15, 1997 (Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan; Notice of Preliminary Results of Administrative Review, 62 FR 26773 (Preliminary Results)). Ta Chen filed a case brief on September 3, 1997; petitioner, the Flowline Division of Markovitz Enterprises Inc., submitted its rebuttal brief on September 11, 1997. The Department held a hearing on October 21, 1997.

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

**Scope of the Review**

The products subject to this antidumping duty order are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Certain stainless steel butt-weld pipe fittings (pipe fittings) are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) Contamination of the material in the system by the system itself must be prevented; (3) High temperatures are present; (4) Extreme low temperatures are present; (5) High pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this antidumping duty order. The pipe fittings subject to this order are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTS).

Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this order remains dispositive.

The period for this review is December 23, 1992 through May 31, 1994. This review covers one manufacturer/exporter, Ta Chen, and its wholly-owned U.S. subsidiary, Ta Chen International (TCI) (collectively, Ta Chen).

**Analysis of Comments Received**

Due to the number of individual and company names and the importance of the timing of events in this review, that history is summarized briefly here. Furthermore, Ta Chen filed a single case brief covering this review as well as the 1992–1993 and 1993–1994 administrative reviews of certain welded stainless steel pipe (stainless pipe) from Taiwan. Therefore, a coherent response to Ta Chen's arguments in the instant review necessarily entails references to actions taken by petitioners in the stainless pipe case. The comments that follow concern our application of adverse best information available (BIA) as the basis for Ta Chen's margins in the preliminary results of this review. Our decision to resort to BIA resulted from Ta Chen's dealings with two US customers, referred to in the Preliminary Results as ''Company A'' and ''Company B'' to protect their identities. Ta Chen has since entered the names of these customers into the public record of this review and we here identify them by name: Company A is San Shing Hardware Works, USA (San Shing), and Company B is Sun Stainless, Inc. (Sun). San Shing and Sun were both established by current or former managers and officers of Ta Chen, were staffed entirely by current or former Ta Chen employees, and distributed only Ta Chen products in the United States. According to Ta Chen, prior to June 1992 (the date of the preliminary determination in the less-than-fair-value (LTFV) investigation of stainless pipe) Ta Chen had sold pipe and pipe fittings from the US inventory of its wholly-owned subsidiary, TCI. In June 1992 TCI and San Shing (a US company established in 1988 by the president of a Taiwanese firm, San Shing Hardware Works, Ltd.) allegedly signed an agreement whereby San Shing would purchase all of TCI's existing US inventory and would replace TCI as the principal distributor of Ta Chen pipe and pipe fittings in the United States. San Shing also committed itself to purchasing substantial dollar values of Ta Chen products from TCI over the next two years, and rented its business location from the president of Ta Chen and TCI, Robert Shieh. Ta Chen claims it took these measures to avoid the burden of reporting exporter's sales price (ESP) sales to the Department. Operating under a number of ''doing business as'' (dba) names including, *inter alia*, Sun Stainless, Inc., Anderson Alloys, and Wholesale Alloys, San Shing accounted for well over eighty percent of Ta Chen's US sales of pipe fittings during the 1992—1994 period of review.

According to Ta Chen, in September 1993 a member of Ta Chen's board of directors, Frank McLane, incorporated a new entity, also called Sun Stainless, Inc. This new Sun purchased all of San Shing's assets, including inventory, and assumed all of San Shing's obligations regarding its lease of space from Ta Chen's president, purchase commitments, credit arrangements, etc. One month later, in October 1993, Mr. McLane allegedly sold all of his Ta Chen stock, resigned as an officer of Ta Chen, and severed all ties with the firm, devoting his full energies from that time forward to the new Sun.

On July 18, 1994, petitioners in the companion case on stainless pipe first called the Department's attention to San Shing's existence, and named six of an eventual eight dba parties all claimed by Ta Chen as unrelated US customers. Ta Chen responded on July 28, 1994, claiming that San Shing, as a newcomer to the US stainless steel pipe fittings market, had adopted the names of prior Ta Chen customers as dba names. This submission failed to note the two additional dba names also used by San Shing, but not included in the stainless pipe petitioners' July 18 allegations. On August 3, 1994, sixteen days after petitioners in the stainless pipe case first called attention to its existence, the corporate charter of San Shing USA, Ta Chen's chosen replacement as the master distributor of its pipe and pipe fittings, was dissolved.

On September 19, 1994, Ta Chen filed its initial questionnaire response in the 1992–1994 review. San Shing, which accounted for over four-fifths of Ta Chen's US sales in this review, was not mentioned anywhere in this 303-page response.

The Department conducted a thorough verification of Ta Chen's home market submissions in the 1992–1993 review of stainless pipe in October 1994. Department officials then traveled to TCI's headquarters in Long Beach, California to verify Ta Chen's US sales

submissions in the pipe case. Aside from minor corrections, the resulting verification reports noted no major discrepancies and repeated Ta Chen's account of San Shing's and Sun's histories without further comment. See Ta Chen's February 7, 1997 submission, placing the relevant portions of the Department's November 6, 1996 verification reports on the record in this review.

On July 12, 1995, petitioners in the stainless pipe case renewed their allegations that Ta Chen, San Shing, and Sun were related parties, and appended reports by Dun & Bradstreet (D&B) and a foreign market researcher indicating that Sun Stainless had actually been founded by Frank McLane and W. Kendall (Ken) Mayes, TCI's sales manager, in May of 1992, not September 1993, as claimed by Ta Chen.[1] Ta Chen's rebuttal of August 2, 1995 included affidavits from Mr. Mayes and a Taiwanese employee of Ta Chen denying the July 12 allegations. See Letter of Ablondi, Foster, Sobin & Davidow, August 2, 1995 (Case A–583–815).

Over a year later, on November 12, 1996, Ta Chen filed a supplemental response[2] in the third (1994–1995) review of stainless pipe which disclosed for the first time that Ta Chen (i) Had authority to sign checks issued by San Shing, its dbas, and Frank McLane's Sun, (ii) Had physical custody of these parties' check-signing stamps, (iii) Controlled San Shing's and Sun's assets and had pledged these as collateral for a loan obtained on behalf of TCI, (iv) Enjoyed full-time and unfettered computer access to San Shing's and Sun's computerized accounting records, and (v) Shared sales and clerical personnel with San Shing and Sun. See Preliminary Results for a further description of these ties. The Department elicited further details concerning these connections in additional questionnaires; Ta Chen incorporated the relevant portions of its responses into the record of this review on February 7, 1997. Based on the totality of evidence before the Department, in the Preliminary Results we concluded that Ta Chen was related to San Shing and Sun within the meaning of section 771(13) of the Tariff Act. The Department also determined that Ta Chen had significantly impeded this review through its incomplete and inconsistent accounts of the events in the relevant period and that Ta Chen's behavior warranted application of first-tier, uncooperative BIA.

*Comment 1: Related Party as Defined by Statute and Practice*

Ta Chen insists that San Shing USA and Sun[3] were not related parties as defined by the Tariff Act in force at the time of all of Ta Chen's sales to these customers during the first period of review (POR). First, Ta Chen notes 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, if—

* * * * *

(B) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) 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.

Ta Chen's September 3, 1997 Case Brief (Case Brief) at 7, quoting section 771(13) of the Tariff Act (Ta Chen's emphasis omitted).

Under this statutory framework, Ta Chen argues, the ''exporter'' can only include the parties ''by whom or for whose account the merchandise is imported.'' According to Ta Chen, because Ta Chen first sold the subject merchandise to its US subsidiary TCI, which took legal title to the pipe fittings, incurred all seller's risks of non-payment, acted as the importer of record for all these transactions, and ''entered the importation into its financial inventory,'' TCI, not San Shing or Sun, was ''the person by whom, or for whose account,'' the merchandise was imported. Case Brief at 9. Therefore, section 771(13) of the Tariff Act never reaches the issue of whether or not TCI subsequently resold the subject merchandise to a related party such as San Shing or Sun. Any such transactions, in Ta Chen's view, would be irrelevant under the statute, citing Certain Small Business Telephone Systems from the Republic of Korea, 54 FR 53141, 53151 (December 27, 1989) (Small Business Telephones). In that case, Ta Chen submits, the Department concluded that the respondent's related US customer was ''neither the importer nor the person for whose account the merchandise is imported;'' therefore, the sales transactions between the respondent's US subsidiary and the related US customer did not constitute ''related party'' transactions, as defined by the antidumping statute. *Id.* at 9, quoting Small Business Telephones. That the sales at issue in Small Business Telephones represented ESP transactions from the US affiliate's warehouse, as opposed to what Ta Chen characterizes as purchase price (PP) transactions ''facilitated'' by its US subsidiary TCI does not, Ta Chen argues, make any difference.

Further, Ta Chen maintains that the Department's preliminary determination that Ta Chen is related to San Shing and to Sun because it controlled these entities is contrary to the plain language of the statute. Section 771 of the Tariff Act, Ta Chen submits, only defines two parties as related if one party ''owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the other.'' Case Brief at 11, quoting section 771 of the Tariff Act (Ta Chen's emphasis). This ''interest,'' Ta Chen insists, is defined both in case law and Departmental practice as involving equity ownership of at least five percent of the stock of the related party. Ta Chen avers that the Department's Preliminary Results in this review have read the phrase ''any interest'' out of the statute. According to Ta Chen, ''[i]t is an elementary principle of statutory construction that a portion of a statute should not be rendered a nullity.'' *Id.*, quoting *Asociacion Colombiana de Exportadores de Flores* v. *United States* (Asocoflores), 717 F. Supp. 847, 851 (CIT 1989). Ta Chen interprets the Department's Preliminary Results as stating essentially that because Ta Chen exercised ''control'' over San Shing and Sun, Ta Chen thereby controlled ''an interest in'' San Shing and Sun; such a reading, Ta Chen argues, renders the relevant statutory language meaningless and redundant. Case Brief at 12. Compounding the Department's error, Ta Chen continues, is that while recognizing the ''any interest'' requirement of section 771(13)(B) and (C) of the Tariff Act, the Department nonetheless failed to define ''any interest'' in its Preliminary Results. In Ta Chen's view, this failure to define ''any interest'' as applied in this review, especially in light of past practice defining ''any interest'' as entailing five percent or more equity ownership, places the burden upon the respondent to divine the meaning of the undefined. Further, this ''abdication'' by the Department effectively precludes judicial review, as the reviewing court

[1] With the permission of petitioners in the stainless pipe case, on February 24, 1997, the Department incorporated this Dun & Bradstreet report and an accompanying affidavit into the record of this review.

[2] Ta Chen submitted relevant portions of this response into the record of this review on December 13, 1996 and again on January 2, 1997.

[3] Although Ta Chen refers to San Shing and Sun Stainless, Inc. collectively as ''Sun,'' for clarity the Department has not done so.

would also be hobbled by this same failure to define the relevant terms.

Ta Chen suggests that, had Congress intended to include a control test in the definition of related parties under section 771, it would have done so. Instead, Ta Chen maintains, Congress chose to define two parties as related to one another not when one controlled the other but, rather, when one controlled ''any interest'' in the other. This distinction is critical, Ta Chen asserts, because Congress did include a simple control test at sections 773(d) and (e) of the Tariff Act (the ''Special Rules'' for, respectively, Certain Multinational Corporations and disregarding related-party transfer prices for major inputs in the calculation of constructed value). ''Where the Congress includes language in one provision of a statute, but not in another, it is assumed that the Congress did so for a purpose. * * * [T]he difference in statutory language must be recognized.'' Case Brief at 14, citing *Rusello* v. *United States*, 464 US 16, 23 (1983), and *United States* v. *Wong Kim Bo,* 472 F. 2d. 720, 722 (5th Cir. 1972). According to Ta Chen, Congress never intended that ''control any interest'' would be synonymous with ''control'' where, as here, neither entity owns or controls equity in the other. This reading, Ta Chen maintains, is supported by the legislative history underlying the relevant statutory provisions. Ta Chen, citing *Nacco Materials Handling Group* v. *United States*, Slip Op. 97–99 (CIT July 15, 1997) (*Nacco Materials*), notes that the Senate Report accompanying the Antidumping Act of 1921 (the 1921 Act), progenitor of the Tariff Act, defined ''exporter'' as including the importer when ''the latter is financially interested in the former, or vice versa, whether through agency, stock control, resort to organization of subsidiary corporation, or otherwise.'' Case Brief at 15, quoting from S. Rep. No. 67–16, at 13 (April 28, 1921). One party's being ''financially interested'' in another, Ta Chen submits, is different from that party ''controlling'' another. *Id.*

Ta Chen argues that the Preliminary Results not only ignore the plain statutory language but also conflict with the common dictionary meaning of the term ''interest'' as entailing equity ownership of a share, right, or title in a business or property. *Id.* at 16. The Department, Ta Chen avers, embraced this definition when it stated that its policy is to find parties related only where the ownership interest of one party in the other meets the five percent threshold. See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Forged Steel Crankshafts From Japan (Crankshafts), 52 FR 36984 (October 2, 1987).

According to Ta Chen, that this interpretation (*i.e.*, the reference to at least five-percent equity ownership) survived two major revisions to the antidumping law underscores Congress's approval of that interpretation. Ta Chen notes that both the 1984 Trade Act and the Omnibus Trade and Competitiveness Act of 1988 left intact the statutory language of section 771(13) and its reliance on equity ownership. ''Congress's amendment or re-enactment of the statutory scheme without overruling or clarifying the [administering] agency's interpretation is considered as approval of the agency interpretation.'' Case Brief at 20, quoting *Casey* v. *C.I.R.,* 830 F. 2d 1092, 1095 (10th Cir. 1987).

Ta Chen further argues that the Department's interpretation of section 771(13) of the Tariff Act in the Preliminary Results could lead to absurd results, asserting that under this standard, ''any control, no matter how inconsequential, would make the parties related,'' including ''any clerical assistance, any forwarding of orders to a customer, any attempt to insure payment, any security interest, any informational exchanges, any movement of an employee from one company to another, *etc.*'' Case Brief at 18. And, having created one absurdity by reading ''any interest'' out of the statute, Ta Chen asserts, the Department creates another absurdity by altering the statutory definition of ''controls * * * any interest'' into ''controls a substantial interest.'' *Id.*, citing the Preliminary Results at 26778 (Ta Chen's emphasis). Ta Chen argues that this attempt to rescue the Preliminary Results from absurdities founders on the Department's long-established practice that a party's five percent equity interest in another makes them related for purposes of the statute; ''[five] percent is not a substantial or significant control interest.'' *Id.* at 19.

Ta Chen points to the amendments to the Tariff Act effected by the Uruguay Round Agreements Act (URAA) as further confirmation that control did not define related parties under the pre-URAA Tariff Act governing this administrative review. According to Ta Chen, the Statement of Administrative Action (SAA) accompanying the URAA supports Ta Chen's contention that the URAA fundamentally altered the prior definition of related parties by adding a control test as a means for finding parties affiliated. For example, the SAA states that ''including control in the definition of 'affiliated' will permit a more sophisticated analysis which better reflects the realities of the marketplace.'' Case Brief at 21 and 22 (quoting the SAA at 78). Further, Ta Chen argues, the Senate report notes that the URAA added the factor of control in determining whether two parties are affiliated. *Id.* That Congress felt compelled to amend the Tariff Act to include specifically the indicium of control, Ta Chen avers, demonstrates that such a test was lacking in the old law: ''when a legislative body amends statutory language, its intention is to change existing law.'' Ta Chen continues: ''Congress completely rewrote the statutory language of the affiliated parties provision * * * adding the control test.'' *Id.* at 24 and 25. If control had been a factor in the pre-URAA Tariff Act's definition of related parties, Ta Chen concludes, there would have been no need to change the statutory language within the context of the Uruguay Round negotiations.

The Department, Ta Chen argues, has similarly distinguished between the prior definition of ''related parties'' and the expanded definition of ''affiliated persons,'' which, Ta Chen asserts, introduced the concept of control. Ta Chen notes that the Department in its Notice of Proposed Rulemaking (Proposed Rule) (61 FR 7308 (February 27, 1996)) issued in the wake of the URAA's amendments, remarked upon the confusion of many parties over the definition of control, and noted that the statute and SAA failed to provide ''sufficient guidance as to when the Department will consider an affiliate to exist by virtue of 'control' * * *'' Case Brief at 28, quoting Proposed Rule. If the control test always existed in the law, Ta Chen asks, why is the Department only now beginning to define control? The answer, Ta Chen submits, is that the control test was added by the 1995 amendments of the URAA.

To buttress its contention that the URAA added a control test to the related-party equation, Ta Chen notes that non-equity control relationships have been common—and widely known—for years prior to enactment of the URAA; yet, Ta Chen asserts, neither Congress nor the Department felt an apparent need to address these non-equity relationships within the context of the antidumping law. Furthermore, generally-accepted accounting principles (GAAP) in the United States have long recognized, and distinguished between, relationships involving control and those involving equity interest. Ta Chen maintains that this bifurcation is evident in the Department's administration of antidumping administrative reviews; since enactment

of the URAA the Department's antidumping questionnaires, verification outlines, and published determinations are replete with discussions of control, whereas ''[s]uch discussion does not exist under the pre-[URAA Tariff] Act.'' The reason, Ta Chen avers, is ''not because the world changed * * * [r]ather, the reason is that the law changed.'' Case Brief at 31.

The Preliminary Results, Ta Chen continues, are contrary not only to the plain language of the statute and the common meaning of the term ''related,'' but also fly in the face of long-standing Department practice. Citing Crankshafts and Disposable Pocket Lighters from Thailand, 60 FR 14263, 14268 (March 16, 1995) (Pocket Lighters), Ta Chen contends that under the pre-URAA statute, the Department has determined that two parties cannot be considered related absent common stock ownership. According to Ta Chen, in Disposable Lighters the Department refused to find two parties related despite closely intertwined operations, joint manipulation of prices and production decisions, and long-standing business relationships, including past ownership of one party by the other. The decisive factor in this determination, Ta Chen suggests, was the absence of any common equity relationship between the two entities during the period under review. Ta Chen maintains that the Department has hewn to this interpretation in litigation, as well. For example, Ta Chen continues, in Nacco Materials the Department concluded that the respondent and its two related entities satisfied the ownership requirements of section 771(13)(C) of the Tariff Act through direct or indirect ownership by the respondent. See Nacco Materials, at 10 and 11. Ta Chen insists that in the instant review Ta Chen, San Shing, and Sun have not satisfied what Ta Chen views as a statutory requirement for finding parties related.

Ta Chen suggests that even cases cited by petitioners in the stainless pipe case to support their claim that parties can be related through control (see, *e.g.*, Certain Fresh Cut Flowers From Colombia, 61 FR 42833, 42861 (August 19, 1996) (Colombian Flowers), and Roller Chain, Other Than Bicycle Chain, From Japan, 57 FR 43697 (September 22, 1992)) indicate that the Department defined ''any interest'' solely in terms of equity ownership. Case Brief at 36 and 37. Ta Chen maintains that prior to the Preliminary Results the Department has never stated that control of a company is tantamount to controlling an interest in that party. Indeed, Ta Chen avers, such control is ''irrelevant to whether the statutory standard is met.'' *Id.* at 37. As an example, Ta Chen cites Fresh Cut Roses From Ecuador where, Ta Chen argues, the Department concluded that the petitioner's concerns over the possibility of price manipulation and control of production and sales were inapposite as there was no evidence that ''any of these statutory indicators'' of related parties had been found. See Fresh Cut Roses From Ecuador, 60 FR 7019, 7040 (February 6, 1995). According to Ta Chen, the Department likewise argued before the Court of International Trade (the Court) that the issue of control over prices ''is irrelevant to the initial determination of whether the parties are indeed related'' within the meaning of section 771(D) of the Tariff Act. Case Brief at 38, quoting *Torrington Co., Inc.* v. *United States,* Slip Op. 97–29 (CIT March 7, 1997). In that case, Ta Chen argues, the Court concluded that ''requiring Commerce to look beyond the financial relationships of the companies would obviate the need for a statute setting forth specific guidelines for determining whether parties are indeed related.'' *Id.* at 40, quoting Torrington at 19. And in *Zenith Radio Corp.* v. *United States* (Zenith), Ta Chen maintains, the Court affirmed the Department's position that such financial relationships ''go to the essence of those relationships which the law details in 19 U.S.C. Sec. 1766(13).'' *Id.,* quoting Zenith at 606 F. Supp 695, 699 (CIT 1985), *aff'd,* 783 F.2d 185 (Fed. Cir. 1986). Ta Chen points to Cellular Mobile Telephones From Japan, 54 FR 48011, 48016 (November 20, 1989) as another instance where the Department ruled that the presence of non-equity relationships embodied in a Japanese keiretsu was irrelevant to its related-party determination. Case Brief at 40.

Ta Chen draws further support for its interpretation of the statute from a ''separate line of cases'' involving the collapsing of related parties. While conceding that home market collapsing determinations are not coterminous with the Department's definition of exporter for the purpose of determining United States price, Ta Chen nonetheless asserts the Department has consistently reached the statutory definition that two parties are related before proceeding to the ''non-statutory question'' of whether or not to collapse the two entities for purposes of antidumping margin calculation. Case Brief at 45 and 46, citing Pocket Lighters, 60 FR 14263, 14276, Fresh Cut Roses From Ecuador, 60 FR 7019, 7040 (February 6, 1995), and Colombian Flowers, 61 FR 42833, 42853 (1996). Rather, Ta Chen avers, the Department's Preliminary Results ''put[ ] the cart before the horse'' by, as Ta Chen frames it, reaching the collapsing decision first, and then using that decision to determine whether Ta Chen is related to San Shing and Sun within the meaning of section 771(13)(B) and (C) of the Tariff Act. Case Brief at 47. Citing these ''parallel lines'' of precedent, Ta Chen argues that the Department has always found parties ''only related when one owns another and no other factors are considered relevant.'' *Id.* at 48 and 49.

Ta Chen next turns to the Department's conclusion in the Preliminary Results that Ta Chen and Sun were related pursuant to subsection 771(13)(B) of the Tariff Act by virtue of the common ownership interests allegedly held by Mr. Frank McLane, who at the time in question was still a board member of Ta Chen. Ta Chen notes that the Preliminary Results assert that Mr. McLane simultaneously held equity interest in Ta Chen and owned Sun outright, thus making Ta Chen and Sun related. This conclusion, Ta Chen argues, is both factually and legally flawed. As a threshold matter, Ta Chen asserts, subsection 771(13)(B) of the Tariff Act holds that the exporter includes the person ''by whom or for whose account'' the subject pipe is imported into the United States (*i.e.*, Mr. McLane's Sun), if such person owns or controls ''any interest in the business of the exporter, manufacturer or producer'' (*i.e.*, Ta Chen). In Ta Chen's view, the Department could at most conclude that Mr. McLane was related to Sun or that Mr. McLane was related to Ta Chen. The Department could not argue, Ta Chen maintains, that Sun was, therefore, related to Ta Chen. Case Brief at 97.

Ta Chen adduces additional support for its contention that Frank McLane did not simultaneously own interests in Sun and Ta Chen by citing to corporate tax returns for San Shing for the 1992 and 1993 tax years. According to Ta Chen, San Shing's return for the year ended October 31, 1993 does not list Mr. McLane as either an officer or an owner. Ta Chen also argues that separate D&B reports on Ta Chen International, submitted by the stainless pipe petitioners, do not list Sun as a related concern. Furthermore, Ta Chen claims, its audited financial statements do not list Sun as being related to Ta Chen or TCI, although they do list Mr. McLane's other business interests, such as McLane Leisure and McLane Manufacturing, as related parties. Case Brief at 105. Finally, Ta Chen concludes, the Department has stated in verification reports in other proceedings that Mr. McLane's involvement with Sun commenced after he left Ta Chen. *Id.,*

citing Ta Chen's July 18, 1994 submission.

Assuming that Ta Chen and Sun were related before November 1993, Ta Chen submits that it did not sell subject merchandise to Sun prior to that time. According to Ta Chen, until November Ta Chen sold to San Shing, doing business as Sun Stainless, Inc., not to Frank McLane's Sun Stainless, Inc. ''It would be pure conjecture,'' Ta Chen submits, for the Department to conclude that Ta Chen sold to Mr. McLane's Sun. Case Brief at 107.

Finally, assuming that the pre-URAA law permits consideration of control in finding parties related, Ta Chen argues that the application of such a test in the instant review is unlawful absent sufficient agency explanation. The Preliminary Results, Ta Chen insists, represent a departure from the Department's practice of defining related parties in terms of five percent equity ownership; the failure to note and explain this so-called departure renders this determination unlawful. Case Brief at 51, citing *USX Corp.* v. *United States,* 682 F. Supp. 60, 63 (CIT 1988). Furthermore, Ta Chen continues, the Preliminary Results represent an unfair retroactive application of what Ta Chen describes as a new control test under section 771(13) of the pre-URAA Tariff Act. Principles of fairness, Ta Chen submits, require the Department to reverse its preliminary finding that Ta Chen was related to San Shing and Sun, especially, Ta Chen argues, because (i) This is a case of first impression, (ii) The Preliminary Results represent an abrupt departure from past administrative practice with respect to related-party issues, (iii) Ta Chen relied upon its understanding of the law then in effect when it responded to the Department's requests for information on related parties, (iv) The Preliminary Results would impose an ''enormous'' burden upon Ta Chen (by raising its margins to the BIA rates presented in the Preliminary Results), and (v) There is, in Ta Chen's view, no statutory interest in applying this new test to this backlog review.

Petitioner dismisses Ta Chen's arguments as to the statutory definition of related parties, characterizing Ta Chen's lengthy case brief as ''a desperate, albeit feeble, attempt to distort and selectively package the facts.'' In petitioner's view the issues are, in fact, quite simple. First, petitioner avers, the information Ta Chen itself provided ''in a misleading, untimely, and unacceptable manner'' demonstrates amply that Ta Chen was related to San Shing and Sun. Petitioner's September 11, 1997 Rebuttal Brief (Rebuttal Brief) at 2. Second, petitioner accuses Ta Chen of intentionally mis-characterizing its true relationships with San Shing and Sun, and of failing to provide the Department with accurate and reliable U.S. sales data to serve as the basis for calculating Ta Chen's margin in this review.

According to petitioner, under the plain language of the statute the only possible conclusion the Department could reach is that Ta Chen and San Shing and Sun [4] are related. *Id.* at 3. Petitioner points out that section 771(13)(C) of the Tariff Act defines the ''exporter'' (*i.e.,* Ta Chen) as including any person (*i.e.*, San Shing and Sun) ''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.*'' Rebuttal Brief at 4 (original emphasis). Petitioner suggests that the control indicia listed by the Department in the Preliminary Results, such as pledging of security interests in the parties' assets, possession of their signature stamps, the dedicated interconnection of computers, the sharing of office and sales personnel, and Mr. Shieh's negotiation of prices with San Shing's and Sun's customers, indicate clearly that Ta Chen was related to San Shing and Sun. In fact, petitioner contends, any one of these indicia in isolation would be sufficient to find Ta Chen related to San Shing and Sun. ''Remarkably, in the case of Ta Chen, each one of these situations existed.'' Given the breadth and depth of these parties' interrelationships, petitioner insists, Ta Chen's claim that it is not related to San Shing and Sun ''can only be interpreted as a blatant attempt to mislead the Department and impede this antidumping review.'' Rebuttal Brief at 4.

Contrary to Ta Chen's assertions, petitioner continues, the Tariff Act clearly does not limit the Department's related-party determinations only to those cases presenting documented evidence of direct equity ownership. Petitioner avers that the statute authorizes the Department to look beyond equity ownership to consider ''any and all situations where the nature of the relationship between the two parties allows the possibility of price and cost manipulation.'' *Id.* Thus, petitioner asserts, the pre-URAA definition of related parties extended beyond a simple test for equity ownership and provided expressly for situations wherein one party controls, through means other than stock ownership, any interest in the business of the other party. Indeed, were the Department to ignore the ''obvious and persuasive evidence'' that Ta Chen was related to San Shing and to Sun, petitioner concludes, it would be guilty of ''failing to fulfill its role and obligations under the statute.'' *Id.* at 4 and 5.

[4] Out of caution, petitioner's Rebuttal Brief refers to San Shing and Sun as ''Company X.''

**Department's Position**

Based upon our review of the evidence on the record in this review, we conclude that the Department cannot reasonably rely upon sales between Ta Chen and San Shing or Sun for the purpose of calculating Ta Chen's dumping margin for this review. We agree with petitioner that the record evidence is clear that Ta Chen was, in fact, related to San Shing and Sun, as defined in section 771(13) of the pre-URAA Tariff Act.

First, nothing in the statute or its legislative history proscribes the examination of non-equity relationships in making a related-party determination pursuant to section 771(13) of the pre-URAA Tariff Act. The plain language of the Tariff Act provides the Department with the statutory mandate to examine, where appropriate, whether parties are related by means of control in defining the exporter for purposes of determining U.S. price. Furthermore, the Department has recognized in its pre-URAA administrative determinations that certain factual situations require it to look to non-financial factors when making its related-party determinations, an interpretation of the statute which the Court has upheld.

We also reject Ta Chen's contention that the definition of ''interest'' in section 771(13) (B) and (C) is limited to common stock ownership; nothing in the statute itself or its accompanying legislative history so constrains the Department in its analysis of related parties. Rather, the principal reason stock ownership is so often cited as the basis for finding an exporter related to a U.S. importer is simply because equity ownership is the most common indicator of two parties' relationship found in commercial practice. In fact, common equity ownership has served as prima facie evidence that two parties are related for purposes of the Tariff Act. See, *e.g.,* Color Television Receivers, Except for Video Monitors, From Taiwan, 53 FR 49706, 49712 (December 9, 1988). That common equity ownership constitutes prima facie evidence of related-party status is not, however, tantamount to saying it is the only evidence of such a relationship. Put simply, the statute does not direct

the Department to find parties unrelated in the absence of common stock ownership. Further, nothing in the statute, the legislative history, or the regulations defines ''interest'' as being limited solely to stock ownership, or fixes a bright-line figure for the requisite level of equity ownership at five percent or more.

Turning first to the statutory language, the statute's explicit reference to parties being related ''through stock ownership or control or otherwise'' demonstrates clearly that Congress anticipated that companies could be related for the purposes of defining the ''exporter'' through means other than through stock or equity ownership. Such a reading is consistent with Congressional intent, the legislative history, and the express purpose of section 771(13) of the Tariff Act, which is to determine the proper basis for United States price in calculating dumping margins. As Ta Chen notes, ''[i]t is an elementary principle of statutory construction that a portion of the statute should not be rendered a nullity.'' See Asocoflores. Ta Chen's reading of the statute, however, would render a nullity the explicit statutory references to parties being related ''through stock ownership or control or otherwise.'' Therefore, accepting the narrow reading of the statute posited by Ta Chen would be inconsistent with the plain language of the statute.

In addition, the Senate Report accompanying the 1921 Act clarifies that the Department is not limited solely to consideration of equity interests in making its related-party determinations, nor does it limit ''financial interests'' solely to common equity ownership. Congress specifically included non-equity relationships as possible bases for finding parties related; by noting that an interest can involve a financial interest or interest ''through agency, stock control, resort to organization of subsidiary corporation or otherwise,'' Congress clearly envisioned the possibility of non-equity relationships between an exporter and an importer such that the prices between them become unreliable for purposes of calculating antidumping margins. See S. Rep. No. 67–16, at 13 (1921). Clearly, then, Congress did not share the view of section 771(13) urged by Ta Chen that related parties were limited per se to those sharing common equity ownership. Rather, Congress's broader view, as expressed in the plain language of the statute, afforded the Department the discretion to examine non-financial relationships where, as here, the record evidence so demanded. Any other reading of the legislative history would place artificial restraints on the Department's analysis and would be inconsistent with commercial realities, which recognize a wide range of relationships which could affect pricing and production decisions between parties.

Turning to the Department's interpretation of the relevant statutory provisions, at one time the Department focused primarily upon equity interests in rendering its related-party determinations under section 771(13) of the Tariff Act. See, *e.g.,* Cellular Mobile Telephones and Subassemblies From Japan, 54 FR 48011, 48016 (November 20, 1989), and Small Business Telephones, 54 FR 53141, 53151 (Dec. 27, 1989). The Department concluded that an equity interest of five percent or more, standing alone, was sufficient evidence to demonstrate that the prices between the parties could be manipulated. See, *e.g.,* Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan, 58 FR 37154, 37157 (July 9, 1993). In certain situations, the Department decided that the facts on record did not justify examining factors of control beyond five percent equity ownership when determining if parties were related. See, *e.g.,* Pocket Lighters, 60 FR 14263 (March 16, 1995). In Zenith the Court upheld our decision not to broaden the related party inquiry beyond an examination of equity relationships. 606 F. Supp. 695, 699 and 700 (CIT 1985). The court stated that the Department is not required by the statute to look beyond financial relationships.[5]

However, the Department has recognized the possibility of parties being related through non-financial interests in factual situations where elements of control exist that raise the distinct possibility of price manipulation. Thus, the Department has not felt constrained to examine only financial relationships and, where appropriate, has ventured beyond a consideration of equity ownership in its interpretation of section 771(13) of the Tariff Act. See, *e.g.,* Portable Electric Typewriters From Japan: Final Results of Administrative Review, 48 FR 7768, 7770 (February 24, 1983) (considering factors indicating control, but ultimately rejecting the sufficiency of these factors to prove the parties were related in this case); Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina, 60 FR 33539, 33544 (June 28, 1995) (considering, in addition to equity factors, non-equity factors such as shared management and indirect control before concluding that the producer was not related to certain customers). For example, in Polyethylene Terephthalate Film From Korea, the Department ''confirmed that the three entities are related in terms of common stock ownership, shared directors, and common management control'' for purposes of determining U.S. price. See Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film From Korea, 56 FR 16305, 16314 (April 22, 1991) (emphasis added). Similarly, in Roller Chain From Japan the Department, in finding that respondent Sugiyama was related to its customer, stated that it ''considers shared directorship to be evidence of a relationship between these two organizations.'' Roller Chain, Other Than Bicycle Chain, From Japan, 57 FR 43697, 43701 (Sept. 22, 1992). Again, the Department clearly examined factors of control, and not solely the level of equity ownership in defining related parties under the statute.

The Court has affirmed the Department's interpretation that a related-party determination may include an examination of non-financial factors. In *Sugiyama Chain Co.* v. *United States,* the Court expressly rejected the plaintiff's argument that section 771(13)(C) of the Tariff Act limited the Department to an examination of financial relationship when determining if parties are related under that provision of the statute. 852 F. Supp. 1103, 1112 (CIT 1994). Instead, the Court held that the Department ''may properly consider 'both financial and/or non-financial connections' when assessing whether parties are related within the meaning of [section 771(13)(c)].'' *Id.* (quoting *E.I. DuPont De Nemours & Co.* v. *United States,* 841 F. Supp. 1237, 1248 (CIT 1993) (DuPont). Similarly, the court in *DuPont* ruled that the Department's examination of both financial and non-financial factors was in accordance with its statutory mandate. See DuPont, 841 F. Supp. at 1248.

As the express statutory language indicates, the purpose of the pre-URAA definition of ''exporter'' provided at section 771(13) is to ''determine when an importer is 'connected' to the exporter so as to warrant the use of

[5] Ta Chen misreads the Court's decision in Zenith. There the Court found that while there was no statutory requirement that the Department examine ''relationships which do not find expression in financial terms,'' nowhere did the court assert that the Department was statutorily barred from an examination of non-financial relationships. Zenith, 606 F. Supp. at 700

'exporters sales price' as the basis for U.S. price.'' Statement of Administrative Action at 839. Under the statute the Department may not rely upon prices between an exporter and a related U.S. customer in calculating dumping margins because of the possibility that prices between these parties will be manipulated to mask dumping activities of the foreign respondent. As stated earlier, in order to effectuate this statutory mandate the Department has recognized that certain non-financial relationships between parties may give rise to the potential for price manipulation or control. See, *e.g.*, Polyethylene Terephthalate Film From Korea, 56 FR 16305, 16314 (April 22, 1991); Portable Electric Typewriters From Japan, 48 FR 7768, 7770 (February 24, 1983). The Court has held that this interpretation is reasonable and in accordance with the law.

Ta Chen's exclusive focus on equity ownership in its Case Brief ignores the express purpose of the related-party determination made pursuant to section 771(13). While the Department's inquiry may begin with an examination of equity ownership, nothing precludes examination of other factors, especially where, as here, we have record evidence of non-financial relationships demonstrating connections between the parties which raise the distinct possibility of price manipulation. Our examination of related parties in light of non-financial relationships in this review is consistent with the express purposes of this provision. In fact, Ta Chen insists in its case brief that its prices to San Shing and Sun were lower than prices to its other U.S. customers, mistakenly viewing this as evidence that the parties could not be related, and that the prices between them are reliable for margin calculations. On the contrary, by offering preferential pricing for goods sold to San Shing and Sun, Ta Chen not only has demonstrated that its relationship with San Shing and Sun raises the possibility of Ta Chen affecting pricing, but has admitted that this relationship has resulted in preferential pricing. We also find misplaced Ta Chen's emphasis on revisions to the Tariff Act effected by the URAA. Contrary to Ta Chen's argument, new section 771(33) does not represent a fundamental change in the statute's intent. Rather, the URAA's definition of affiliated persons merely ''shifted the focus to control rather than equity.'' See Memorandum to Jeffrey P. Bialos in Engineering Process Gas Turbo-Compressor Systems From Japan, December 4, 1996 at 2. While in the past the predominant focus was on control through equity ownership, the new Tariff Act highlights all means of control in addition to equity ownership. See Engineering Process Gas Turbo-Compressor Systems From Japan.

We also do not accept Ta Chen's definition of ''any interest'' as being limited to a minimum five percent equity ownership. The five-percent equity test is a mere starting point in the Department's inquiry, establishing *prima facie* evidence that two parties are related. The analysis urged by Ta Chen would ignore the clear evidence in the record of this review that Ta Chen controlled San Shing and Sun and, through these parties, could manipulate prices to U.S. customers. We conclude further that Ta Chen did, in fact, have a non-equity financial interest in San Shing and Sun. The totality of the facts in this case, including Ta Chen's control of San Shing's and then Sun's check signing stamps, the unfettered computer ties, the involvement of Mr. Shieh in negotiating the prices accepted by San Shing and Sun, the exclusive supplier relationships, the pledging of San Shing's and Sun's assets to TCI's benefit, the intermingling of personnel, the preferential pricing and credit terms (for more on each of these ties see our response to Comment 2, below), and the rise and disappearance at Ta Chen's behest of both San Shing and Sun as Ta Chen's sole distributors, all point to the inescapable conclusion that San Shing's and Sun's financial interests were indistinguishable from Ta Chen's.

In fact, given the depth and breadth of these non-equity financial ties, one would reasonably expect to find common equity ownership. Its absence is the only missing element in the panoply of indicia which demonstrate that Ta Chen ''owned or controlled, through stock ownership, or control, or otherwise,'' an interest in the business of San Shing and Sun. Notwithstanding this absence, the Department cannot be obliged to find that no relationship exists where parties have no equity interest between them. Such a limitation would invite parties to evade the antidumping law by simply avoiding any common stock ownership.

Finally, assuming, arguendo, that the statute and the Department's past practice bar a finding that Ta Chen was related to San Shing and Sun pursuant to section 771(13)(C) of the Tariff Act, the facts of this review lead us to conclude, nevertheless, that the prices between these parties were, at a minimum, subject to manipulation by Ta Chen. Ta Chen acknowledges that its prices to San Shing and Sun were lower than its prices to Ta Chen's other U.S. customers. This pattern of preferential pricing undermines the credibility of Ta Chen's assertions concerning its relationships with San Shing and Sun and renders prices between them unsuitable for margin calculation purposes, given our statutory mandate to calculate dumping margins based upon arm's-length prices to the United States.

Our interpretation of the related-party provisions for these final results is consistent with the plain language of the statute when applied to the facts of this case. Any other conclusion would render this portion of the Tariff Act a nullity and would result in absurdities, given the evidence of record demonstrating Ta Chen's control over these parties. Both San Shing and Sun were established by current or former managers and officers of Ta Chen, were staffed entirely by current or former Ta Chen employees, and distributed only Ta Chen products in the United States. Finally, we reject Ta Chen's suggestion that the Department has in this case applied some extra-statutory test based upon ''substantial'' interest. Our use of this adjective in the Preliminary Results was descriptive only, and in no way implies the use of any new basis for the examination of relationships based upon control.

*Comment 2: Ta Chen's Control of San Shing and Sun*

Assuming, arguendo, that the statute permits finding parties related based upon control, Ta Chen insists that it exercised no control over either San Shing or Sun. Ta Chen first contends that if it had held any interest in San Shing or Sun it would have ''received something'' from Chih Chou Chang's sale of San Shing to Frank McLane, and the subsequent sale of Mr. McLane's Sun Stainless, Inc. to a third party, Picol Enterprises.[6] Ta Chen claims that it received nothing from either transaction, which ''alone demonstrates that Ta Chen had no interest in either [San Shing or] Sun.'' Case Brief at 54.

Furthermore, Ta Chen argues, even the indicia of control cited by the Department in the Preliminary Results do not lead to a finding that Ta Chen exercised control over San Shing and Sun. For example, while Ta Chen concedes that it had physical custody of the check signature stamps used first by San Shing and later by Sun, Ta Chen claims that it could not unilaterally execute checks drawn against San Shing's or Sun's accounts. Nor, Ta Chen

[6] This firm is identified variously as ''Picol International'' and ''Picol Enterprises.'' The contract covering Frank McLane's sale of Sun lists the purchaser as ''Picol Enterprises.''

continues, could Ta Chen prevent either San Shing or Sun from writing checks without Ta Chen's approval and signature. This physical custody of the signature stamp was, Ta Chen insists, merely an avenue for monitoring disbursements by these companies. Ta Chen suggests that this was a prudent measure given both the large volume of merchandise involved, as well as the 210-day credit terms Ta Chen extended first to San Shing and then to Sun. In Ta Chen's view, under these conditions it was entirely reasonable to impose ''strong measures'' to permit ''stringent credit monitoring.'' Case Brief at 57.

In addition, Ta Chen admits that it had full access to San Shing's and Sun's computer systems. Because, Ta Chen claims, San Shing and Sun could write checks without using the signature stamps held by Ta Chen, this method of monitoring their disbursements ''was not perfect.'' *Id.* Hence, Ta Chen insisted upon additional computer monitoring of San Shing's and Sun's accounts receivable and payable. Ta Chen concludes by insisting that (i) It did not control disbursements of funds by San Shing and Sun, and (ii) Any such control over disbursements would be irrelevant where, as in the instant review, the only control at issue would be control over prices. Such stringent control, Ta Chen argues further, is an acceptable practice under the Uniform Commercial Code (UCC). According to Ta Chen, under Article 9 of the UCC, ''policing'' or ''dominion'' by a secured party (here, Ta Chen) over its unrelated debtors (referring to San Shing and Sun) ''is both permissible and expected.'' Case Brief at 59, citing § 9–205, Comment 5 of the UCC. In other contexts, Ta Chen argues, courts have found it unremarkable that one company would provide its financial and computer records to a second unrelated company.

Ta Chen also takes issue with the Preliminary Results' conclusion that Ta Chen shared sales department personnel with San Shing and Sun. According to Ta Chen, the record indicates that no individuals were simultaneously employed by Ta Chen and either San Shing or Sun. As to the activities of Ta Chen's former sales manager Ken Mayes, Ta Chen asserts that Mr. Mayes was an independent contractor, and not an employee of Ta Chen. Ta Chen maintains that Mr. Mayes only began working for San Shing (and later, Sun) after terminating the independent contractor relationship with Ta Chen. Furthermore, Ta Chen continues, it is not uncommon for individuals in the U.S. stainless steel market to move about among the limited number of players in the industry. While acknowledging that Ta Chen did provide some assistance to San Shing and Sun, Ta Chen insists that its employees remained on Ta Chen's payroll, acting on Ta Chen's behalf. Case Brief at 63. Even if Ta Chen shared employees with San Shing or Sun, Ta Chen avers, such commingling of personnel would not indicate that the parties are related. Even company officers, Ta Chen suggests, are merely corporate employees who do not necessarily have a share of, and therefore, an interest in, their employers. Ta Chen argues that the Department may not assume that because an individual is employed simultaneously by two firms, the two firms are related, or that the individual controls any interest in the firms. *Id.* at 64. Ta Chen also insists that a payment Ta Chen made to Mr. Mayes in 1995, or three years after he allegedly left Ta Chen's employ, does not indicate that Mr. Mayes was employed by Ta Chen in the intervening period (*i.e.*, when he worked for San Shing and Sun). Rather, Ta Chen claims, this payment stemmed from a previous agreement between Mr. Mayes and Mr. Robert Shieh, Ta Chen's and TCI's president and CEO, whereby in return for Mr. Mayes's expertise and assistance in Ta Chen's start-up in the United States, Ta Chen would pay a certain amount to Mr. Mayes should it reach a pre-determined level of profits in any future year. Ta Chen accuses the Department of establishing a ''per se rule'' that because money changed hands between Ta Chen and Ken Mayes, Mr. Mayes was an employee of Ta Chen, and further, Ta Chen and Mr. Mayes were, therefore, related parties. This one-time profit sharing payment, Ta Chen argues, conferred no ownership rights or control over prices to Mr. Mayes, and is thus irrelevant to a related-party determination. Further, Ta Chen insists, both Ta Chen and San Shing (or Sun) acted freely and in their own best interests throughout this period. *Id.* at 68 and 69.

The close business relationships which existed in the instant review, Ta Chen maintains, do not constitute grounds for finding Ta Chen related with San Shing or Sun. For instance, Ta Chen argues, in OCTG From Argentina the Department found close business ties between parties irrelevant, even in the face of a prior equity connection. Subsequent equity ties were likewise found irrelevant in Pocket Lighters, 60 FR 14263, 14267. According to Ta Chen, the parties at issue must be related through equity ownership at the time of the sales in question for the relationship to be legally relevant. Case Brief at 65. Furthermore, Ta Chen continues, the Department has previously examined cases wherein a respondent provided ''clerical type assistance'' [sic] to customers and found such assistance irrelevant to the issue of relatedness. See, *e.g.*, Polyethylene Terephthalate Film From Korea, 62 FR 10526, 10529 (1997). In Tapered Roller Bearings From Japan, 61 FR 57629 (November 7, 1996), Ta Chen maintains, even the provision of sales personnel, training, inventory management assistance, use of computer resources for inventory and ordering, accounting assistance, and marketing and customer service training were insufficient to find a U.S. subsidiary related to its customers. Ta Chen continues by noting that the Department's level-of-trade analysis performed under the post-URAA Tariff Act routinely includes examination of precisely these types of relationships, demonstrating, Ta Chen submits, that ''such services can be, and are, provided by sellers to their unrelated customers.'' Case Brief at 66.

Furthermore, Ta Chen argues, in past cases the Department has determined that parties are not related even in the face of much starker evidence of the parties' consanguinity. According to Ta Chen, in Certain Fresh Cut Flowers From Mexico, 56 FR 1794, 1799 (January 17, 1991) the parties shared the same address, telephone numbers, invoice forms, and the same individual signed all invoices. The Department not only found the parties unrelated, but ''did not indicate that these facts were even relevant to whether the parties were related.'' Case Brief at 67.

Ta Chen also insists that there was nothing untoward in Ta Chen's practice of meeting with the customers of San Shing and Sun, and forwarding orders from these customers to San Shing and Sun. On the contrary, Ta Chen maintains, ''it is a perfectly understandable business practice for a mill to act in this way and to meet with it own previous customers and assure them that its use of a new inventory-holding master distributor will not adversely affect service or the price competitiveness of its products.'' Case Brief at 70, n. 17. Ta Chen claims that its officials ''knew the prices'' Sun would charge for subject pipe fittings, and accepted customer orders on behalf of San Shing and Sun. As Ta Chen ''would not wish to undermine [San Shing and] Sun,'' Ta Chen claims, it forwarded these orders to San Shing or Sun, as appropriate, rather than simply filling the order and billing the customers directly. Case Brief at 71. According to Ta Chen's account, San Shing and Sun were free to accept or

reject any orders obtained by Ta Chen. Ta Chen likens this pattern of activity with a commission agent who secures an order on behalf of a given supplier, and then forwards that order to the supplier. In Ta Chen's estimation, such a transaction would not render the commissionaire related to the supplier.

Furthermore, Ta Chen asserts, such practices as described in this review are common between unrelated parties and ''thus, are not probative of Ta Chen and [San Shing and] Sun being related.'' Case Brief at 73. Citing statements by officials of a U.S. pipe company, a U.S. pipe and pipe fittings distributor, and a distributors' association, which Ta Chen submitted for the record, Ta Chen contends that mill officials would not fill orders directly from their distributors' customers, thus undercutting the distributors; rather, Ta Chen claims, the mill would forward the order to the distributor. Ta Chen challenges the credibility of one witness put forth by the stainless pipe petitioners, Mr. Brent Ward, who asserted in a sworn affidavit that such intimate involvement of a mill with its customers' subsequent sales of merchandise is unheard of among unrelated parties. Ta Chen wonders whether ''this lone domestic mill witness can really speak knowledgeably about the practices of offshore mills in assuring [the] ultimate customers about shipment and delivery with respect to subject merchandise (pipe and fittings).'' *Id.* at 74 (original emphases).

Ta Chen argues that even if it knew the prices at which San Shing and Sun would sell the subject merchandise they purchased from Ta Chen, such knowledge ''is of no moment.'' *Id.* Ta Chen cites the public testimony of Joe Avento before the International Trade Commission (the Commission) in an unrelated inquiry that the market for fungible products such as stainless pipe and pipe fittings is price-driven, and that these prices are ''generally well known by [ ] participants'' in the marketplace. *Id.* at 75. Ta Chen also cites to Tapered Roller Bearings From Japan, where a respondent provided its distributors with resale prices, as another case where the supplier had knowledge of its customers' prices. Again, Ta Chen avers, such knowledge would be insufficient grounds for finding two parties related for purposes of the Tariff Act.

Turning next to the liens held by Ta Chen on San Shing's and Sun's assets, which these parties supplied voluntarily, Ta Chen argues that such liens do not make parties related and are, in fact, common between unrelated parties. Ta Chen reiterates that it sold pipe fittings and other stainless steel pipe products to San Shing and Sun on extended credit terms. As an exercise in prudence, Ta Chen allows, it obtained a security interest in the inventory and accounts receivable of first San Shing, and then Sun. Furthermore, Ta Chen submits, its assignment of these security interests to a third party (*i.e.,* TCI's creditor bank) is irrelevant to a discussion of whether Ta Chen was related to San Shing and Sun. In fact, Ta Chen stresses, the UCC, at § 9–318, Comment 4, notes that security interests in ''intangibles'' such as accounts receivable ''can be freely assigned.'' Case Brief at 81, quoting UCC section 9–318, Comment 4.

Ta Chen states that in June 1993 TCI asked San Shing to grant a lien directly to TCI's bank. Ta Chen insists that this arrangement had the same result as TCI securing an interest in San Shing's inventory and accounts receivable and then assigning this interest to TCI's bank. Asking San Shing to grant the lien directly to TCI's bank was, Ta Chen avers, ''a way to simplify a still otherwise ordinary commercial arrangement,'' and imposed no additional burdens upon San Shing. *Id.* Ta Chen accuses the Department of creating another per se rule that providing UCC security interests as a condition for obtaining a loan makes two parties related. Rather, Ta Chen submits, failure to seek a lien on a borrower's assets would be a stronger indication that two parties are related, and that the creditor did not need to secure the debt. Ta Chen also claims that San Shing (and later, Sun) actually did receive consideration in return for granting these UCC liens, in the form of extended credit terms.

In addition, Ta Chen claims that since San Shing and Sun only distributed Ta Chen products, any liens on their inventory and accounts receivable were necessarily limited to the outstanding amounts owed to Ta Chen. That the liens covered all of San Shing's inventory and accounts receivable is, Ta Chen declares again, ''of no moment.'' Ta Chen notes that Article 9 of the UCC permits creditors to seek a ''blanket'' interest in both existing and ''after-acquired'' assets, rather than attempting to secure interests only in specific assets. Case Brief at 83. Nor is it unusual, Ta Chen continues, for a party pledging its assets as security to a creditor to pledge full cooperation in enforcing the lien in the event of default by the creditor. In the instant case, Ta Chen submits, as San Shing and Sun held the accounts receivable at issue, efforts to secure payment from San Shing's and Sun's customers would necessarily continue to rest with San Shing and Sun.

Ta Chen also sees nothing unusual in San Shing and Sun, putatively unrelated parties, entering into these security arrangements with no written documentation as to their terms. Ta Chen claims that, while it was ''unable to find any formal writing memorializing the agreement that [TCI's loan with its creditor bank] would always be less than the accounts payable of San Shing and McLane's Sun Stainless to TCI,'' such agreements were, Ta Chen contends, ''referenced in various correspondence during the relevant period between the parties * * *'' Case Brief at 85. Ta Chen implies that, just as terms of sales are not always committed to writing, there is nothing unusual in the absence of written documents concerning the debt financing arrangements between Ta Chen and San Shing, and between Ta Chen and Sun.

Even if the facts surrounding the debt financing arrangements between these parties were, in fact, unusual, Ta Chen avers, that would not provide a basis for finding Ta Chen related with San Shing or Sun. Ta Chen asserts that all parties acted freely and in their own best interests. Therefore, Ta Chen concludes, these security agreements do not indicate that Ta Chen controlled San Shing or Sun. Ta Chen points to the statements it submitted for the record from two individuals involved in the steel industry in the United States as support for its contention that security arrangements such as those described above are ''reasonable given a concern of nonpayment.'' Case Brief at 88. Ta Chen quotes one of these statements at length, noting with approval this individual's opinion that such measures can and do occur between suppliers and their unrelated distributor customers. Not only did Ta Chen's witnesses find these arrangements ''perfectly normal,'' but TCI's audited financial statements likewise did not include San Shing or Sun when listing loan guarantees provided by related parties. *Id.* at 89.

As two final notes with respect to the debt financing arrangements, Ta Chen states that no prior Departmental precedent exists for the proposition that secured debts or loan guarantees are sufficient grounds for finding parties related under the pre-URAA Tariff Act. Even under what Ta Chen interprets as a broader definition of ''affiliation'' under the post-URAA Tariff Act, to date the Department has yet to find that loans make parties affiliated. Case Brief at 90, citing to Certain Internal Combustion Industrial Forklift Trucks From Japan, 62 FR 5592, 5604 (February

6, 1997), and Large Newspaper Printing Presses From Japan, 61 FR 38139, 38157 (July 23, 1996). Second, Ta Chen criticizes the Preliminary Results for failing to explain precisely how the liens at issue in this review could affect control over prices which, Ta Chen reiterates, is the only aspect of control relevant to this review.

Ta Chen next discusses San Shing's and Sun's exclusive supplier relationships with Ta Chen. While conceding that, in fact, San Shing and Sun purchased and sold Ta Chen products exclusively, Ta Chen claims that San Shing and Sun were ''free to do business with others of [their] own choosing, as well as buy and sell others' products.'' Case Brief at 90. Ta Chen cites prior cases decided under the pre-URAA statute wherein the Department considered exclusive buy-sell relationships; in such cases, Ta Chen argues, the Department did not find such relationships indicative of the parties' being related. *Id.,* citing Portable Electric Typewriters From Japan, 48 FR 7768, 7770 (February 28, 1983), and Certain Residential Door Locks and Parts Thereof From Taiwan, 54 FR 53153 (December 27, 1989) (Door Locks From Taiwan). Even under post-URAA determinations, Ta Chen avers, the Department has not found exclusive buy-sell relationships sufficient to consider two or more parties affiliated. According to Ta Chen, the Department examined such relationships in Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea, 62 FR 18404, 18441 (April 15, 1997) and Open-End Spun Rayon Singles Yarn From Austria, 62 FR 14399, 14401 (March 26, 1997), and concluded that because the parties were free to transact with others, their exclusive buy-sell arrangements did not render the parties affiliated. Case Brief at 91 and 92. On a broader plane, Ta Chen continues, San Shing and Sun could not be considered ''reliant'' upon Ta Chen because each had interests beyond their dealings with Ta Chen. San Shing, Ta Chen notes, sold fasteners, while Mr. McLane had interests involving lawnmower parts and plastic patio furniture. Ken Mayes, Ta Chen asserts, had an additional business interest in another pipe distributor, Stainless Specialties, Inc.

As further evidence that San Shing and Sun were not related to Ta Chen, the company states that its ''net, ex-factory price to [San Shing and] Sun was *less* than its net, ex-factory price to other U.S. customers.'' Case Brief at 95 (original emphasis). These pricing patterns, Ta Chen asserts, demonstrate that Ta Chen ''did not have control over'' San Shing and Sun. *Id.* Ta Chen allows that, had it exercised control over these distributors, it would have charged them higher prices, so as to mask any dumping of subject pipe fittings sold to genuinely unrelated customers. That Ta Chen's prices to San Shing and Sun were lower than its prices to other customers ''further confirm[s]'' that Ta Chen is not related to San Shing or to Sun.

Ta Chen also assails the credibility of the D&B report cited in the *Preliminary Results* as evidence that Ta Chen and Sun were related through Frank McLane's common equity ownership. According to Ta Chen, the conclusion in the D&B report that Frank McLane and Ken Mayes had been active with Sun since 1992 (indicating that Mr. McLane simultaneously held equity in Ta Chen and owned Sun outright) is based upon hearsay: ''[o]ne D&B clerk apparently heard something from somebody. A second D&B clerk speculates from what the first D&B clerk said.'' Case Brief at 100. According to Ta Chen, its certification that Mr. McLane ''had no involvement with any Sun before the one he incorporated in September 1993'' should be sufficient to refute the D&B report. *Id.* Requiring Ta Chen to go beyond the certified questionnaire responses ''unlawfully places the burden on Ta Chen to rebut the D&B report.'' *Id.* at 108. Ta Chen also claims that the Department should disregard the D&B report because petitioners in the stainless pipe case failed to submit the September 1994 D&B report to the Department prior to the October 1994 verification in the first review of WSSP.

Assuming that the D&B report constitutes evidence, Ta Chen asserts that it is not substantial evidence and, therefore, any reliance upon it is unlawful. Citing *Timken Co.* v. *United States,* 894 F. 2d 385, 388 (Fed. Cir. 1990), Ta Chen argues that ''substantial evidence is ''such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' '' Case Brief at 101. Ta Chen notes that Dun & Bradstreet issues a stock disclaimer with its reports that it does not guarantee their accuracy. Further, Ta Chen charges, the accuracy of this particular report is further impeached by the apparent removal of the unique D&B number identifying the subject of the report. Ta Chen asserts that this is not a minor matter since *two* Suns are at issue in this case—San Shing's dba Sun Stainless, Inc., and Frank McLane's Sun Stainless, Inc. Ta Chen also hints that other alterations may have been made to the D&B report.

In addition, Ta Chen maintains that the D&B report does not specifically cite Mr. Mayes as the source for the claim that Messrs. McLane and Mayes had been active in Sun Stainless since 1992. Since the D&B report does not indicate that Mr. McLane was president or owner of Sun prior to November 1993, the clear and unequivocal evidence indicates that Mr. McLane only became involved with Sun at the later date. In fact, Ta Chen submits, the contract of sale between Mr. McLane and Picol International, dated July 1995, states that Mr. McLane was president of Sun since November 5, 1993.

In closing on this point, Ta Chen alleges that the Department treated it unfairly by not accepting into the record submissions by Ta Chen addressing the credibility of the D&B report. Ta Chen asserts that it first received notice of the possible ''breadth of section 771(13)(B),'' and the importance of the D&B report, upon publication of the Department's *Preliminary Results.* Case Brief at 109. Ta Chen maintains that its July 2, 1997 submission on this point (rejected by the Department as untimely new factual information) should have been accepted for the record.

Suggesting that Ta Chen's version of events is ''embarrassingly lacking in any degree of common sense or logic,'' petitioner contends that ''[b]y any reasonable standard, Ta Chen exerted control over [San Shing and Sun]—as evidenced by its own belated admissions to the record of this review.'' Rebuttal Brief at 2 and 4. Petitioner contends that Ta Chen's continued denial of any control over San Shing and Sun is ludicrous, and stresses that Ta Chen failed to demonstrate that the types of relationships it enjoyed with San Shing and Sun are in any manner common between parties dealing at arm's length. *Id.* at 5. Ta Chen, petitioner avers, is the only foreign or domestic supplier of pipe fittings to whom San Shing and Sun pledged their assets. Ta Chen is the only supplier to have dedicated, interconnected telecommunications and computer systems with San Shing and Sun. Ta Chen is the only supplier with whom San Shing and Sun shared sales and clerical personnel. Ta Chen is the only supplier to whom San Shing and Sun surrendered the signature stamps used to execute withdrawals from their checking accounts. Finally, Ta Chen is the only supplier whose president, Mr. Shieh, routinely accompanied San Shing's and Sun's personnel on sales calls, and discussed prices with San Shing's and Sun's customers. ''In fact,'' petitioner concludes, ''the 'common sense' standard, in addition to any legal standard, permits only one conclusion,'' *i.e.,* that Ta Chen and San Shing and Sun were related and operating under

common control. Rebuttal Brief at 5. Petitioner accuses Ta Chen of establishing San Shing and then Sun for ''purposes specifically related to this and other antidumping investigations and reviews.'' *Id.* at 6.

Petitioner dismisses as ''laughable'' Ta Chen's use of statements by various individuals to support its contentions that the types of relationships between Ta Chen and San Shing and Sun are ordinary and commonplace practices for parties dealing at arm's length. If, in fact, the statements of any of these witnesses reflected common practices in the stainless steel pipe fitting markets, petitioner suggests, they would have supplied actual examples of other cases where unrelated parties: (i) Shared signature stamps, computer facilities, and sales department personnel, (ii) Participated in joint sales negotiations, and (iii) Pledged their assets to secure one another's debts. ''Neither Ta Chen nor its so-called experts have or ever will provide such examples because no *such examples exist.*'' Rebuttal Brief at 7 (original emphasis). And the reason no such examples exist, petitioner concludes, is that such practices are not at all characteristic of dealings between truly unrelated parties dealing at arm's length but, rather, provide indisputable evidence that Ta Chen and San Shing and Sun were related and operating under joint control.

*Department's Position*

We agree with petitioner that the factual evidence of record demonstrates a level of operational control exercised by Ta Chen over both San Shing and Sun that more than satisfies the statutory provisions for finding Ta Chen, San Shing, and Sun related parties.

Ta Chen in its case brief focuses upon each indicium of control cited in the *Preliminary Results* in isolation, characterizing each of these connections as (i) Commonplace and unremarkable in the commercial world, (ii) Insufficient to demonstrate Ta Chen's control of these parties, and, (iii) Irrelevant to a finding that these parties are related for purposes of the Tariff Act. However, we have examined the totality of the evidence in this case as it pertains to Ta Chen's overarching control over not only the activities of San Shing and Sun, but over their existence as well.

In placing such emphasis on a so-called five-percent equity test, Ta Chen ignores the true purpose of section 771(13) of the Tariff Act, which is to define the ''exporter'' for purposes of determining the correct basis for U.S. price. According to Ta Chen's repeated assertions, the only relevance of the present discussion is whether or not Ta Chen could control pricing decisions made by San Shing and Sun in selling subject merchandise in the United States. In fact, the evidence of record indicates this was so, as do Ta Chen's own admissions during the course of this review. As we have indicated, San Shing and Sun were both established by current or former managers and officers of Ta Chen, were staffed entirely by current or former Ta Chen employees, and distributed only Ta Chen pipe products in the United States. Throughout their involvement in these proceedings, Ta Chen had control of San Shing's and Sun's bank accounts, with authority to sign checks issued by San Shing, its dbas, and Frank McLane's Sun. Ta Chen also had physical custody of these parties' check-signing stamps. Ta Chen further controlled San Shing's and Sun's assets and these parties pledged their assets as collateral for a loan obtained on behalf of TCI. In addition, Ta Chen enjoyed full-time and unfettered computer access to San Shing's and Sun's computerized accounting records. Ta Chen's owner, Robert Shieh, owned the property housing San Shing and Sun, and Ta Chen shared sales and clerical personnel with the two companies. Finally, Robert Shieh actually negotiated the prices that San Shing and Sun would realize on their subsequent resales of subject merchandise to unrelated customers.

Furthermore, for the Department to conclude that Ta Chen did not exercise effective control over San Shing and Sun would require the Department to ignore numerous *lacunae* in Ta Chen's account. The inconsistencies, inaccuracies, partial admissions, and lack of documentation in Ta Chen's version of events in this administrative review do not support Ta Chen's claims.

First, as for Ta Chen's argument that had it held an interest in San Shing or Sun it would have received consideration for the sale of San Shing to Mr. McLane, and Mr. McLane's eventual sale of Sun Stainless, Inc. to a third party, this argument suffers from one fatal flaw. Ta Chen's claim that Mr. McLane purchased San Shing from Chih Chou Chang in the fall of 1993 is unsubstantiated. The transaction itself has never been documented for the record. In fact, aside from Ta Chen's claims on this matter, we have no evidence that any assets, or consideration therefor, actually changed hands in September 1993. Ta Chen's failure to document for the record this transaction is significant given Ta Chen's ability to enter into the record the most sensitive financial information concerning these parties, *e.g.,* the individual tax returns of Frank McLane and the corporate tax returns of the putatively unrelated parties, San Shing and Sun. More fundamentally, as we discuss above, record evidence indicates that Ta Chen misstated the commencement of Frank McLane's (and Ken Mayes's) involvement with the second ''Sun Stainless, Inc.,'' incorrectly indicating that Mr. McLane did not simultaneously act as president of Sun and as a director and shareholder of Ta Chen. Because the underlying chronology is itself impeached, we cannot accept at face value Ta Chen's claim that it did not receive compensation for these transactions, whether in the form of cash value or other non-monetary consideration.

Turning now to the indications of control enumerated in the *Preliminary Results*, we affirm our preliminary finding that Ta Chen controlled San Shing's and Sun's disbursements. One avenue Ta Chen used to exercise this control was through its possession of San Shing's and Sun's signature stamps. Ta Chen's assertion that it is commonplace for a business entity to surrender control over its disbursements to an unrelated party, as both San Shing and Sun did to Ta Chen, by turning over physical custody of their signature stamps to an unrelated supplier is not credible and is not supported by record evidence. Nor is there record support for Ta Chen's *ex post facto* claim that it could not execute checks unilaterally; having possession of both the checks and the signature stamp enabled Ta Chen to execute checks at will upon these entities' accounts. Furthermore, there is no support, either in the record of this review or in the Department's experience, for the notion that such a drastic step as demanding control over an unrelated customer's checking account would be required to effect ''stringent credit monitoring'' of the customer's expenditures, as Ta Chen claims here. In fact, control by one party over another party's checking account is usually only found between related parties.

Similarly, we find that Ta Chen's unlimited level of computer access to San Shing's and Sun's proprietary data supports a finding that Ta Chen exercised control over these parties. Ta Chen's assertions with respect to this invasive computer access are unpersuasive and are not supported by evidence in the record. Ta Chen attempts to present its full-time and unrestricted ability to scrutinize San Shing's and Sun's proprietary business records as prudent monitoring by a

creditor of its unrelated debtors which is ''permissible and expected'' under provisions of the UCC. We note that, while a creditor is entitled to periodic reports from a debtor concerning, *e.g.,* the debtor's sales and deliveries and the agings of accounts receivable used as collateral, nothing in the UCC envisions the unlimited access Ta Chen enjoyed here. *See* Nassberg, Richard T., *The Lender's Handbook*, American Law Institute, American Bar Association Committee on Continuing Professional Education, Philadelphia, 1986, at 32 and 33. Further, Ta Chen has offered no examples of any other firm allowing its unrelated supplier such extensive access to its payroll and accounting information. The reason Ta Chen did not give examples of such computer access is because, contrary to Ta Chen's claims, such a practice is not common and, to the Department's knowledge, does not exist between truly unrelated parties. As we noted in the final results of the 1994–1995 administrative review of stainless pipe, ''Ta Chen officials stated at the Department's [June 1997] verification at TCI that [Sun] maintained no security system or passwords with which to limit or terminate Ta Chen's access to its records; Ta Chen's access to [Sun's] accounting system was complete.'' *Certain Welded Stainless Steel Pipe From Taiwan*, 62 FR 37543, 37549 (July 14, 1997).[7]

With respect to the claimed need for the computer access and control over San Shing's and Sun's disbursements, this claim too is undermined by Ta Chen's own statements in the record. Ta Chen insists that it required these measures of control as a means of monitoring its customers in light of the substantial quantities of merchandise Ta Chen sold to San Shing and Sun, and in return for the 210-day credit terms offered by Ta Chen.[8] But as Ta Chen noted in its July 28, 1994 submission in the first administrative review of stainless pipe, San Shing was an established company enjoying ''substantial resources including lines of credit.'' Ta Chen's July 28, 1994 submission at 9. Furthermore, with respect to the balances owed by San Shing and Sun, as Ta Chen itself concedes, Ta Chen's ''risk [of non-payment] is not significant, since actual bad debt has not been a problem.'' Ta Chen's December 13, 1996 submission at 81. If San Shing enjoyed such substantial resources, and never presented a risk of non-payment, Ta Chen's stated need to implement such extraordinary monitoring measures to secure payment for its sales is without support. The absence of a genuine credit risk would, in fact, attenuate the need for this relationship. The second possible reason for these ties, posited by Ta Chen's witnesses, is that it allows for ''just-in-time'' delivery of inventory. While electronic ordering is a common and growing practice between suppliers and their distributors, this typically entails a sharply delimited level of access—most commonly, a one-way communication between the customer's purchasing department and the supplier's sales department. We are aware of no circumstances where electronic ordering would allow a supplier to have unrestricted access to the accounts payable, accounts receivable, inventory, and payroll data of an unrelated customer. We conclude that these untrammeled on-line computer ties existed because Ta Chen was controlling and directing San Shing and Sun.

We also conclude that the record indicates that Ta Chen shared personnel with San Shing and Sun. In fact, Ta Chen's December 13, 1996 submission details a long two-way history of shared office personnel between Ta Chen and San Shing dating to before San Shing ever purchased a single pipe fitting from Ta Chen. For example, Ta Chen claims that ''[f]rom the outset of [Ta Chen's and San Shing's] landlord-tenant relationship, TCI provided San Shing USA with assistance from its personnel and, from time to time, the use of TCI office equipment.'' Furthermore, San Shing ''provided necessary technical and other support to TCI personnel'' when TCI commenced its production of fasteners. See Ta Chen's December 13, 1996 submission at pages 51 through 54. In addition, Ta Chen's sales manager, Mr. Mayes, also acted as sales manager for San Shing and for Sun. For more on Mr. Mayes's role in these reviews, see our response to Comment 3, below. When considered together with the other indicia of control, this commingling of personnel lends additional support to the conclusion that Ta Chen was related to San Shing and Sun as defined in the Tariff Act.

With respect to Ta Chen's involvement in negotiating sales prices to San Shing's and Sun's customers—the true focus of this inquiry—Ta Chen insists that this involvement does not indicate control by Ta Chen of San Shing and Sun, and further asserts that such practices are commonplace. However, we agree with petitioner that Ta Chen's claim that negotiating the prices of its customers' subsequent sales is common between unrelated parties is unsupported either by record evidence or the Department's experience. San Shing and Sun Stainless were engaged in the distribution of a fungible, commodity product, i.e., ASTM A312 stainless steel pipe, and pipe fittings manufactured from this pipe. As Ta Chen's witness Mr. Joe Avento notes, the market for such products is price-driven. With little margin for profit, an unrelated distributor, as a matter of survival, would guard the prices it would accept for reselling the product in order, as the stainless pipe petitioners phrase it, to ''maximize whatever negotiating room [the customer] has with [its] supplier.'' See Rebuttal Brief of Collier, Shannon, Rill & Scott, September 10, 1997 at 15. Ta Chen has argued that the only element of control relevant to an antidumping proceeding is control over prices; Ta Chen's admitted role in setting prices for San Shing's and Sun's subsequent sales of pipe fittings to unrelated customers in the United States is evidence of precisely this type of control. For Ta Chen, as the supplying mill, to liken its role in these transactions to that of a mere commission agent, passing purchase orders between end-users and its distributors San Shing and Sun, is not credible. Ta Chen has noted that Ta Chen officials (specifically, Ta Chen's president, Mr. Robert Shieh) not only met with customers of San Shing and Sun, but that these same customers would contact Ta Chen directly, bypassing altogether their putative suppliers, San Shing and Sun. Ta Chen claims that ''Ta Chen officials would not wish to undermine [San Shing or] Sun,'' and that it merely forwarded any purchase orders it received to San Shing or Sun for their independent consideration and acceptance or rejection. See Ta Chen's Case Brief at 71. Here again, however, there is no record evidence, aside from Ta Chen's unsupported claims, that it ever forwarded a customer's order to San Shing or Sun, nor is there evidence of either San Shing or Sun ever rejecting a purchase order so obtained from TCI. Furthermore, Ta Chen's fastidious avoidance of ''undermining'' San Shing and Sun was unnecessary, given its control of the transactions from the mill in Tainan to the delivery to the ultimate end user in the United States.

[7] The original text identifies Sun as ''Company B.'' Although the verification concerned the 1994–1995 administrative review of WSSP, this narrative applied to prior periods as well, including the time covered by the instant review. *See* Memorandum to the File, *Certain Welded Stainless Steel Pipe from Taiwan*, June 19, 1997, at 5, a public version of which is on file in room B–099 of the main Commerce building.

[8] We note that, in addition to preferential pricing, these extended credit terms offered to San Shing and Sun would further indicate that their dealings were not at arm's length.

Turning to the debt security arrangements between San Shing, Sun Stainless, TCI, and TCI's creditor bank, Ta Chen claims that such arrangements are ''irrelevant.'' Ta Chen maintains that debt security arrangements by themselves have proven insufficient grounds for finding parties related for purposes of section 771(13) of the Tariff Act. Nevertheless, the nature of these particular security assignments, including the absence of any written agreement between these putatively unrelated parties, further supports our finding that transactions between these parties were not at arm's length. Within the larger context of Ta Chen's relationships with these entities, we find the debt security arrangements provide additional evidence of the degree of Ta Chen's control over all aspects of San Shing's and Sun's operations. Here, San Shing, and then Sun, unilaterally, and without consideration, assigned their entire inventory and accounts receivable directly to TCI's bank to facilitate a loan for TCI. That San Shing and Sun would accept such a risk without any consideration—without even a written agreement memorializing the terms and duration of the agreement—is not consistent with the dealings between truly unrelated companies. Nor has Ta Chen offered convincing evidence that this arrangement is, in fact, commonplace. Ta Chen fails to note that the UCC financing statements submitted for the record ''serve only to perfect the lender's rights against competing creditors and that rights so perfected must be created under a valid security agreement.'' The Lender's Handbook, op. cit. at 27. In spite of numerous submissions focusing upon the significance of these loan guarantees and their relevance to these proceedings, and in spite of our specific requests that Ta Chen do so, Ta Chen has never submitted evidence that a valid security agreement was ever created. Ta Chen has stated only that it ''asked'' first San Shing, and then Sun, to assign their inventory and receivables as security for a line of credit TCI obtained from a California bank, and that these parties agreed freely in return for extended credit terms. See Case Brief at 81 and 82. However, that these putatively unrelated parties would accede to such a request in the absence of any written security agreement as to the nature of the assignments, their scope, their duration, *etc.* does not comport with the actions of unrelated parties dealing at arm's length. Contrary to Ta Chen's assertion, in fact, the existence of these UCC filings absent any valid security agreement serves merely to underscore the dominion Ta Chen enjoyed over the actions and the assets of both San Shing and Sun.

Furthermore, Ta Chen has never documented for the record why the supposedly unrelated San Shing would be willing to offer its accounts receivable and inventory to secure a loan for TCI, or why Sun, supposedly unrelated to either Ta Chen or to San Shing, would assume these same obligations in toto when, as of the claimed date of its founding, it would have no outstanding balances whatever with Ta Chen. Two other aspects of these security agreements bear noting. First, that the secured amount available to TCI from its bank was always limited to the value of these receivables is an ipse dixit which Ta Chen, the sole party able to do so, has failed to document for the record. Ta Chen claims in its case brief that these agreements were ''referenced in various correspondence during the relevant periods between the parties,'' yet, curiously, Ta Chen elected not to submit any of this correspondence for the record. Our thorough review of Ta Chen's and TCI's correspondence files during the October 1994 verifications for the stainless pipe review also failed to reveal a single mention of these agreements. Second, Ta Chen insists that because San Shing and Sun only sold Ta Chen products, the value of any assets assigned by San Shing and Sun to TCI's bank necessarily equaled the amount owed by San Shing and Sun to TCI. See Case Brief at 82 and 83. However, this would be true only if San Shing and Sun sold this merchandise at the same price it originally paid to TCI. If San Shing and Sun marked up the price of the merchandise, which they would have to do to realize any profit from these transactions, then the secured amount necessarily exceeded the receivables San Shing and Sun owed to TCI. Furthermore, San Shing sold nuts and bolts for the automotive industry. Thus, its inventory and accounts receivable from the start of this relationship extended beyond the pipe and pipe fittings supplied by Ta Chen. Contrary to Ta Chen's assertions, the value of San Shing's inventory and accounts receivable clearly did exceed the amount San Shing owed to Ta Chen for its pipe products.

As for the exclusive supplier relationships between Ta Chen, San Shing and Sun, Ta Chen concedes that it was the exclusive supplier to both entities, but claims that each was free to do business with whomever it chose. However, Ta Chen has presented no evidence of San Shing or Sun ever seeking to purchase pipe fittings or pipe from any other firm. In fact, the record clearly indicates that except for the fasteners manufactured by San Shing Hardware Works, Ltd., San Shing dealt exclusively with Ta Chen merchandise; Sun Stainless was established for this purpose alone. Both were entirely reliant upon Ta Chen for their supplies of pipe and pipe fittings. We also find that Ta Chen's case cites in this regard are not on point. In Portable Electric Typewriters, for example, respondent Tokyo Juki sold merchandise exclusively to EuroImport, S.A., a subsidiary of Olivetti. Petitioner, citing a number of factors, including assumption of start-up costs, Olivetti's supplying typewriter parts to Tokyo Juki, and the fact that Tokyo Juki sold subject typewriters exclusively to EuroImport, alleged that Tokyo Juki and Olivetti were related parties. We concluded that ''Olivetti's and Tokyo Juki's relationship does not constitute control as contemplated by section 771(13) of the Tariff Act,'' and that petitioner's arguments with respect to EuroImport were ''not persuasive.'' Portable Electric Typewriters From Japan, 48 FR 7768, 7771.[9] While EuroImport had an exclusive distributor arrangement to distribute Tokyo Juki's typewriters, there is no indication that the obverse was true, *i.e.,* that Tokyo Juki was the sole supplier to EuroImport. In all likelihood, EuroImport also distributed typewriters manufactured by its parent, Olivetti, and may have distributed typewriters supplied by any number of manufacturers. Unlike the instant case, there is no evidence that EuroImport was dependent upon Tokyo Juki for its continued sales operations. Thus, Portable Electric Typewriters never reaches the issue of whether or not an exclusive supplier relationship is, or is not, evidence of parties' being related under section 771(13) of the Tariff Act by means of control. Furthermore, in sharp contrast to the instant case, the totality of evidence in Portable Electric Typewriters clearly indicated that Tokyo Juki could not control Olivetti or vice versa. Likewise, the cite to Residential Door Locks From Taiwan is inapposite. There we concluded that ''[t]here is no evidence on the record that Posse and Tong Lung operated closely together, were billed jointly, had their day-to-day operations directed by joint owners, or conducted transactions

[9] This discussion of ''control as contemplated by section 771(13) of the Tariff Act'' would be unnecessary if, as Ta Chen insists, the statute only defined related parties in terms of common equity ownership.

between themselves.'' Residential Door Locks From Taiwan, 54 FR 53153, 53161. We did not say, as Ta Chen asserts, that exclusive-supplier relationships could not be indicative of related-party status; on the contrary, we clearly examined the issue of exclusive supplier relationships within the context of a related-party determination and found that not only was there no exclusive supplier relationship between Posse and Tong Lung, there were no business transactions of any kind between the two.

Furthermore, Ta Chen has presented no evidence in support of its contention that these indicia of control, including computer access, control of disbursements, and intervention by a mill in its unrelated customers' sales are common. Despite the claims of Ta Chen's witnesses, Mr. Charles Reid, Mr. Theodore Cadieu of the USX Corporation, and officials from a U.S. pipe producer and an association of distributors that such practices happen ''all the time,'' none could cite a single specific example of similar ties between unrelated parties. The head of the distributors' association, who would be expected to have familiarity with the practices of its membership, failed to name a single member firm engaging in such ''common'' practices. See Ta Chen's February 7, 1997 submission at 54, and Ta Chen's April 1, 1997 submission. As a final note on the qualification of the stainless pipe petitioner's affiant, Mr. Brent Ward, to speak to ''the practices of offshore mills,'' Ta Chen has known at least since the Department's April 28, 1997 public hearing (in the 1994–1995 administrative review of stainless pipe) Mr. Ward's qualifications to address these matters. Mr. Ward is the president of the domestic pipe producer, Damascus-Bishop Tube Company, and also the Specialty Tubing Group, an association of North American producers of welded stainless steel pipe. His firm also purchases and distributes ornamental steel tubing produced by offshore mills. See Memorandum to the File, October 30, 1997, at 2, and Hearing Transcript (''Open Session''), In the Matter of Certain Welded Stainless Steel Pipe From Taiwan, May 12, 1997 at 15 through 21 and 34 through 37, on file in room B–099 of the main Commerce building. It is worth quoting Mr. Ward, acting in all three capacities, at some length:

> [a]t most, if it is necessary, a producing mill might have the opportunity to meet with both a distributor and that distributor's customer to discuss issues of material specification and/or quality requirements, but not to discuss issues of prices and quantities. . . . [I]n reality distributors in the welded stainless steel pipe industry in the United States that are truly unaffiliated with their supplying mills jealously guard both their corporate independence and their commercial ties with their customers and limit any contact by the mills with those customers as much as possible. The logic behind this approach at one level, of course, is simply that the distributors do not want to lose control of their businesses and do not want their customers to buy directly from the mills and eliminate the distributor's role in the chain of distribution.

See Affidavit of Mr. Brent Ward, submitted April 8, 1997, on file in room B–099 of the main Commerce Building.

We find Mr. Ward's common-sense description of the business ties typically found between unrelated parties to be credible, especially in light of Ta Chen's inability to cite any evidence to the contrary.

Finally, turning to Ta Chen's relationship with Sun through Mr. McLane's full ownership of Sun while holding a share of, and acting as a director for, Ta Chen, we find that substantial evidence of record in this review indicates that Mr. McLane's involvement with Sun predates the September 14, 1993 date claimed by Ta Chen. Rather, Mr. McLane, working with Mr. Mayes, established Sun and was actively engaging in sales of subject merchandise by 1992. The evidence of this is not, as Ta Chen characterizes it, hearsay. It is, in fact, the September 20, 1994 report of a disinterested and credible organization, Dun & Bradstreet, whose reports are routinely relied upon by the business and investment communities in assessing businesses' creditworthiness. Dun & Bradstreet's source, in turn, was Mr. Ken Mayes who, as the putative vice president and director of Sun, clearly had familiarity with the history and operations of this firm. In a May 27, 1994 interview with Dun & Bradstreet's analysts, Mr. Mayes stated that ''Sun Stainless, Inc.'' was started in 1992.[10] Mr. Mayes noted that Mr. McLane was the president and he the vice president of Sun. Furthermore, the D&B report includes a ''fiscal statement'' covering the period from November 1, 1992 to October 31, 1993. This document shows that for the year ended October 31, 1993, Sun had millions of dollars in sales, accounts payable, and accounts receivable.

If, as Ta Chen claims, Frank McLane's Sun Stainless, Inc. only became operational as of November 1, 1993, there should have been no financial activity whatever reported for the year prior to that date. Certainly, there would be no activity reported prior to September 1993 when Mr. McLane allegedly founded his new Sun Stainless, Inc. Perhaps recognizing this inconsistency, Ta Chen suggested in an August 2, 1995 letter originally submitted in the first review of stainless pipe:

> [t]he Dun & Bradstreets submitted by Petitioners on Frank McLane's Sun Stainless, Inc. obviously include the financial results of San Shing USA for the pre-October 31, 1993 period and the financial results of Frank McLane's Sun Stainless, Inc. for the period November 1, 1993 onward.

Ta Chen's February 7, 1997 submission at 73, n. 4 (original bracketing deleted).

Ta Chen went on to speculate that ''D&B's reporting in this fashion may be useful, as the profitability of San Shing USA's assets during the pre-October 31, 1993 period may be a useful indicator of the financial performance of Frank McLane's Sun Stainless, Inc. during the post-November 1, 1993 period.'' *Id.* It is not at all obvious, however, that the D&B report for a putatively new corporate entity, Sun Stainless, Inc., would include the financial results for a separate party, San Shing. Unless Mr. Mayes incorrectly presented San Shing's financial results as Sun's own, Dun & Bradstreet could not have confused the two. Indeed, since San Shing used the name ''Sun Stainless, Inc.'' as a fictitious dba name only, any search for financial information on ''Sun Stainless, Inc.'' (as distinct from San Shing Hardware Works, USA), would be unavailing because, according to Ta Chen, Sun never really existed before September 1993, other than as a name on San Shing's invoice forms. Furthermore, if Sun had truly started as a new, independent entity in November 1993, the performance of San Shing in the prior year would be of little or no help in predicting how a new firm, with different ownership, different levels of financing, and different levels of business experience and expertise, would perform in the market.

Mr. Mayes's May 27, 1994 statements to a disinterested person, *i.e.*, Dun & Bradstreet, were made at a time when Mr. Mayes had no reason to foresee that the stainless pipe petitioners and, later, the Department, would inquire as to the dates of Sun's establishment. To the contrary, his later statements on Ta Chen's behalf for the record of the

[10] We note this date coincides with Ta Chen's decision to ''exit the ESP business'' and to rely on newcomers to the pipe industry as its sole distributors in the United States. Thus, contrary to Ta Chen's allusions, the D&B report has not erroneously stated the founding date of San Shing USA, which existed as a distributor of fasteners manufactured by its parent, San Shing Hardware Works, Ltd., in Taiwan prior to its involvement in Ta Chen's pipe distribution. See Case Brief at 107.

fittings and pipe reviews were made at a time when he had a direct interest in sustaining Ta Chen's claim that it was not related to Sun. We conclude that the information contained in the D&B report more accurately reflects the history of Frank McLane's Sun Stainless, Inc.[11]

*Comment 3: Use of Best Information Available*

Even if the Department had the discretion to find Ta Chen related to San Shing and Sun within the meaning of section 771(13) of the Tariff Act, Ta Chen argues, the Department nonetheless acted unlawfully in applying BIA to Ta Chen. According to Ta Chen, the Department never clearly requested from Ta Chen any information regarding control of San Shing or Sun by Ta Chen, and never indicated what such control might entail. Citing *Sigma Corp.* v. *United States*, 841 F. Supp. 1255 (CIT 1994), Ta Chen asserts that the Department cannot '' 'expect a respondent to be a mind-reader' * * * BIA cannot be imposed for failure to provide information that was not requested, or clearly requested.'' Case Brief at 112 (Ta Chen's emphasis omitted). Ta Chen also points to, *inter alia, Usinor Sacilor* v. *United States*, 907 F. Supp. 426, 427 (CIT 1995), *Creswell Trading Co., Inc.* v. *United States*, 15 F. 3d 1054, 1062 (Fed. Cir. 1994), *Daewoo Electronic Co.* v. *United States*, 13 CIT 253 266, and *Queen's Flowers de Colombia, et al.,* v. *United States*, Slip Op. 96–152 (CIT September 25, 1996) as supporting its contention that the Department may not penalize a respondent ''for failure to provide information on relationships which the respondent had no fair notice that the Department wanted.'' Case Brief at 112 through 114.

The Preliminary Results are especially galling, Ta Chen charges, given what Ta Chen characterizes as the Department's oft-stated position that ''control indicia were irrelevant under the pre-[URAA] statute.'' *Id.* at 114. In cases involving financial inter-dependencies, interlocking and coordinated directors and officers, and de facto joint operation through, *e.g.*, a Japanese keiretsu, Ta Chen claims, the Department has ''repeatedly and publicly'' stated that control was irrelevant to its analysis. *Id.*

Furthermore, Ta Chen avers, Ta Chen submitted for the record the information relied upon by the Department as indicative of control prior to issuing any supplemental questionnaires in this review. With this information in hand, Ta Chen alleges, the Department issued supplemental questionnaires in this review, all covering Ta Chen's sales to San Shing and Sun. At no time, Ta Chen submits, did the Department ask Ta Chen to report the subsequent resales of Ta Chen pipe fittings made by San Shing and Sun Stainless. Ta Chen argues that in *Olympic Adhesives, Inc.* v. *United States*, 899 F. 2d 1565, 1573 (Fed. Cir. 1990) the Court of Appeals for the Federal Circuit (Federal Circuit) held that when a respondent answers fully the Department's questionnaire and receives a supplemental request ''pursuing a different inquiry,'' the respondent has reasonable grounds for believing that the original queries were fully answered. Case Brief at 116. This holds a fortiori, Ta Chen continues, where the information concerning Ta Chen's relationships with San Shing and Sun was submitted prior to the Department's supplemental questionnaire. Why, Ta Chen asks, if the previous information ''clearly indicated'' that Ta Chen was related to San Shing and Sun, did the Department ask Ta Chen for wide-ranging information concerning Ta Chen's sales to San Shing and Sun, but never to report sales by San Shing and Sun? Ta Chen submits that it is not the Department's practice to determine that a response is inadequate in toto because a respondent reports the wrong body of U.S. sales, not to inform the respondent of the deficiency, to ask extensive questions about the putatively useless sales data, and only then to notify the respondent of what the Department now claims was evident all along: that the Department could not use Ta Chen's reported U.S. sales.

Ta Chen concludes that the questionnaires it received did not state that parties could be considered related through control; therefore, Ta Chen declares, it would be unlawful for the Department to proceed on the basis of BIA because Ta Chen failed to address these control issues in its responses.

If the Department continues to hold that Ta Chen's submitted U.S. sales data are unusable for these final results, Ta Chen nonetheless disputes the Preliminary Results' finding that Ta Chen failed to cooperate with the Department and, thus, deserves adverse (or ''first tier'') BIA. First, Ta Chen rejects the Department's conclusion that Ta Chen failed to disclose fully its relationships with San Shing and Sun. Rather, Ta Chen claims, it reported that Ta Chen was not related to San Shing and Sun as defined by the Tariff Act. Only later, Ta Chen avers, in the context of the 1994–1995 administrative review of stainless pipe did the Department phrase the question differently, asking Ta Chen to describe ''all relationships'' with San Shing and Sun. Ta Chen asserts that it answered fully this broader inquiry in its November 12, 1996 response in that proceeding. Ta Chen dismisses petitioner's claim that Ta Chen was forthcoming with this new information only because of a separate legal proceeding as both speculative and irrelevant to these proceedings. Rather, Ta Chen holds, once the Department framed the question as it did in the 1994–1995 pipe review, Ta Chen responded candidly.

Ta Chen also claims that it explained accurately the provenance of the dba names used by San Shing and that, in any event, the Department failed to explain the significance of Ta Chen's account to the decision to apply uncooperative BIA. Furthermore, Ta Chen submits, any sales of subject pipe fittings to ''Sun Stainless, Inc.'' were to Frank McLane's Sun, not to San Shing and its dba Sun, thus making the derivation of these names especially irrelevant to these later sales. Case Brief at 121, citing the Department's verification report for the 1992–1993 review of welded stainless steel pipe. Ta Chen challenges the Preliminary Results' conclusion that Ta Chen misled the Department with respect to the origin of the dba names. According to Ta Chen, its November 12, 1996 submission in the 1994–1995 review of stainless pipe (the relevant portions of which were submitted for the record of this review on December 13, 1996) never claimed that ''all of the dba names would appear in the Ta Chen customer list submitted in the original [LTFV] investigation.'' *Id.* Rather, Ta Chen argues, only some of these names would be drawn from the customer list with the remainder selected because they were ''American[-]sounding.'' *Id.* In any event, Ta Chen continues, the record does indicate the prior existence of six of the eight dba names Ta Chen claims were used by San Shing. Ta Chen claims that Charles Reid, with whom the Department spoke at the October 1994 verification in the pipe review, was also owner of Wholesale Alloys, one of the dba names. As to the use of the name Sun, Ta Chen asserts:

[t]he record does not establish the prior existence of the name Sun in the market. But

[11] This same chronology was corroborated by a foreign market researcher retained by petitioners in the stainless pipe case. See the July 12, 1995 submission of Collier Shannon Rill & Scott at Attachment 5, a public version of which is on file in Room B–099 of the main Commerce building. Even if the D&B analysts interpreted erroneously Mr. Mayes's May 27, 1994 statements, it is clear that Mr. McLane negotiated the purchase of San Shing USA's inventory sometime prior to mid-September 1993, *i.e.*, while he was still a shareholder in, and director of, Ta Chen.

what the record does show is that San Shing essentially went by the name Sun. That is what it was known as in the market and the vast bulk of its sales were under the name Sun. For someone to have the mindset that this was a company known as Sun, but on occasion using other dba names, would be reasonable and reflect the reality of the situation.

Case Brief at 123.

As for one customer name, Anderson Alloys (Anderson), Ta Chen insists that the Department in the Preliminary Results has assumed incorrectly that the Anderson of South Carolina is the same as San Shing's dba Anderson Alloys. The record, Ta Chen notes, is replete with references to two Andersons. The Anderson allegedly owned and operated by Charles Reid had a South Carolina mailing address; any sales to this Anderson, Ta Chen avers, can be segregated in Ta Chen's U.S. sales listing through use of this address. Furthermore, Ta Chen declares, all sales to Anderson after November 1, 1993 were to the South Carolina firm, as San Shing USA was no longer using the dba designation Anderson Alloys. ''By then, Sun was of course a sufficiently known company in the market that there was no reason to use dba designations for name recognition.'' Case Brief at 125.

Ta Chen takes issue with the pipe petitioners' attempt to portray the use of dba names as part of an effort to conceal sales to San Shing. Citing its October 20, 1994 submission in the 1992–1993 stainless pipe review, Ta Chen claims that it reported its U.S. sales to the Department using the names as appearing on the invoices TCI issued to the customer. For example, Ta Chen continues, a majority of its invoices to San Shing bore the name ''Sun Stainless, Inc.'', and were so reported. Other sales to San Shing under its other dba names were likewise reported using the applicable dba name. Furthermore, Ta Chen argues, its submitted sales data reflect a trend where sales to the various dbas were supplanted by sales exclusively to Sun Stainless, Inc., as ''Sun became more well-known and the use of alternative dba names became unnecessary.'' Case Brief at 127.

As for the sales contracts between Ta Chen and San Shing, and between San Shing and Frank McLane, Ta Chen avers that these documents were not unusual, nor did they provide substantial grounds for adverse BIA. Contrary to the Preliminary Results, Ta Chen claims that the June 1992 contract, while allowing the possibility of future negotiations, did, in fact, set the prices for the sale of San Shing's inventory to Frank McLane. According to Ta Chen, sales contracts often omit price terms when, *e.g.*, ''the parties in their repeated dealings have customarily set the price at a later date,'' or in the face of risks of a ''fluctuating market, particularly where delivery is postponed a considerable period of time (for example, 'delivery six months from today.')'' Case Brief at 129, quoting, respectively, Nelson, Deborah L, and Jennifer L. Howicz, Williston on Sales, 5th Ed. at 377, and Hawkland, Will D., Uniform Commercial Code Series, § 2–305:01 at 301 (1997). Under the two-year term of the contract between Ta Chen and San Shing, Ta Chen submits, the open-ended nature of this contract was not remarkable. Ta Chen also claims that the first such purchase, which entailed all of TCI's then-existingU.S. inventory of welded stainless steel pipe, was concluded prior to the preliminary LTFV determination in that case, thereby averting suspension of liquidation. According to Ta Chen, the second incremental purchase six months later was timed to permit TCI to sell all of its existing inventory of pipe fittings prior to suspension of liquidation in this investigation. See Preliminary Determination of Sales at Less Than Fair Value: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 57 FR 61047 (December 23, 1992). Ta Chen asserts that such agreements between Ta Chen and San Shing were not improvident and that, in any event, these contracts are irrelevant for purposes of the Tariff Act. The Department, Ta Chen alleges, failed to explain why an ''unusual'' contract would suffice to treat the respondent with adverse BIA. Case Brief at 132. When confronted with similar contracts in other cases, Ta Chen argues, the Department concluded that the contracts were ''not necessary or relevant to calculation of the dumping margin,'' and have never been the basis for imposing uncooperative BIA. *Id.*

With respect to Mr. Mayes's involvement with Ta Chen, San Shing, and Sun, Ta Chen maintains that this is also an inappropriate basis for resorting to adverse BIA. Mr. Mayes, Ta Chen declares, worked for Ta Chen, later worked for San Shing, and later still worked for Mr. McLane's Sun; however, ''[Mr.] Mayes never worked for Ta Chen and Sun at the same time.'' Ta Chen submits that an employee leaving one company to work for another ''happens all the time.'' Case Brief at 133. As to Ta Chen's previous statement that Mr. Mayes was never ''employed by San Shing,'' Ta Chen claims that it did note that Mr. Mayes was an ''independent contractor'' for San Shing. An independent contractor is not, Ta Chen declares, an employee. Case Brief at 134. As to monies paid by Ta Chen to Mr. Mayes after his alleged departure from TCI, Ta Chen insists that there was a single payment in 1995 pursuant to the standing agreement between Ta Chen and Mr. Mayes. According to Ta Chen, in return for helping Ta Chen get its start in theU.S. pipe market by turning over his customer lists to Ta Chen, Mr. Mayes would become eligible for a one-time payment should Ta Chen reach a specific profit level. Ta Chen suggests that ''in a cyclical steel industry, where, when profits are good, they are great,'' achieving this level of profit was ''almost an inevitability.'' Case Brief at 135. Ta Chen charges once again that the Department has created a per se rule that payment of money by one party to another is tantamount to employment by the former of the latter. Rather, Ta Chen concludes, this one-time profit-sharing payment conferred no ownership rights and is, thus, irrelevant to the issue of related parties.

Ta Chen next assails the Department's characterization in the Preliminary Results that Ta Chen misled the Department with respect to the debt-financing arrangements between Ta Chen and San Shing and Ta Chen and Sun. According to Ta Chen, its descriptions of these arrangements were ''consistent'' and ''clear'' throughout this review. Ta Chen insists that as early as July 1994 evidence submitted in the stainless pipe case indicated that San Shing's accounts receivable were ''not securing San Shing's debt to TCI but, rather, Ta Chen's debt to a Los Angeles bank.'' Case Brief at 137, see also the Department's Preliminary Results Analysis Memorandum, March 4, 1997 at 6. Furthermore, Ta Chen disagrees with the Preliminary Results' conclusion that it had misled the Department through its various characterizations of the debt arrangements. That Ta Chen pursued one argument to rebut the petitioners' submission as to the implication of the debt assignment, and later pursued a different argument to address petitioners' documentary evidence of those assignments is not, Ta Chen insists, a basis for concluding that Ta Chen misled the Department. Finally, Ta Chen avers, the relevance of Ta Chen's submissions addressing the security arrangements is unclear given the ''undefined'' nature of the Department's control test. Finally, Ta Chen claims that the alternating arguments cited in its Case Brief were only presented in the 1992–1993 review of stainless pipe; thus, they are

irrelevant with respect to a BIA decision in this review of pipe fittings.

Ta Chen claims further that the Department's verification reports in the first administrative review of stainless pipe confirm that the company cooperated fully with the Department. Ta Chen states that it answered accurately every question asked, and supplied all requested documents. ''There is,'' Ta Chen insists, ''no record evidence otherwise.'' *Id.* at 139 and 140. Noting the free access granted to the Department's verifiers, Ta Chen concludes that ''[n]ever once did the verifiers state that, per a control standard for relatedness, they were now going to address common indicia of control, or ask questions thereon. There are no statements in any of the verification reports otherwise.'' Case Brief at 140. Ta Chen dismisses the Preliminary Results' claim that Ta Chen withheld relevant information from the verifiers ''[d]espite repeated probing by [the] verifiers,'' claiming that the Preliminary Results failed to explain what this ''repeated probing'' involved. *Id*, quoting the Department's Preliminary Results Analysis Memorandum at 7. Ta Chen claims that the concern expressed by the Department during verification was whether one party owned the other, not whether one party controlled another. ''Nothing was said or asked by the verifiers to suggest otherwise.'' *Id.* The Department cannot, Ta Chen insists, resort to BIA where it ''does not have the information it wants because it did not ask the right questions.'' *Id.* at 141. Furthermore, even if an alleged failure to be forthcoming in the October 1994 verification of stainless pipe could be cited as grounds for adverse BIA in the 1992—1993 review of that case, Ta Chen continues, such is not the case for the 1992—1994 administrative review of pipe fittings. Conceding that it has, in fact, entered the relevant portions of the 1994 pipe verification reports into the record of this review of butt-weld pipe fittings (and in the 1993—1994 review of stainless pipe), Ta Chen nevertheless insists that it ''did not use the verification in the first pipe review to conceal its relationship with [San Shing and] Sun in these other reviews.'' Case Brief at 142.

Comparing its treatment at the hands of the Department in the instant review to that of respondents in other proceedings, Ta Chen suggests that the Department has elsewhere allowed far more egregious conduct to pass without resort to first-tier BIA. For example, Ta Chen cites a review of Antifriction Bearings (except Tapered Roller Bearings) From France, *et al.*, 57 FR 28360 (June 24, 1992), where the Department applied uncooperative BIA only to those companies that failed to respond to the questionnaire altogether. There, Ta Chen submits, the Department applied second-tier BIA to other firms despite ''extensive misrepresentations and omission in [the firms'] questionnaire responses.'' *Id.* Likewise, Ta Chen cites *Emerson Power Transmission Corp.* v. *United States*, 903 F. Supp. 48 (CIT 1995) (Emerson), and *NSK, Ltd.* v. *United States,* 910 F.Supp. 663 (CIT 1995) (NSK) for the proposition that second-tier BIA is ''proper and consistent with'' Departmental practice where a respondent has tried but failed to cooperate. *Id.* at 144, quoting *NSK, Ltd.* v. *United States*. In addition, Ta Chen avers, a Binational Panel Review convened pursuant to Article 1904 of the North American Free Trade Act concluded that the Department must impose second-tier BIA in light of the respondents' ''repeated efforts to provide answers to the Department's numerous questionnaires.'' *Id.*

Ta Chen notes that the Department applied second-tier BIA in 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), even though respondents in these proceedings improperly reported U.S. sales to related parties, improperly classified ESP sales as PP sales, and misreported data which were crucial to the dumping calculations. In *Sugiyama Chain Co., Ltd.* v. *United States*, 852 F. Supp. 1003 (CIT 1994), a case spanning seven review periods, Ta Chen points out that the Department relied upon second-tier cooperative BIA despite Sugiyama's failure to report its sixty percent equity relationship with its ''dominant'' home market customer. In addition, Ta Chen claims, the Department found that Sugiyama failed to provide its financial statements, had significant unrecorded transactions, and could not reconcile its U.S. and home market sales listings. Yet, Ta Chen asserts, the Department applied cooperative BIA in all but one of the seven reviews at bar. Ta Chen argues that because it disclosed the information upon which the Department based its related-party determination (as distinct from the Sugiyama case, where the Department discovered this information on its own), Ta Chen should not be a candidate for first-tier uncooperative BIA.

As for the choice of a BIA margin, Ta Chen takes issue with the Department's use of the highest margin from the petition as BIA in the Preliminary Results. In Certain Welded Carbon Steel Pipes and Tubes From Thailand, 62 FR 17590 (April 10, 1997), Ta Chen maintains, the Department used an average of the petition margins as BIA even though (i) The Department discovered purchases from and sales to affiliated parties and (ii) The parties' affiliation was evident on the basis of common stock ownership and, thus, the respondent should have known to report the affiliated-party transactions. Similarly, according to Ta Chen, in Brass Sheet and Strip From Sweden, 57 FR 29278 (July 1, 1992), the Department rejected a respondent's questionnaire response in toto, applying first-tier BIA; yet, Ta Chen notes, despite what it characterizes as the more egregious failings of the company's questionnaire response, the Department assigned as adverse BIA the respondent's own margin from the LTFV investigation. Selection of a BIA margin, Ta Chen asserts, should be based upon an objective reading of the respondent's cooperation, rather than any subjective and speculative standard of intent. *Id.* at 148 and 151.

Ta Chen urges the Department to use as BIA Ta Chen's cash deposit rate from the LTFV investigation, claiming this would be sufficient to ''motivate cooperation'' on the part of Ta Chen. *Id.* at 153. Ta Chen reasons that it requested the three pending administrative reviews in order to reduce its antidumping liabilities; if the Department reinstated the prior cash deposit rate of 3.27 percent, ''Ta Chen's purpose in participating in these reviews will have been completely undermined.'' Case Brief at 153. Ta Chen draws a distinction between the pending review of pipe fittings 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. This is especially so, Ta Chen argues, where the possible revocation of the antidumping duty order with respect to the respondent hangs in the balance. Ta Chen suggests that it requested the first reviews of pipe fittings and stainless pipe with the expectation that it would receive zero or *de minimis* margins in all three and, thereby, be eligible for revocation. In fact, Ta Chen notes, it requested revocation of the welded stainless steel pipe order during the 1994–1995 review of that case. Failure to cooperate in the instant reviews, Ta Chen concludes, would defeat Ta

Chen's purpose in requesting these reviews in the first place.

Ta Chen distinguishes these reviews from the issue before the Court in *Industria de Fundicao Tupy and American Iron & Alloys Corp.* v. *United States (Industria de Fundicao)*, 936 F. Supp. 1009, 1019 (CIT 1989). In contrast to this review, Ta Chen submits, the review at issue in *Industria de Fundicao* was requested by the petitioners. In light of the respondent's failure to cooperate, Ta Chen notes, petitioners in that case presented evidence that this firm's existing dumping margin would be insufficient to induce cooperation. There, Ta Chen concludes, the Department also used an average of the margins alleged in the antidumping petition in establishing a margin based on BIA.

Ta Chen also faults the 76.20 percent BIA margin presented in the Preliminary Results as unlawfully punitive, contending that it is not probative of current conditions. Consistent with the holdings of the Federal Circuit in *D&L Supply Co, Inc.* v. *United States,* (D&L Supply) 1997 WL 230117 at 2 (Fed. Cir. May 8, 1997), Ta Chen asserts that there is an ''interest in selecting a rate that has some relationship to commercial practices in the particular industry.'' Case Brief at 155, quoting D&L Supply. Rather, Ta Chen argues, the Department has already verified that Ta Chen's margins should be 3.27 percent for the stainless pipe case and 0.67 percent for the pipe fittings case. These past margins, Ta Chen submits, are ''substantial evidence'' as to Ta Chen's expected future dumping of subject merchandise. *Id.* at 156. Ta Chen urges the Department to disregard the margins suggested in the petition in favor of the verified dumping margins from the appropriate LTFV determination.

Ta Chen also suggests that the failure of the petitioner in this case to request a review of Ta Chen for the first three PORs is indicative of petitioner's belief that Ta Chen is not dumping pipe fittings into the U.S. market. In administrative reviews requested solely by a respondent who then fails to cooperate, Ta Chen argues, the Department's practice is to impose second-tier BIA. The Department's treatment of Ta Chen in the instant reviews, Ta Chen asserts, constitutes another *per se* rule (*i.e.*, that it is irrelevant whether respondents or petitioners requested the review when selecting BIA), which is contrary to the Department's practice of deciding BIA issues on a case-by-case basis.

In addition, Ta Chen notes what it sees as significant changes in the U.S. market since publication of the antidumping duty order. Ta Chen claims that it is no longer forced to compete against other Taiwanese producers of stainless steel products who, according to Ta Chen, 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 166 and 167. Ta Chen also insists that the health of the U.S. industry has improved markedly since the original investigation in this case. *Id.* at 162 and 163, citing Welded Stainless Steel Pipe From Malaysia, ITC Pub. No. 2744 (March 1994).

According to Ta Chen, petitioner's inaction is especially relevant in light of statements made by representatives of the US industry in other antidumping proceedings. For instance, Ta Chen claims that the US industry testified before the Commission in the investigation of welded stainless steel pipe from Malaysia that the imposition of antidumping duties on stainless pipe from Taiwan had effectively eliminated dumping by Taiwanese producers. *See* ITC Pub. No. 2744 at I–10. Ta Chen cites a telephone conversation purportedly held between the president of a US pipe producer and Robert Shieh wherein this individual stated that he did not think a review of Ta Chen was necessary. Case Brief at 158. In a similar vein, Ta Chen cites the testimony of Mr. Avento, president of the US pipe producer Bristol Metals, insisting that ''Taiwan imports have been checked by the antidumping laws.'' Ta Chen's Case Brief at 162, quoting Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, ITC Pub. No. 2900 (June 1995). Ta Chen argues that these statements ''support a [zero] percent dumping finding for Ta Chen.'' *Id.* at 163. 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 from the pipe company president and another purchaser of Ta Chen's pipe and pipe fittings, both claiming that ''Ta Chen could not have been dumping at a significant rate during this period'' through San Shing and Sun. Case Brief at 164. Taken together, Ta Chen submits that petitioner's failure to request a review, and the subsequent statements as to the state of the U.S. market for stainless steel pipe products after imposition of antidumping duties, indicate that petitioner has ''repudiated [the 76.20 percent margin] as inapplicable to more recent time periods, including the period of [this review].'' *Id.* at 165. Furthermore, Ta Chen argues, the BIA rate from the LTFV investigation applied to producers other than Ta Chen and is, thus, ''irrelevant and unlawful.''

Petitioner assails Ta Chen's attempts ''to unfairly undermine and manipulate the antidumping process to its own advantage,'' claiming that Ta Chen's comportment in this review warrants nothing less than first-tier, uncooperative BIA. Rebuttal Brief at 2. By standing firm in asserting that Ta Chen is not related to San Shing and Sun, petitioner charges, Ta Chen makes ''a complete mockery of both law and reason.'' *Id.* at 6. Rather, petitioner continues, Ta Chen's behavior underscores its persistent unwillingness to cooperate with the Department in this review. Additional evidence of Ta Chen's uncooperative stance, petitioner suggests, is its insistence on treating the identities of certain of its so-called expert witnesses as business proprietary information, thus preventing public disclosure of these individuals' names. Petitioner hints that the true reason for requesting proprietary treatment of these individuals' identities is that their testimony does not reflect accurately common practices in the industry and, therefore, the individuals are loathe to have the stainless steel community at large know of their role in ''such deception.'' *Id.* at 7.

According to petitioner, the timing and quality of Ta Chen's revelations in this review make clear that Ta Chen ''deliberately ignored and/or refused to cooperate'' with the Department's requests for factual information. *Id.* Further, Ta Chen's continued obstinacy is made manifest in Ta Chen's Case Brief, providing vivid testimony that Ta Chen still refuses to cooperate and is actively impeding this review. *Id.* Ta Chen's insistence on reporting its sales to San Shing and Sun, rather than its first sales to truly unrelated parties, petitioner maintains, has deprived the Department of the necessary sales database for calculating Ta Chen's margin in this review. That Ta Chen has ''clearly and deliberately withheld factual information explicitly requested by the Department,'' petitioner argues, dictates that the Department base Ta Chen's margin on total first-tier BIA. *Id.* at 8.

Petitioner insists that there was, in fact, no ambiguity with respect to the Department's definition of related

parties and the specific sales data the Department requested in this review. Rather than being a cooperative respondent, petitioner avers that Ta Chen deliberately misled the Department and only revealed the true nature of its ties to San Shing and Sun when the Department opted to verify Ta Chen's responses in the 1994–1995 review of welded stainless steel pipe. *Id.* Ta Chen's protestations that it did not apprehend that the Department might possibly find it related to San Shing, petitioner asserts, are ''laughable.''

Citing Ta Chen's behavior in other proceedings before the Department, petitioner points to what it characterizes as a pattern of deception in ''its overall track record in the U.S. antidumping arena.'' Rebuttal Brief at 8. For example, petitioner continues, in an investigation of stainless steel flanges from Taiwan, Ta Chen insisted on participating as a voluntary respondent, even though, petitioner alleges, Ta Chen was not a producer of the subject merchandise and had not up to that time supplied stainless steel flanges to the U.S. market. Only when the Department was preparing to verify Ta Chen's sales and cost-of-production responses, petitioner maintains, did Ta Chen abruptly withdraw from the investigation and accept the ''all others'' margin of 48 percent. See Final Determination of Sales at Less Than Fair Value: Certain Forged Stainless Steel Flanges From Taiwan, 58 FR 68859 (December 29, 1993) (Flanges From Taiwan). When considered with Ta Chen's behavior in the reviews of stainless pipe and pipe fittings, petitioner argues, this pattern of behavior indicates Ta Chen's ''strategy of manipulating U.S. dumping law to its advantage.'' *Id.* at 10.

Because Ta Chen ''repeatedly and deliberately lied to the Department'' concerning its U.S. sales in this review, petitioner contends, Ta Chen deserves to be treated as an uncooperative respondent, and to receive total, first-tier BIA as the basis for its margin. *Id.* Petitioner suggests that U.S. antidumping law is essentially fair ''when all parties cooperate by providing timely, factual, reliable information'' to the Department. However, petitioner continues, a respondent debases this fairness through submission of ''untimely, inaccurate, unreliable, misleading information'' at the expense of those parties who do cooperate. *Id.* In such cases, petitioner argues, the Department must take fair and decisive action to protect the integrity of the administrative review process for all interested parties, both respondents and petitioners. In light of Ta Chen's behavior in the instant proceeding, petitioner concludes, the Department must continue to base Ta Chen's margin upon the 76.20 percent BIA rate.

*Department's Position*

As is clear from our responses to Comments One and Two, we believe that Ta Chen submitted the improper body of U.S. sales to the Department. We believe that the U.S. sales data submitted by Ta Chen in the 1992–1994 administrative review cannot be relied upon in calculating Ta Chen's dumping margin. These flaws affect such a vast majority of Ta Chen's U.S. sales in this review as to render its questionnaire responses unuseable in toto.

We also agree with petitioner that, through its persistent refusal to disclose fully its relationships with San Shing and Sun, despite our manifest interest in these relationships, Ta Chen impeded the conduct of this administrative review and did not act to the best of its ability by providing complete, accurate and verifiable responses to the Department's questionnaires.

As a factual matter, we reject Ta Chen's claims that the Department never clearly requested information from Ta Chen concerning its sales to unrelated customers in the United States, or that the Department was in some way remiss in failing to seek data on San Shing's or Sun's downstream sales. In fact, the only reason we did not insist immediately that Ta Chen report San Shing's and Sun's sales as its first sales to unrelated customers in the United States is because the full extent of these extraordinary relationships was not known until two-and-a-half years after we had received Ta Chen's original response. In our original antidumping questionnaire, issued July 20, 1994, we asked Ta Chen to report its first U.S. sales to unrelated customers, and provided the statutory definition of related parties, including the references to parties being related ''through stock ownership or control or otherwise,'' at Appendix II. Ta Chen instead reported sales to numerous customers, representing each of these as Ta Chen's separate and unrelated customers. Despite the fact that well over eighty percent of Ta Chen's U.S. sales in the instant review were to San Shing, Ta Chen never acknowledged this company's existence in its initial questionnaire response. When petitioners in the stainless pipe case first obtained business and real estate records indicating that Ta Chen might be related to these parties, Ta Chen admitted the existence of San Shing, and presented the wholly unconvincing story of San Shing's entrance into the United States market (see below for more on this point).

As the pipe petitioners adduced additional evidence pointing to Ta Chen's concealment of relevant information, Ta Chen proffered arguments why the Department should not inquire further into these relationships. Due to petitioners' related party allegations, the Department sent a team of five verifiers to Tainan and three to Long Beach in October 1994 to verify Ta Chen's questionnaire responses in the 1992–1993 review of welded stainless steel pipe. Ta Chen argues now that the results of these verifications, as outlined in the Department's reports for the record, prove conclusively that Ta Chen cooperated fully in this review. To the contrary, the results of these verifications do not support Ta Chen's repeated claims that it cooperated with the Department. Despite an extensive verification of related-party issues, Ta Chen withheld all of the information concerning its extensive ties to San Shing and Sun. We were able to verify only those aspects of the control indicia for which the stainless pipe petitioners had already produced documentary evidence for the record: Ta Chen provided information concerning (i) The dates Mr. McLane allegedly sold his stock in Ta Chen, and (ii) Mr. Shieh's ownership of the real property allegedly rented first to San Shing and then to Sun, including the arm's-length nature of the monthly rents charged by Mr. Shieh. Despite having free access to any employee, and despite reviewing TCI's correspondence files with relevant customers, including San Shing and Sun, and Ta Chen's correspondence files with TCI, we did not find a single memorandum, letter, facsimile message, phone message, or any other communication concerning the check-signing ability, the computer access, the debt-financing arrangements, the shared employees, *etc.* And, Ta Chen's protestations notwithstanding, the verifiers did indeed ask questions about, *inter alia*, the facts of, and reasons for, Mr. McLane's establishment of the second ''Sun Stainless, Inc.,'' Mr. Shieh's rental of property to San Shing and Sun, and other questions about their dealings. The Department went so far as to poll other offices within the International Trade Administration for information on Ta Chen, and to interview third parties, such as the president of San Shing Hardware Works, Ltd. in Tainan and several of Ta Chen's putative U.S. agents (including

Mr. Reid) in Long Beach.[12] See Memoranda, Holly A. Kuga to Robert Chu, Ian Davis, Dan Duvall, and to Charles Bell, dated October 5, 1994. Clearly, all of these efforts were to determine if the transactions between these parties were at arm's length. And all were equally unavailing.

Therefore, contrary to the claims in Ta Chen's Case Brief, after two sales and two cost questionnaire responses, and full home market, U.S., and cost-of-production verifications in the 1992–1993 review of stainless pipe, Ta Chen disclosed nothing about the nature of its ties to San Shing and Sun. Finally, in November and December 1996, Ta Chen made further partial disclosures of the facts surrounding its relationships with San Shing and Sun in the context of the 1994–1995 review of stainless pipe. The incomplete nature of these disclosures was made clear when Ta Chen, in its September 3, 1997 Case Brief, disclosed additional salient information for the first time: Ta Chen identified two additional dba names used by San Shing during this period. Ta Chen's partial and belated disclosure of relevant factual information casts further doubt on the reliability of its reported sales data as a whole.

Had Ta Chen been laboring under any misapprehension of the statutory definition of related parties, it could have contacted the Department's officials, as instructed in the questionnaire. Further, the allegations filed by petitioners in the stainless pipe case in July 1994, October 1994, and July 1995 concerning San Shing and Sun Stainless, and the Department's attendant focus upon this issue, put Ta Chen on notice that its relationships with San Shing and Sun were a major issue in this review. Instead, Ta Chen released information piecemeal and incompletely.

Ta Chen's explanations for its behavior during these reviews are in themselves problematic. As a preliminary matter, they make little sense from a business standpoint when one looks beyond the text of the legal arguments. Ta Chen claimed that in 1992 it elected to forsake the ESP business, essentially because reporting ESP sales in the wake of the antidumping duty order would be too burdensome. Ta Chen, relying on the Department's verification reports in the 1992–1993 review of welded stainless steel pipe, continues:

> [a]fter the imposition of the antidumping duty order on [stainless pipe], Ta Chen turned to San Shing Hardware Works, USA (San Shing USA). San Shing USA was established by the president of San Shing Hardware Works Co., Ltd. (San Shing Taiwan) to sell pipe products and fasteners in the United States out of a U.S. warehouse.
>
> *Ta Chen officials stated that San Shing USA contacted Ta Chen's former sales representatives in the United States and established an arrangement whereby San Shing USA, an unknown in the U.S. pipe market, could sell Ta Chen pipe using these representatives' names on a [dba] basis.*

Ta Chen's February 7, 1997 submission at 47 (emphasis added; Ta Chen's bracketing omitted).

Ta Chen, therefore, elected to rely upon San Shing, a company with no prior experience in the stainless steel or tubular products industries, to replace TCI as its sole distributor of stainless steel pipe fittings and stainless pipe in the United States. Having made this decision, San Shing then purportedly on its own struck deals with known pipe dealers in the United States who had been prior TCI customers, whereby San Shing would use these dealers' names as dbas. The customers would then turn over their customer lists to San Shing and stand aside, allowing San Shing effectively to replace them in the distribution chain. However, having gone to such lengths to secure the names of known players in the U.S. market, San Shing then funneled the majority of its sales through the one previously unknown dba, ''Sun Stainless, Inc.''

However, as petitioners in the stainless pipe case pointed out, this arrangement makes neither commercial nor logical sense. See the October 12, 1994 submission of Collier Shannon Rill & Scott at 7. According to Ta Chen's narrative account, San Shing ''was not a well-known name in the U.S. pipe business.'' Ta Chen's December 13, 1996 submission at 54. Therefore, San Shing, operating under its various dba names, e.g., Sun and Anderson Alloys, sold Ta Chen pipe and pipe fittings to the same customers who formerly purchased pipe from TCI's customers, e.g., Sun and Anderson Alloys. The stated reason for this arrangement is that downstream purchasers who did not know San Shing would be put at ease by allowing them to deal with a name they knew. But clearly Sun's and Anderson's former customers knew with whom they were dealing. If San Shing replaced these dealers, their customers would not ''feel more comfortable'' because they were buying pipe from ''San Shing, dba Sun Stainless,'' or ''San Shing, dba Anderson Alloys.'' On a more elementary level, this narrative would have us believe that established pipe distributors in the United States, who earned their income by purchasing pipe fittings from TCI and reselling them after a markup to various end users, simply stepped aside and allowed San Shing to use their businesses' names to sell to their former customers. Such a step is inconsistent with commercial reality, and yet Ta Chen claims to have found not one, but eight stainless pipe products distributors amenable to this arrangement.

Ta Chen also misstated the origins of the dba names themselves. In a December 20, 1996 submission in the 1994–1995 review of stainless pipe Ta Chen, again quoting the Department's verification reports, explained that:

> [Ta Chen] officials stated that San Shing USA contacted Ta Chen's former representatives in the United States and established an arrangement whereby San Shing USA, an unknown in the U.S. pipe market, could sell Ta Chen pipe using the representative's names on a [dba] basis. According to TCI, its sales representatives readily agreed.

Ta Chen's February 7, 1997 submission at 62, quoting the Department's November 6, 1996 verification reports.

To verify this claim the Department introduced into the record of this review Ta Chen's U.S. customer list from the LTFV investigation of stainless pipe. See Memorandum for the File, February 24, 1997. The most significant dba name, ''Sun Stainless, Inc.,'' is not found on this list. In fact, only three of the admitted eight dbas were prior Ta Chen customers. In explaining the need for San Shing to use dbas and how San Shing came to select the names it used, Ta Chen misstated the origins of these names, and never explained for the record where the dba names, most significantly ''Sun Stainless, Inc.,'' originated. Ta Chen explains its earlier misstatements by arguing in its case brief that its November 12, 1996 submission in the 1994–1995 pipe review did not claim that ''all'' the dba names were those of prior TCI customers. While this is true, Ta Chen did so claim when first confronted with the pipe petitioners' knowledge of San Shing's and Sun's existence. Given the absence of evidence on the record that any sale of assets to Frank McLane ever took place (aside from Ta Chen's undocumented claims), given the lack of clarity surrounding Sun's 1992 founding, and given Ta Chen's failure to document for the record precisely how and why San Shing came to use dba names in the first place, Ta Chen's version of events is neither credible nor supported by evidence.

[12] It should be noted that none of these individuals provided any information about Ta Chen's and TCI's extraordinary ties to San Shing and Sun.

Other factual aspects of the record are also troubling. For example, we continue to believe that the sales contract involving Chih Chou Chang and Robert Shieh was, in fact, highly unusual. Ta Chen argues that sales contracts with no prices are commonplace when such transactions are customary between the parties, or where the date of delivery is in doubt. That was certainly not the case here. These transactions were not a ''customary practice'' between Ta Chen and San Shing, they were one-time deals involving the transfer of Ta Chen's entire existing inventory of stainless steel pipe and stainless steel pipe fittings to San Shing. Delayed delivery was also not at issue, as delivery was immediate, with Robert Shieh arranging to move the merchandise from one of his properties (TCI's warehouse) to another of his properties nearby, rented to San Shing. The relevance of the contract in the present discussion is that its commercially-unrealistic terms further indicate that San Shing was crafted by, and related to, Ta Chen. We stand by our preliminary conclusion that ''[t]he terms of this contract do not comport with Ta Chen's repeated assertions that San Shing was new to the pipe trade, and so lacked familiarity with the U.S. pipe market that it was compelled to use 'dba' names which 'sounded more American.' '' Preliminary Analysis Memorandum, March 4, 1997, at 7 and 8 (original bracketing omitted).

We also disagree with Ta Chen's description of the activities of W. Kendall Mayes. The record clearly indicates that Mr. Mayes, working with TCI since its inception, took over the day-to-day management of first San Shing and then Sun Stainless at the insistence of Ta Chen, and not as a free agent who coincidentally migrated between these three firms as a normal result of normal relocations within a tightly restricted industry environment. As to the ''independent contractor'' relationship with Ta Chen, the record evidence indicates that Mr. Mayes worked exclusively on behalf of Ta Chen, used Ta Chen office space and equipment, was paid monthly by Ta Chen, was covered under Ta Chen's group health insurance policy (even after he putatively ended his employment with Ta Chen), and continued to enjoy substantial financial benefits from his relationships with Ta Chen and Mr. Shieh long after this relationship allegedly ended. Furthermore, in return for this ''independent contractor'' relationship, Mr. Mayes had to provide to Ta Chen his own list of customers, thus effectively selling his business to Ta Chen. We also disagree with Ta Chen's conclusion that the one-time payment to Mr. Mayes conferred no control over pricing. Rather, given Mr. Mayes's successive roles as sales manager for TCI, San Shing, and Sun Stainless, together with Ta Chen's admitted role in negotiating the final prices between San Shing and Sun and their unrelated customers, the record indicates that Mr. Mayes enjoyed a knowledge and control of prices unknown between unrelated parties. Finally, with a sizeable payment to Mr. Mayes from Ta Chen dependent upon Ta Chen's profitability, Mr. Mayes's own self-interest lay not in negotiating truly arm's-length prices between San Shing and Sun and Ta Chen, but in maximizing Ta Chen's profits in these transactions. This relationship further buttresses the Department's Preliminary Results determination that these transactions were not, in fact, at arm's-length. Rather than enforcing a ''per se'' rule concerning the exchange of money between Ta Chen and Mr. Mayes, we have drawn the only reasonable conclusion possible in light of the record evidence.

As for sales made to Anderson Alloys, Ta Chen mistakenly argues that the Department can sort these sales by customer address to segregate sales made to the ''real'' Anderson Alloys in South Carolina from those made to the dba Anderson Alloys. However, we have no idea which sales are to which entity, as Ta Chen used the same address and customer code for both Andersons. More to the point, the ability to segregate sales to Charles Reid's Anderson and sales to San Shing's dba Anderson would have no bearing on our decision to resort to total first-tier BIA. Rather, we cannot ''use only portions of a response that were verifiable since this 'would allow respondents to selectively submit data that would be to their benefit in the analysis of their selling practices.' '' *Chinsung Industries Co., Ltd. et al.* v. *United States,* 705 F. Supp 598, 601 (CIT 1989) (citations omitted). As the Court noted in *Persico Pizzamiglio, S.A.* v. *United States,* by allowing the Department ''to reject a submission in toto, the court encourages full disclosure by the respondent, because only full disclosure will lead to a dumping margin lower than that established by employing BIA.'' *Persico Pizzamiglio, S.A.* v. *United States,* 18 CIT 299 (CIT 1994).

Finally, with respect to Ta Chen's reliance upon the statements of Messrs. Avento and Reid to support its arguments, we note Bristol Metal's and Mr. Avento's longstanding affiliation with Ta Chen. Bristol Metals was one of Mr. Shieh's original partners in founding Ta Chen, and Joseph Avento himself was at one time on Ta Chen's board of directors. See, *e.g.,* Ta Chen's September 19, 1994 questionnaire response at Exhibit 2, and Ta Chen's December 13, 1996 submission at 50. Mr. Avento later joined the petitioners in the stainless pipe case in initiating that investigation. He now appears before the Department as Ta Chen's witness and advocate. Neither in its case brief nor in its original filing of Mr. Avento's statement has Ta Chen elected to reveal the current relationships between Ta Chen, Bristol Metals, and Mr. Avento, such as whether Ta Chen and Bristol make purchases from each other, or whether either holds stock in the other. Given Mr. Avento's ongoing ties to Mr. Shieh and Ta Chen, the unsubstantiated nature of his testimony, and Ta Chen's unwillingness to disclose for the record Mr. Avento's current dealings with Mr. Shieh and Ta Chen, we are unable to establish his credibility as a witness about the U.S. stainless steel pipe and pipe fittings industries as a whole.

As for Charles Reid, Ta Chen acknowledges for the public record that Mr. Reid, using at least three trade names, was a customer of Ta Chen during the investigation and first period of administrative review. See Case Brief at 122.

We conclude, therefore, that the use of total, adverse BIA is appropriate in this case. The statute's provision for use of BIA is, as the Federal Circuit has held, ''an investigative tool, which the [Department] may wield as an informal club over recalcitrant respondents whose failure to cooperate may work against their best interest.'' *Atlantic Sugar Ltd.* v. *United States,* 744 F.2d 1556, 1560 (Fed. Cir. 1984). In the absence of subpoena power, the Department ''cannot be left merely to the largesse of the parties at their discretion to supply the [Department] with information. * * * Otherwise, alleged unfair traders would be able to control the amount of antidumping duties by selectively providing the ITA with information.'' *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565, 1571 (Fed. Cir. 1990). The decision to resort to BIA in an administrative review is made on a case-by-case basis after evaluating all evidence in the administrative record. With respect to the selection of BIA, the Department is granted considerable deference in deciding what constitutes the ''best'' information available. See *Allied-Signal Aerospace Corp.* v. *United States,* 966

F.2d 1185, 1191 (Fed. Cir. 1993). The courts have long held that ''it is for Commerce, not the respondent, to determine what is the best information'' available. *Yamaha Motor Co.* v. *United States,* 910 F. Supp. 679, 688 (CIT, 1995).

As discussed, we believe Ta Chen has impeded this administrative review through the submission of inaccurate and incomplete information, and through its lack of cooperation in bringing forth factual information known by Ta Chen to be of immediate relevance to these proceedings. We also agree with petitioner that Ta Chen's conduct in this review warrants use of first-tier BIA.

We also find that Ta Chen's citations to past Departmental determinations in support of using cooperative, second-tier BIA 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; Preliminary Results of Administrative Review, 59 FR 66912, 66913 (December 28, 1994). In the instant case, despite the 1995 sale of Sun to Picol Enterprises, Ta Chen has never indicated any such difficulty in accessing San Shing's and Sun's records, and has even submitted these companies' federal income tax returns in the record of this review.

Emerson and NSK, cited by Ta Chen as grounds for use of second-tier BIA, are likewise not on point. Emerson involved a review of antifriction bearings from Japan where the Department, in two significant departures from standard practice, determined it would (i) use a sampling of home market sales, and (ii) use annual average home market prices as the basis for FMV, both to reduce the complexity and reporting burden of the review. Respondent Nippon Pillow Block Sales made good faith efforts to respond to the Department's questionnaire, but misinterpreted the instructions concerning which home market sales it would be required to report for purposes of sampling.[13] In addition, the Department discovered other unreported sales at verification. The Department determined that, while Nippon had attempted to cooperate, it had failed to provide the home market sales data necessary to calculate annual weighted-average prices; therefore, Nippon's margin was based on second-tier BIA. In NSK, involving a review of tapered roller bearings (TRBs) from Japan, plaintiff NSK submitted complete, verifiable, and timely U.S. and home market sales responses. However, NSK balked when directed to submit cost of production data on TRB parts acquired from related suppliers, arguing that the Department had no legal authority to request these data absent ''a specific and objective basis'' for suspecting that NSK's prices for the parts had been less than the suppliers' cost of production. NSK, 910 F. Supp. at 666. The Court held that we properly rejected NSK's arguments, and that we correctly resorted to partial second-tier BIA for the missing cost data.[14] In each of the cited cases, while the responses were found to be deficient, the respondents attempted to cooperate with the Department's review. We contrast the behavior of these respondents with that of Ta Chen, and find that Ta Chen not only failed to submit the proper body of U.S. sales, but impeded the review. We conclude, therefore, that it would be inappropriate to base Ta Chen's margin for this review on second-tier, or cooperative, BIA.

Similarly, we cannot accede to Ta Chen's suggestion that we apply its margin from the LTFV investigation as first-tier BIA, 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 margin, which was calculated in a segment of these proceedings wherein Ta Chen was deemed cooperative and its responses fully verified, as first-tier BIA, 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 prior cash deposit rate as BIA. See *Olympic Adhesives, Inc.* v. *United States,* 899 F.2d 1565, 1572 (Fed. Cir. 1990). We find the Court's holdings in *Industria de Fundicao* to be directly on point: ''the Court will not allow respondent to cap its antidumping rate by refusing to provide updated information to [the Department].'' *Industria de Fundicao,* 936 F. Supp 1009, 1011. Contrary to Ta Chen's suggested approach, our aim in selecting BIA for non-cooperating 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.'' *National Steel Corp.* v. *United States,* 913 F. Supp 593 (CIT 1996). Likewise, we find that the antidumping proceedings of other countries, such as Canada, are irrelevant to our selection of BIA in this review which is being conducted pursuant to U.S. antidumping law. Furthermore, aside from its irrelevance, information concerning antidumping proceedings before Canadian authorities is not in the administrative record of this review.

We also reject Ta Chen's assertion that the 76.20 percent BIA 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, 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, Slip Op. 97–28 (CIT March 12, 1997).

Likewise, in *Sugiyama Chain Co., Ltd. et al.,* v. *United States,* the plaintiff 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

[13] Thus, while it is true that Nippon ''failed to report approximately 80% of its home market sales,'' it is only fair to note that Nippon was required to report only a portion of its home market sales for sampling purposes to begin with. Emerson, 903 F. Supp. at 52.

[14] The Court did remand NSK, ordering the Department to correct its application of second-tier BIA; the decision to use BIA was, however, upheld.

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,* 880 F. Supp. 869, 873 (CIT 1995); see also *Rhone Poulenc, Inc.,* v. *United States,* 710 F. Supp. 341, 346 (CIT 1989) (''There is no mention in the statute or regulations that the best information available is the most recent information available.''); *aff'd* 899 F.2d 1185 (Fed. Cir. 1990). Furthermore, we reject Ta Chen's suggestion that the 76.20 percent margin has been ''verified as wrong.'' Our use of a margin drawn from data supplied by the petitioner comports fully with section 776(b) of the Tariff Act. It is not necessary, as Ta Chen appears to argue, for the Department to conduct an economic analysis of the stainless steel fittings industry before using a margin based on petitioner's data to determine the validity of these data. See *Tai Ying Metal Industries Co.* v. *United States,* 712 F. Supp 973, 978 (CIT 1989) (''it is reasonable for Commerce to rely upon the published margin from the LTFV investigation as the best information available without reassessing the record therefrom''). Furthermore, as petitioner points out, Ta Chen fails to note a prior investigation involving Ta Chen where the Department acted precisely as we have acted here, i.e., using the highest margin from the petition as first-tier BIA. In Certain Forged Stainless Steel Flanges From Taiwan Ta Chen was deemed an uncooperative respondent because it ''withdrew'' from the investigation immediately prior to verification. As first-tier, uncooperative BIA the Department chose the highest margin alleged in the petition, 48 percent, applying this rate to Ta Chen and to two other uncooperative respondents. See Certain Forged Stainless Steel Flanges From Taiwan, 58 FR 68859 (December 29, 1993).

The 76.20 percent margin has stood unchallenged for over six years as the first-tier BIA margin and, in fact, still applies to one other Taiwan manufacturer of subject merchandise. See Amended Final Determination and Antidumping Duty Order, 58 FR 33250, 33251 (June 16, 1993). We conclude that use of this margin from the LTFV investigation is entirely consistent with the statute, the Department's regulations, and our past precedent.

We also find inapposite Ta Chen's argument that, since petitioner did not request this review, petitioner is satisfied with Ta Chen's existing cash deposit rate. Whether or not petitioner requested this review is, at this point, irrelevant, and cannot be construed in any way as evidence of Ta Chen's dumping activities, or lack thereof, during the first period of review. Ta Chen's reference to our determination concerning Yamaha in Antifriction Bearings From France, *et al.* (57 FR 28360) is entirely inapposite. There, the Department was merely summarizing the extent of Yamaha's cooperation in the review, noting that ''Yamaha requested the review, provided the Department with questionnaire responses, and submitted to verification of its response * * *'' Ta Chen posits this one sentence as evidence of a per se rule that if a respondent requests a review, it is immune from first-tier BIA. Not only is this contention historically wrong, it ignores Ta Chen's failure to cooperate in this review. As the Court noted in Industria de Fundicao, a respondent may not cap its antidumping margins by refusing to cooperate in an administrative review.

**Final Results of Review**

Based on our review of the arguments presented above, for these final results we have made no changes in the margin for Ta Chen. We have determined that Ta Chen's weighted-average margin for the period December 23, 1992 through May 31, 1994 is 76.20 percent.

The Department shall determine, and the US Customs Service shall assess, antidumping duties on all appropriate entries. 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 certain stainless steel butt-weld pipe fittings 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 76.20 percent, the rate established in 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 51.01 percent. See Amended Final Determination and Antidumping Duty Order, 58 FR 33250, 33251 (June 16, 1993).

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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: January 4, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00–872 Filed 1–12–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–829]**

### Stainless Steel Wire Rod from Korea: Recission of Antidumping Administrative Review

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

**SUMMARY:** On November 4, 1999, the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on stainless steel wire rod from Korea for Changwon Specialty Steel Co., Ltd., Dongbang Special Steel Co., Ltd., and Pohang Iron and Steel Co., Ltd., (collectively, ''respondents''), manufacturers and exporters of stainless steel wire rod, for the period March 5, 1998 through