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MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Abdelali Elouaradia
Acting Office Director
for Enforcement and Compliance (Office VI)

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Less-Than-Fair-Value Investigation of Certain Steel Nails from
Malaysia

I. SUMMARY

We analyzed the comments submitted by interested parties in the less-than-fair-value (LTFV) investigation of certain steel nails from Malaysia. As a result of our analysis and as discussed below, we have made changes to the weighted-average dumping margins assigned to two mandatory respondents, Inmax Sdn. Bhd. (Inmax) and Region System Sdn. Bhd. and Region International Co., Ltd. (collectively, Region). We recommend that you approve the positions of the Department of Commerce (the Department) set forth below in the “Discussion of Interested Party Comments” section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments by parties:

Issues Pertaining to Inmax

Comment 1: Application of Adverse Facts Available for Inmax

Issues Pertaining to Region

- Comment 2: Region System Energy and Labor Costs
- Comment 3: Region System Common Variable Overhead
- Comment 4: Region System Heat Treatment Service Costs
- Comment 5: Region System Financial Expense Rate
- Comment 6: Whether to Revise Region System G&A Expenses to include Region Products



Marketing G&A Expenses
Comment 7: Region System G&A and Interest Expense Calculations
Comment 8: U.S. Warranty Expenses
Comment 9: Packing Expenses

II. BACKGROUND

On December 29, 2014, the Department published in the *Federal Register* the preliminary determination in the LTFV investigation of certain steel nails from Malaysia.¹ In the *Preliminary Determination*, we postponed the final determination until no later than 135 days after the publication of the *Preliminary Determination* in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2)(ii) and invited parties to comment on our *Preliminary Determination*.

The following events occurred since December 17, 2014, the day on which the *Preliminary Determination* was signed. On December 29, 2014, and January 12, 2015, Region submitted responses to additional Department requests for information. On December 31, 2014, January 2, 2015, and January 8, 2015, Inmax submitted responses to additional Department requests for information. On January 9, 2015, Mid Continent Steel & Wire, Inc. (Petitioner) submitted factual information in rebuttal to information submitted by Inmax in its aforementioned January 2, 2015 response.

Between January 26, 2015, and February 13, 2015, the Department conducted sales and cost verifications of both respondents. The Department's sales verification report for Inmax is dated March 9, 2015 (Inmax Sales Verification Report), and its sales verification report for Region is dated March 17, 2015 (Region Sales Verification Report). The Department's cost verification report for Inmax is dated March 11, 2015 (Inmax Cost Verification Report), and its cost verification report for Region is dated March 16, 2015 (Region Cost Verification Report).

On March 26, 2015, Petitioner submitted a case brief (Petitioner Case Brief). On that same day, the mandatory respondents, Inmax and Region, submitted a joint case brief (Respondents Case Brief).² On April 1, 2015, Petitioner, Inmax, and Region each submitted rebuttal briefs (Petitioner Rebuttal Brief, Inmax Rebuttal Brief, and Region Rebuttal Brief, respectively).³

Abbreviations

AFA – adverse facts available
BPI – business-proprietary information
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price

¹ See *Certain Steel Nails From Malaysia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 79 FR 78055 (December 29, 2014) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

² The final proprietary version is dated March 27, 2015.

³ The final proprietary version of the Region Rebuttal Brief is dated April 2, 2015.

CIT – Court of International Trade
COM – cost of manufacturing
CONNUM – control number
COP – cost of production
CV – constructed value
G&A – general and administrative expenses
ICCs – inventory carrying costs
POI – period of investigation
SAA – Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)
The Act – The Tariff Act of 1930, as amended
URAA – Uruguay Round Agreements Act
WTO – World Trade Organization

III. PERIOD OF INVESTIGATION

The period of investigation is April 1, 2013, through March 31, 2014.

IV. SCOPE OF THE INVESTIGATION

The final version of the scope, reflecting the changes referenced in the “SCOPE COMMENTS” section, below, appears in Appendix I of the *Final Determination*.

V. SCOPE COMMENTS⁴

On March 17, 2015, the Department invited interested parties to submit additional comments on certain scope issues that had been raised on the record of this and the concurrent antidumping and countervailing investigations of certain steel nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam (All Nails Investigations).

On March 23, 2015, two interested parties, The Home Depot (Home Depot) and Target Corporation (Target) requested in a joint submission that the Department exclude certain nails from the scope of All Nails Investigations. On that same day, another interested party, IKEA Supply AG (IKEA), made the very same request, using identical language to that in the Home Depot/Target submission. On March 26, 2015, Petitioner submitted a response that agreed with the exact scope exclusion language proposed by the aforementioned parties in their March 23, 2015 submissions. The exclusion language proposed by those parties and Petitioner is referenced below as “Interested Parties’ Proposed Exclusion.” That language reads as follows:

Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article is described in one of the following current HTSUS subheadings: 4418.10, 4418.20,

⁴ In several of the investigations of certain steel nails, The Home Depot and Target Corporation submitted a case brief and IKEA Supply AG submitted a rebuttal brief that reiterate those parties’ requests for an additional scope exclusion, which those parties requested in scope comments they made in separate submissions, as discussed below.

9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403 .81 or 9403.89.

On April 10, 2015, the Department provided interested parties in All Nails Investigations the opportunity to comment on a proposed revised version of the scope. That Department proposal modified the language proposed in the Interested Parties' Proposed Exclusion to include narrative from the Harmonized Tariff Schedule of the United States (HTSUS) describing the merchandise referenced in the HTSUS subheadings identified in Interested Parties' Proposed Exclusion, and which altered the reference to "described in one of the following current HTSUS subheadings" to "currently classified under the following HTSUS subheadings." The Department proposal also contained two other revisions.⁵ In addition, the Department indicated it was considering including language in the scope to address mixed media and non-subject merchandise kit ("mixed media and kits") analysis criteria.

On April 15, 2015, Home Depot, Target, IKEA, and Petitioner submitted comments objecting to the Department's proposed modification to Interested Parties' Proposed Exclusion. Those parties noted that it was unnecessary to attempt to incorporate language from the HTSUS into the scope itself because the HTSUS chapters in question are on the record and, therefore, can by reference be reflected in any interpretation of the desired scope exclusion.⁶ Those parties also commented that language related to "mixed media and kits" analysis would be unnecessary and inappropriate, and would introduce ambiguity that would be burdensome for the Department, importers, and Petitioner. None of those parties commented on the two other minor revisions the Department had proposed.

No parties provided rebuttal comments to those submitted by Home Depot, Target, IKEA, and Petitioner.

The Department has determined that inclusion of language from the HTSUS for the additional exclusion is appropriate, as modified in the Department's April 10, 2015 memorandum to incorporate narrative from the HTSUS. The Department notes it is important for such exclusions to include descriptions of the products in question, instead of relying only upon references to HTSUS subcategory numbers. The Department references HTSUS categories for convenience and customs purposes only, and such references are not intended to be dispositive of the scope. The Department's preference to rely on the physical description of the merchandise to determine the scope of an investigation provides greater clarity should there be future HTSUS number or categorization changes, and allows better enforcement of any order.

As noted, the April 10, 2015 version proposed by the Department incorporates two other modifications. No parties have raised objections to those other modifications, and the Department determines they are appropriate for clarification purposes.

⁵ The other two other proposed revisions were: moving and altering a sentence that referred to an existing exclusion to account for the additional exclusion language, and an adding a reference noting subject merchandise may enter under HTSUS subheadings other than those listed with the scope.

⁶ Home Depot and Target also noted that use of "described in one of the following current HTSUS subheadings" ties the complete language of the HTSUS regarding those subheadings to the scope, while use of "currently classified under the following HTSUS subheadings" fails to achieve that goal.

The Department also determines that it would not be appropriate to introduce language into the scope to address “mixed media and kits.” We note no interested parties have requested such language, and those that commented in fact opposed such language.

VI. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Based on our review and analysis of the comments received from parties, minor corrections presented at verifications, and various errors identified during verifications, we made certain changes to Region’s margin calculations since the *Preliminary Determination*. For Inmax, we are basing Inmax’s final margin on adverse facts available (*see* Comment 1, below).⁷

For Region, we: revised energy and labor costs (*see* Comment 2, below); revised common variable overhead, to use what was originally reported (*see* Comment 3, below); modified the transactions regarded adjustment (*see* Comment 4, below); revised the financial expense ratio (*see* Comment 5, below); revised U.S. warranty expenses (*see* Comment 8, below); revised U.S. packing expenses associated with one packing material (*see* Comment 9, below); further revised U.S. packing expenses for an additional packing material; corrected a billing adjustment for one home market sale; corrected the inland freight expense for several home market sales; corrected the reported shank style for several home market sales; corrected the steel type and heat treatment field for several U.S. sales; and corrected the shipment date for several U.S. sales (and the corresponding calculations of imputed credit expenses for those sales).⁸

VII. DISCUSSION OF INTERESTED PARTY COMMENTS

Issues Pertaining to Inmax

Comment 1: Application of Adverse Facts Available for Inmax

Petitioner argues the Department’s identification during the sales verification of numerous errors in gross unit prices of U.S. sales requires not simply correcting those errors but application of adverse facts available for various U.S. sales. Petitioner notes that understatement of gross unit prices for U.S. sales were identified for 11 of the 14 U.S. sales examined at verification, suggesting errors in Inmax’s U.S. sales database are pervasive and operate directly to the respondent’s advantage.⁹

⁷ Several additional issues were raised by parties in briefs with respect to Inmax, including proposed changes to G&A expenses, proposed changes to the interest rate used to calculate home market imputed credit expenses, and proposed changes related to minor corrections identified by Inmax at the outside of the sales verification and to errors or omissions identified during that verification. Because the Department is assigning Inmax a margin based on adverse facts available, those additional issues are moot.

⁸ *See* “Memorandum to the File from Edythe Artman, International Trade Compliance Analyst, AD/CVD Operations, Office VI, on the subject of ‘Region System Sdn. Bhd. and Regional International Co. Ltd. – Analysis Memorandum for the Final Results of the Less-Than-Fair Value Determination of Certain Steel Nails from Malaysia’ (Region Final Analysis Memorandum)” and “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Region Systems Sdn. Bhd.” (Region Final Cost Memorandum), both dated concurrently with this memorandum.

⁹ *See* Petitioner Case Brief at 14-16 and 20-21. Petitioner also noted that for one of the sales observations associated with of the pre-selected U.S. sales traces, although there was no error in gross unit price, there was a discrepancy

Inmax sale prices are on a per carton basis, so Inmax’s reported gross unit price per kilogram for each sales invoice line item relies in part on the calculation of the weight associated with that line item. Petitioner notes that early during the sales verification, Inmax indicated its reported weights were based on standard carton weights identified in product-specific reports in its “UBS stock system,” the explanation it had provided in a supplemental questionnaire response (which itself modified Inmax’s original explanation that weights were based on standard weights of nails). Petitioner states that later during the verification Inmax changed its explanation yet again, stating that it had actually relied on packing lists to report weights for U.S. sales. Petitioner states that at verification the Department discovered this reliance on packing lists resulted in the numerous aforementioned errors in reported gross unit prices for U.S. sales.¹⁰

Petitioner asserts the circumstances observed at verification may be characterized as, at best, inattentiveness, carelessness, or sloppy recordkeeping or, at worst, a deliberate effort to misreport data and, thus, artificially reduce the calculated margins of dumping. Petitioner advocates application of adverse facts available for the gross unit prices for all U.S. sales of the CONNUMs for which the aforementioned errors were identified or, alternatively, for all U.S. sales of the product codes in question.¹¹

Petitioner also argues that upward revisions Inmax made in a submission to per carton nail count and per carton weight for certain home market sale products (and proportionate decreases in per unit gross unit prices) were contradicted not only by Department observations at verification as recorded in the sales verification report, but also by evidence in certain verification sales traces that the Department did not discuss in its report. Consequently, Petitioner notes, the upward revisions to quantities for the home market sales Inmax had incorporated in submissions subsequent to its initial Section B response (and the proportionate downward revisions to gross unit prices per kilogram), should be reversed by the Department in its final calculations.

Petitioner states Inmax had claimed in a submission dated November 5, 2014 (prior to verification) that Inmax and a customer had agreed prior to the POI that the per carton nail count and per carton weight for certain products should be revised upward proportionately. Petitioner also states Inmax added that it had inadvertently failed to update its internal systems to reflect these changes, but had updated them for these proportionate upward changes to per carton nail count and per carton weights when the oversight was discovered late in 2014 (after the POI, but before the Department’s preliminary determination) while preparing revised sales databases for the Department.¹² Petitioner also states Inmax had provided in its submission a “product change sheet” that identified the changes to carton nail count and carton weight.¹³

Petitioner states that at verification the Department discovered the part of Inmax’s internal systems that identifies per carton nail counts for products still identified the original, lower per

between the carton weight reported in the carton weight field of the U.S. sales database and the carton weight reported in the summary worksheet for the sale provided by Inmax during the sales verification. *Id.* at 16-17.

¹⁰ *Id.* at 15.

¹¹ *Id.* at 18-21.

¹² *Id.* at 21-22.

¹³ *Id.* at 22-23.

carton nail count.¹⁴ Petitioner also claims Inmax acknowledged at verification that no change to per carton nail counts had been made for any product during the last few years.¹⁵

In addition, Petitioner notes that sales invoice, sales order, and delivery order documents issued by Inmax for home market sales of these products that were examined and obtained by the Department at verification refer to the original, lower per carton nail count, and that the sales orders refer to the original, lower per carton weight as well. Petitioner states it is highly unlikely that the customer would continue to refer to the original per carton nail count and per carton weight had it actually requested the changes itself.¹⁶

Petitioner contends that the revisions to carton weights made by Inmax for the products in question resulted in a substantial decrease in gross unit price per kilogram for the sale observations covered by those products. Petitioner argues that this impact, combined with the inconsistencies identified at and evident from the sales verification, justify reversing Inmax's adjusted carton nail count and carton weight data for all of the sales observations with product codes for which the aforementioned November 5, 2014 revisions were made.¹⁷

Inmax argues that it has cooperated throughout the investigation, and that the Department should not apply facts available as a result of finding errors in several sales traces out of thousands of total transactions. Inmax states it is not unusual for the Department to identify errors in pre-selected and surprise sales traces because such sales are often selected for review because they contain what appear to be discrepancies. Inmax asserts the Department noted discrepancies in certain pre-selected sales and additional sales documentation observed at verification and verified the corrected weights and sales prices, and argues the Department can and should make corrections for these identified errors, but should not make adjustments to other U.S. sales.¹⁸

Inmax states the Department may apply facts available where there is a gap in the administrative record, citing 19 U.S.C. § 1677e(a)(1). Inmax states, however, there is no gap in the administrative record, as Inmax has provided a complete U.S. sales listing and necessary corrections thereto have been properly made by Inmax or calculated by the Department.¹⁹

Inmax states the Department may also apply facts available where a party has: withheld requested information from the Department; failed to provide information by stated deadlines or has failed to provide information in the form or manner requested; significantly impeded the proceeding; or provide information that cannot be verified, citing 19 U.S.C. § 1677e(a)(2). Inmax claims no information has been withheld, information and corrections have been submitted in a timely manner, Inmax's sales listing and corrections made by Inmax and calculated by the Department have been verified, and Inmax has in no way impeded the Department's investigation.²⁰

¹⁴ *Id.* at 23.

¹⁵ *Id.* at 23-24.

¹⁶ *Id.* at 24-25.

¹⁷ *Id.* at 25-26.

¹⁸ *See* Inmax Rebuttal Brief at 2 and 3.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 2-3.

Inmax states that even if partial facts available were to be applied in a most limited manner, application of any adverse inference as requested by Petitioner requires a separate finding by the Department that Inmax has not acted to the best of its ability, citing 19 U.S.C. § 1677e(b). Inmax argues it has been a fully cooperative respondent, and states all errors observed at verification with respect to the sales traces were corrected and verified by the Department, citing pages 29 through 32 of the Inmax sales verification report. Inmax concludes there is no legal basis for the application of facts available with an adverse inference as suggested by Petitioner.²¹

Regarding Petitioner's arguments pertaining to nail counts per carton for several products, Inmax argues that the Department should disregard Petitioner's attempt to discredit the reliability of Inmax's reported sales and cost data. Inmax claims the Department verified that the number of nails per box and the weight per carton for the product in question that were reported in Inmax's corrected home market sales database and examined at verification had been revised by Inmax in accordance with the product change reports kept in Inmax's normal course of business. Inmax states further that the Department verified that the revision to the weight per carton for the product was incorporated into Inmax's automated stock system.²²

Inmax claims it regrets the confusion caused by its not updating the stock control system for the number of nails per carton when it revised the weight per carton, but notes its financial and accounting systems and the company's cost responses to the Department rely only upon the weight per carton, not the number of nails per carton. Inmax claims the quantity of nails per carton is descriptive in nature and appears only on customer invoices.²³

Inmax states the Department verified the weight and costs per carton of products in the Inmax Cost Verification Report, citing a paragraph that refers to carton weights twice: once in reference to obtaining for selected products the "cost generate" reports in the stock system that identify carton weight for each product code, and once in reference to tying, for those selected products, "the reported carton weight per KG from the COP master file to the carton weight per KG for each product in the cost generate report from the UBS stock system."²⁴

Department Position: Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested by the Department; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is

²¹ *Id.* at 2 and 3.

²² *Id.* at 6.

²³ *Id.* at 5.

²⁴ *Id.*

sufficiently adverse as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.²⁵ The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁶

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."²⁷ The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.²⁸

In analyzing whether information has probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.²⁹ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.³⁰ Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.³¹

Given the extent of the problems with Inmax's submitted information, as described in detail below, we find Inmax did not cooperate to the best of its ability, and will use an adverse inference in selection of the facts available.

As discussed below, Inmax, in its questionnaire responses, stated that the weights it reported for its U.S and home market sales databases were based on the standard weights of filled cartons. Inmax also stated that it provided these same standard weights in its cost response database. However, as is explained below, at verification and through subsequent examination of the reported weight data in each of these databases, we found significant inconsistencies in the reported weights in the U.S. and home market sales databases, and between the reported weights in the sales databases versus those reflected in the cost database. As a result, we do not know if

²⁵ See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

²⁶ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).

²⁷ *Id.* at 870.

²⁸ *Id.*

²⁹ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

³⁰ See SAA at 869-870.

³¹ See, e.g., *Non-Oriented Electrical Steel From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61607 (October 14, 2014), and accompanying Issues and Decision Memorandum at 7-8.

any of the reported weights are accurate.³² Moreover, for both sales markets the per kilogram prices and expenses (*e.g.*, credit, inland freight, brokerage and handling) used in the Department's programming are based on the weights. Because some of the expenses are calculated based on allocations at an invoice-specific level, the weight discrepancies affect the expense allocations for significantly more than just the sales observations with the inconsistent weights. Based on the above, we find that the discrepancies in the weight data and the effect of those discrepancies on prices and many of the expense allocations for sale observations in both markets is so significant that they undermine the reliability of the entire sales databases and comparisons of sales between markets, as well as cost test results utilizing the cost database and home market sales database.³³ Furthermore, an accurate calculation of a weighted-average margin requires weighting individual margins by volumes, so in addition to affecting the calculation of individual margins, the weights reported affect the averaging of the individual margins. For the calculations to have any real meaning, the weights reported in all three databases must be accurate and consistent, and any inconsistencies might only be acceptable should they be demonstrated to have minimal or insignificant impact on our margin calculations.

Inmax initially identified conflicting bases for determining sale weights in kilograms for the sales files versus the cost database. In its first explanation of the methodology used for the sales databases, Inmax stated it had "reported the weight of collated nails by multiplying the number of nails in a carton by the standard weight of the nail plus the standard weight of the collating material."³⁴ In contrast, from the outset Inmax indicated its cost database reporting reflected carton weights.³⁵ Later, in a revised, second explanation with regard to its sales files, Inmax stated that "{w}hen a product is first produced, the finished product is weighed and the weight is recorded in the system," and "Inmax does not maintain a standard weight of nails or of collating material."³⁶ Inmax also stated that for sales, the weights are based on the standard "weight reports" in its UBS stock control system.³⁷ Inmax further clarified, in reference to the quantity fields that would need to be used in the Department's calculations, that "{t}he quantity reported in fields QTY2H and QTY2U are the quantity in kilos based on the number of cartons sold multiplied by the standard weight per carton."³⁸ Finally, in a cost supplemental response filed on the same day as the supplemental sales response cited immediately above, Inmax indicated that it was reporting weights on a consistent basis across cost and sales databases, starting with filled carton weights based on the standard weights it had established for each product (standard filled carton weights).³⁹

³² We weighed a sample carton of filled nails from the plant floor during the verification, and the measured weight was almost exactly that of the standard filled carton weight for the production in question. However, this verification of a single carton does not remedy the numerous discrepancies between and within databases. In any case, the record demonstrates that standard filled carton weights were not used consistently in Inmax's sales and cost data submissions.

³³ See Section 782(e) of the Act.

³⁴ See Inmax's September 12, 2014 Section B/C response at B-16 and C-16.

³⁵ See Inmax's September 25, 2014 Section D response at 8 ("Inmax maintains production quantities in cartons, which are then converted to kilos.").

³⁶ See Inmax's December 2, 2014 supplemental Section B/C response at 11-13.

³⁷ *Id.* at 2-3.

³⁸ *Id.* at 11.

³⁹ See Inmax's December 2, 2014 supplemental Section D response at 6 ("A separate report in the USB {sic} system can provide the weight per carton for a specific product, one product at a time. The weight per carton is based on historically weighed cartons and is the same weight used in the sales file. Inmax inputs the weight per carton for

Therefore, at the outset of its first (sales) verification, Inmax was claiming its reported weights and, therefore, the per kilogram prices, expenses and costs derived from those weights, had been calculated and reported in each sales database on a single, consistent standard filled carton weight basis. Also, in a spreadsheet in a cost response, Inmax identified standard filled carton weights for all products it produced in the POI.⁴⁰

Of the three pre-selected U.S. sale invoices we examined at verification, two contained line items (each line item typically representing a sale observation) for which Inmax reported carton weights that were inconsistent with the standard filled carton weights.⁴¹ Later in the sales verification, while the Department was identifying discrepancies between line item weights in packing lists and reported U.S. sale observation weights for all four initial surprise U.S. sale invoices, Inmax, contradicting the statement in its supplemental questionnaire regarding its weight methodology, stated that the weights for U.S. sales had actually been obtained from packing lists because such packing lists were available for export sales.⁴² For each of the weight discrepancies identified for the surprise sale invoices, Inmax explained that either a packing list contained an error, or that its staff had erred in copying information from packing lists.⁴³

All 10 of the surprise U.S. sale invoices we selected for examination at verification (the aforementioned initial four surprise invoices, and selected sales observations from six additional invoices) contained weight discrepancies versus the standard filled carton weights in the stock control system.⁴⁴ These discrepancies existed despite Inmax's claim earlier in the verification that one use of the standard filled carton weights in Inmax's stock control system is for identifying weights for packing lists for export sales.⁴⁵ Moreover, with regard to the first four surprise sale invoices, the supporting documentation provided by Inmax indicated some of the reported weights were inconsistent with both the packing list and the standard filled carton weights.⁴⁶

After the Inmax sales and cost verifications were completed, we compared the U.S. sales database to the Cost Spreadsheet. The result of this comparison demonstrates the sale weights for over eight percent of U.S. sales observations were inconsistent with the standard filled carton

each product. The total production quantities in kilos were derived by multiplying the number of cartons produced by the system weight per carton.”).

⁴⁰ See the Excel spreadsheet labeled D-8 in the cost data file (ACCESS document number 3244837-03) submitted by Inmax on December 2, 2014. See also Inmax Cost Verification Report at 11. Data from this spreadsheet (“Cost Spreadsheet”) are described in more detail in “Analysis Memorandum for Inmax Sdn. Bhd. for the Final Determination of Certain Steel Nails from Malaysia” (Inmax Final Analysis Memorandum). This Cost Spreadsheet was described as the “Master File” during the cost verification of Inmax. See Inmax Cost Verification Report at 9.

⁴¹ See Inmax Final Analysis Memorandum for details regarding these sale observations and the standard filled carton weights for the associated products that appear in the Cost Spreadsheet.

⁴² See Inmax Sales Verification Report at 31.

⁴³ See Inmax Sales Verification Report discussions of Surprise U.S. Sale Invoices #1, #2, #3, and #4, at 29-32.

⁴⁴ The seven additional line items (sale observations) selected from the six additional invoices were only examined with respect to comparison of reported carton weights to standard carton weights. See Inmax Sales Verification Report at 35-36.

⁴⁵ See Inmax Sales Verification Report at 7-8.

⁴⁶ See Inmax Sales Verification Report at 29-32. For specific information relating to standard filled carton weights for the products reflected in the sale observations in question, see Inmax Final Analysis Memorandum.

weights.⁴⁷ In short, the weights in the U.S. sales database not only appear to be reported on a basis inconsistent with those in the cost database (which tie to the Cost Spreadsheet) but also are internally inconsistent, as evidenced by the numerous discrepancies identified during the sales verification that are discussed above.

Of the nine pre-selected and surprise home market sale invoices examined at verification, two contain line items (sale observations) with reported carton weights that are inconsistent with the standard filled carton weights.⁴⁸ Furthermore, comparison of the home market sales database to the cost spreadsheet demonstrates the sale weights for over three percent of home market sale observations were inconsistent with standard filled carton weights in the stock control system.⁴⁹ Consequently, the sale weights in the home market sales database are internally inconsistent and, therefore, also inconsistent with weights in the cost database, which the cost verification indicated are based consistently upon standard filled carton weights.

No inconsistencies were noted at the cost verification between reported standard filled carton weights and those in Inmax's internal stock control system.⁵⁰ However, certain discrepancies noted at the sales verification with regard to standard filled carton weights, which are discussed below, cast doubt on the general reliability of the standard filled carton weights, which formed the basis for reporting weights in the cost database.

The first of these discrepancies relates to the nails per carton discrepancies for certain home market sale products referred to by Petitioner. Inmax is incorrect in its suggestion that the Department at the cost verification verified the carton weights of the product in question that was examined at the sales verification. The Department's Cost Verification Report refers to obtaining reports identifying the standard weight in the company's system at the time of the verification for certain "selected products," and to tying that information for those selected products to the COP master file that had been prepared by Inmax for the Department.⁵¹ The "selected products" that were examined during the cost verification did not include any of the products for which Inmax had made a carton nail count and carton weight revision.⁵² In any case, the statements Inmax cited in the Inmax Cost Verification Report with respect to carton weights do no more than support what the Department observed during the sales verification the prior week with respect to a sample product for which Inmax did make carton nail count and carton weight revisions: namely, that Inmax's current internal system identified the "revised" (higher) carton weight, and that Inmax's final home market sales database contains those revised

⁴⁷ See Inmax Final Analysis Memorandum.

⁴⁸ See Inmax Final Analysis Memorandum for details regarding these sale observations and the standard filled carton weights for the associated products that appear in the Cost Spreadsheet.

⁴⁹ See Inmax Final Analysis Memorandum.

⁵⁰ See Inmax Cost Verification Report at 11.

⁵¹ See Inmax Cost Verification Report at 11. The reports referenced here in the Inmax Cost Verification Report are the "Generate Cost" reports (also referred to by Inmax as the "Weight" reports), which were said by Inmax to identify standard filled carton weights. See, e.g., the Inmax Sales Verification Report at 16.

⁵² See the products identified on page 2 and in Exhibit 11 of the Inmax Cost Verification Report, compared to those identified in Inmax's November 5, 2014 submission that revised the carton nail counts and carton weights in question.

carton weights. Furthermore, the cited statements from the Inmax Cost Verification Report say nothing about carton nail counts.⁵³

As noted above, Inmax claims in its rebuttal brief that it had not updated its stock control system to reflect the number of nails per carton when it revised the weight per carton. However it claimed otherwise in a supplemental response prior to verification, where it stated that following the issuance of a “Product Change Sheet,” the original number of nails per carton was replaced with the revised number of nails per carton in the company’s “Item File Maintenance” system.⁵⁴ In that response Inmax then referred the Department to a Product Change Sheet, stating “{t}he quantity per carton at the ‘Item Description’ and the ‘Weight/Length’ in the ‘Item File Maintenance’...were actually changed as a result of the issuance” of the Product Change Sheet.⁵⁵ The “Item Description” line contains numbers of nails per carton. In the same response, for each of the product numbers associated with the change, including the one sample of those that was examined during the sales verification for this issue, Inmax provided two versions of the “Item File Maintenance” documents: one containing the lower nail number count figure and lower carton weight figure, the other containing the higher nail number count figure and the higher carton weight figure it had first reported in its November 5, 2014 submission.⁵⁶ The “Item File Maintenance” document in the company’s system during the sales verification, however, contained the higher carton weight figure, but the lower, original nail count figure.⁵⁷

Why Inmax seemingly revised both the nail number per carton and the carton weight figures for its supplemental responses, but later changed the nail number per carton figure back to the original lower figure, is unclear.⁵⁸ It is evident that Inmax’s explanations are at best inconsistent. The higher carton weight figure is associated with a lower home market gross unit price per kilogram because the higher the weight, for a given total sales value, the lower the gross unit price per kilogram (which is calculated as total sales value divided by total weight). The carton nail count data are not, in and of themselves, used in the calculations; but the carton weights, which as explained are used in the calculation of gross unit prices for home market sales, are themselves tied to the numbers of nails in the cartons. If the proper carton nail count for the products in question is the original, lower figure in Inmax’s system at the time of the sales verification, it is reasonable to conclude that the higher carton weight figure for those products is suspect.

Inmax downplays the relevance of nail counts per carton, stating they “only” appear on customer invoices, unlike weight per carton figures, upon which Inmax’s financial accounting and stock

⁵³ See Inmax Cost Verification Report at 11, and in general.

⁵⁴ See Inmax December 31, 2014 supplemental response at 40.

⁵⁵ *Id.*

⁵⁶ *Id.* at Exhibit S2-42. Also provided were pairs of the “Generate Cost” reports, one with the lower standard filled carton weight and the other with the higher standard filled carton weight.

⁵⁷ See Inmax Sales Verification Exhibit 6 at 2.

⁵⁸ Such a later revision is also inconsistent with Inmax’s claim during verification that no other product change sheets had been issued during the last few years. See Inmax Sales Verification at 17. If no other product change sheet had been issued during the few years prior to the sales verification, and if the original change reflected in Exhibit S2-42 of Inmax’s December 31, 2014 supplemental response was appropriate, presumably there was no legitimate basis for Inmax staff to change the nail count for the products in question a second time. However, as noted, the Department observed at verification that the original, lower nail count appeared in the “Item File Maintenance” system document for one of the products in question after it had been revised upward.

control systems and the company's cost responses to the Department allegedly "rely." However, Inmax stated repeatedly in its responses that its sales information are on a carton basis, not a weight basis.⁵⁹ Furthermore, carton weights reflect not just the number and weight of the nails themselves, but also the weight of the materials used to collate nails (such as those in question) and the weight of the packaging.⁶⁰ Customers would be at least as interested in the number of nails they order and receive as they are about weights of cartons consisting in part of carton, other packaging materials, and collation materials. Inmax's product brochure, which presumably was designed for customers and potential customers, identifies nail counts per carton, but does not identify carton weights.⁶¹ Also, as noted by Petitioner, sample sales documentation indicates nail counts appear not only on invoices, but also on Inmax's sales order and delivery documents. Inmax even stated, without later clarification, that "{t}he quantity of collated nails in a carton is recorded in number of nails, not weight."⁶² Furthermore, Inmax acknowledged during verification that for collated nails, customers even request the number of nails per coil, as well as the total number of nails.⁶³ With regard to the relevance to Inmax's cost response of carton weights, as noted above the Department's cost verification report did not address these products specifically. Furthermore, although the cost verification report confirmed the consistency between the standard filled carton weights examined during the cost verification and those in Inmax's cost response, it did not address the discrepancies relating to the specific standard filled carton weights and nail counts that are discussed above.

Given the discrepancies between Inmax's explanations regarding the products in question and the Department's findings at the sales verification, the Department cannot rely on the carton weight information (and, therefore, on the reported gross unit prices per kilogram) in Inmax's final sales response for the products in question. Furthermore, these discrepancies cast doubt on the general reliability of Inmax's internal standard filled carton weights.

In addition, we noted in our sales verification report the stock control system contains identical standard filled carton weights for a pair of U.S. sale products with exactly the same properties, except one has a length and diameter that are 25 percent and six percent more, respectively, than the other.⁶⁴ Information on the record about the magnitude and variation of weights of actual

⁵⁹ See, e.g., Inmax's September 12, 2014 Section B response at B-16, in response to an initial request for quantity information for individual home market sales ("HM sales are priced on a carton unit of measure and all invoices reference the number of cartons," followed by Inmax's initial explanation for how reported quantities in kilograms were derived), and Inmax's December 2, 2014 supplemental Section B response at 2-3, in response to a request to provide documentation supporting quantity figures reported to the Department ("Inmax uses the UBS stock system 'Sales Report' which records sales quantities in cartons, invoice number, invoice date, product code and product description, customer code, unit price and total value" and "{t}he report does not include the quantity in kilos.");

⁶⁰ See Inmax Sales Verification Report at 7 ("The company stated that for all nails except bulk nails, the weight in the weight report covers the weight of the entire full carton.")

⁶¹ See Inmax's September 2, 2014 Section A response at Exhibit A-10 (for example, the reference to "2.5 M" or "2.0 M" in the "M/CTN" column for 33 degree paper collated clipped head strip nails indicates 2,500 or 2,000 nails per carton, respectively, as clarified by Inmax in its December 31, 2014 Supplemental A/B/C response at 12).

⁶² See Inmax's September 12, 2014 Section B response at B-16.

⁶³ See Inmax Sales Verification Report at 15 ("We also saw some coils of nails being loaded in a box, in which a total of 12 coils could fit. The box was labeled as containing 2500 nails. We asked how 12 standard size coils could account for 2500 nails, given 12 does not divide into 2500 evenly; the company said the customer requests twelve coils each with 208 nails, which totals 2496 nails, and Inmax rounds the identified total figure to 2500.")

⁶⁴ See Inmax Sales Verification Report at 24.

carton material and internal pads used inside of cartons indicates these cannot explain this type of anomaly.⁶⁵ Given the reported number of nails per carton for those pair of products varies only slightly, it is implausible that each would have the same carton weight.

Contrary to Inmax's claims, the Department did not correct all of the errors identified at the sales verification that pertain to sales traces. Rather, as noted above, the Department identified inconsistencies in reported weight data for numerous sales examined during the sales verification, and in a few instances stated what appeared to account for discrepancies between information in packing lists and information in Inmax's U.S. sales database for the observations in question. For example, in describing discrepancies associated with the first surprise U.S. sale invoice, the Department stated based on an "assumption" that a certain weight per carton is accurate, a new gross unit price per kilogram could be calculated to replace the one resulting from a packing list weight that Inmax characterized as incorrect.⁶⁶ This does not confirm that the assumed carton weight figure is correct; nor does it establish that the resulting gross unit price per kilogram figure is reliable. Furthermore, for inland freight and brokerage expenses, which were calculated on an invoice-specific basis for U.S. sales, the Department stated explicitly in the verification report that it was not attempting such recalculations of the remaining three initial surprise U.S. sale invoices, though acknowledging the "figures would be expected to be inaccurate for the same reason they were inaccurate" for the first surprise sales invoice.⁶⁷

Furthermore, since that verification, the Department has identified numerous additional sale observations in the sales databases with weight inconsistencies and, by implication, per kilogram value and expense discrepancies.⁶⁸ In addition, as noted above for some expenses, the inconsistencies would extend to additional sale observations, given that Inmax's allocation methodology, as noted above regarding inland freight and brokerage for U.S. sales, sometimes is on an invoice-specific basis rather than just a sale observation-specific basis. As a result, an inconsistency in quantity for one sale observation covered by an invoice affects the per kilogram expense calculated for all sale observations covered by the invoice. This is because a single average expense was calculated for all sale observations covered by an invoice, using the entire expense in question for the invoice divided by the entire quantity for the sales observations covered by the invoice. For one freight expense for home market sales, the same extension of inconsistencies across all sales observations covered by an invoice would result, given the methodology for reporting that expense was identical to that used for the inland freight expense reported for U.S. sales.⁶⁹ Finally, for two home market freight expenses, inconsistencies in quantities would affect all sales observations for which such expenses were incurred.⁷⁰

⁶⁵ See Inmax Final Analysis Memorandum.

⁶⁶ See Inmax Sales Verification Report at 29.

⁶⁷ *Id.* at 30-32. The Department was aware that the discrepancies in reported sale weights for one observation of an invoice would affect the calculations of inland freight expense per kilogram and brokerage expense per kilogram, given Inmax's calculation methodology for those expenses, and for each of the final three initial surprise U.S. sales invoices made no effort to attempt to recalculate those freight and brokerage expenses for all affected sale observations using the figures from the packing list for the sale observation in question.

⁶⁸ See Inmax Final Analysis Memorandum.

⁶⁹ See Inmax's December 2, 2014 supplemental B/C response at 15.

⁷⁰ See Inmax Final Analysis Memorandum.

Because of verification failures and inconsistencies in the reported weights and the effect of those inconsistencies on much of the other reported expense data, we find that the submitted databases are unreliable and that we must resort to total facts available.⁷¹ Furthermore, we find that Inmax did not cooperate to the best of its ability, having claimed to have reported weights and made conversions to per kilogram values on a consistent weight basis across all databases, but then reporting inconsistent and inaccurate weights in its databases. The extent to which Inmax's failures and inconsistencies were inadvertent is not dispositive with respect to whether the facts available applied should be adverse.⁷² Consequently, given the extent of the problems described above, we find Inmax did not cooperate to the best of its ability, and will use an adverse inference in selection of the facts available.⁷³

In deciding which facts to use as adverse facts available, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁷⁴ It is also the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁷⁵ Generally, the Department finds selecting the highest rate in any segment of the proceeding as adverse facts available to be appropriate.⁷⁶ It is the Department's practice to select the higher of the (a) highest margin alleged in the petition or (b) the highest calculated rate of any respondent in the investigation, as adverse facts available.⁷⁷

The Department, as discussed above, has determined it is basing Inmax's final margin on total AFA. In accordance with the Department practice referenced above, we are assigning the highest petition margin, 39.35 percent, to both Inmax and to Tag Fasteners Sdn. Bhd. The latter

⁷¹ See section 776(a)(1) and (2)(D) of the Act.

⁷² See *Nippon Steel v United States*, 337 F.3d 1371, 1382 (Fed. Cir. 2003): "Compliance with the 'best of the ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping."

⁷³ See section 776(b) of the Act.

⁷⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁷⁵ See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005); see also SAA at 870.

⁷⁶ See *Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005), unchanged in final, *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 10.

⁷⁷ See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 21, 2000), and accompanying Issues and Decision Memorandum at "Facts Available".

had been assigned this AFA rate in the *Preliminary Determination*, and that rate has been corroborated for the *Final Determination*.⁷⁸

Issues Pertaining to Region

Comment 2: Region System Energy and Labor Costs

Petitioner argues that for the final determination, the Department should use the revised direct labor and energy costs for Region System based on its findings at the cost verification.

Department Position: We agree with Petitioner. To allocate direct labor and energy to nail production, Region System used a multi-step methodology whereby these costs were first assigned to the company's different production departments (*e.g.*, wire drawing, nail making, blind rivet processing, *etc.*). During verification, the Department found that Region System maintains separate drawing machines within the wire drawing department dedicated exclusively to nail processing. As discussed in the Region Cost Verification Report, the total energy and labor costs allocated to nail production increases if wire drawing is treated as two separate departments (*i.e.*, wire drawing for nails only and wire drawing for non-nail products).⁷⁹ For this final determination, we adjusted Region System's reported direct labor and energy costs accordingly.

Comment 3: Region System Common Variable Overhead

Region System allocated other common variable overhead costs between subject and non-subject merchandise using relative production quantities. At the *Preliminary Determination*, the Department revised the allocation base for these expenses to reflect a ratio of direct labor and energy costs for subject products to total direct labor and energy costs.⁸⁰ Region System asserts that the Department should use the other common variable overhead costs as originally submitted. The respondent notes that these expenses consist mainly of consumables and upkeep (*i.e.*, repairs and maintenance, electric installations, forklifts and machines, *etc.*), and that the cost of drawing powders, lubricant oil, and forklift alone account for a significant share of total common variable overhead. Region System further notes that both nail and non-nail products pass through the drawing process, and asserts that the consumption of these items is dependent upon the quantity of all merchandise produced.

Petitioner argues that the Department should continue to allocate other common variable overhead to subject products based on a ratio of subject direct labor and energy costs to total direct labor and energy. As noted above, Region System provides examples of overhead expenses (*e.g.*, drawing powders, lubricant oil, and forklift upkeep) which it asserts vary

⁷⁸ See Inmax Final Analysis Memorandum. See also *Preliminary Determination* and accompanying Decision Memorandum.

⁷⁹ See Memorandum to the File, "Verification of the Cost Response of Region System Sdn. Bhd. in the Less-Than-Fair-Value Investigation of Steel Nails from Malaysia," dated March 16, 2015 (Region Cost Verification Report) at page 17.

⁸⁰ See Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Region System Sdn. Bhd.," dated December 17, 2014 (Region Preliminary Cost Calculation Memorandum).

according to production volume. However, Petitioner maintains that the percentage cited by Region System in its case brief is inconsistent with what the Department verified. Petitioner argues that the Region Cost Verification Report does not indicate whether, in fact, these costs vary based solely on production quantity such that a quantity-based allocation is appropriate or that the verifiers found a direct correlation between these costs and production volume. According to Petitioner, Region did not provide any specific evidence demonstrating this to be the case or that the Department's reallocation is distortive.

Petitioner asserts that, even if one were to accept that a certain percentage of the variable overhead at issue are best allocated on production quantity, the remaining portion of those costs are not. According to Petitioner, Regions System would have the Department abandon a methodology that unquestionably ensures an accurate and reasonable allocation for a significant percentage of common variable overhead for one that the respondent can only assert *may* be better to allocate the other portion. Petitioner concludes that the Department should continue to allocate Region System's common variable overhead based on the ratio of direct labor and energy costs for nails to the total direct labor and energy for all products.

Department Position: After considering the arguments raised by interested parties, and upon further review of the information on the record, we are relying on Region System's original, quantity-based allocation methodology for common variable overhead for the final determination.

In determining whether a particular allocation methodology is reasonable, cost accounting examines the nature of the relationship between the cost pool being allocated and the allocation factor.⁸¹ Region System's other common variable overhead consists of factory expenses, consumables, electric installations, and repairs and maintenance.⁸² Of these items, materials used in the wire drawing process for all Region System products – such as lubricant oil and drawing powder, the single largest expense – account for a substantial portion of total common variable overhead.⁸³ Because the consumption of these inputs will increase in relation to the total subject and non-subject production volume, a quantity-based allocation methodology is reasonable. Further, there is information on the record to indicate that energy and direct labor consumption is not the best allocation base for the expenses at issue. For example, Region System's nail making department is very labor-intensive when compared to other, non-subject production departments.⁸⁴ As such, the majority of direct labor costs are assigned to nail production. Under the energy and direct labor-based methodology, a proportionately greater share of common variable overhead is therefore allocated to nails. However, consumption of labor inputs in the nail making department is not related in any way to the usage of materials in the wire drawing department.

Petitioner argues that the reported allocation should be rejected because the Department found no “direct correlation” between this cost pool and production volume, did not obtain any “specific

⁸¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, March 11, 2005 and accompanying Issues and Decision Memorandum at Comment 19.

⁸² See Region's November 28, 2014 Supplemental Section D Response at Exhibit D1-19.

⁸³ *Id.*

⁸⁴ *Id.* at Exhibit D1-14a and D1-14b.

evidence” demonstrating a correlation, nor indicated that these costs “did, in fact, vary based solely on production quantity.”⁸⁵ We note, however, that allocation by its very nature involves reasonable estimates and assumptions to approximate indirect costs associated with a particular product. We find that information on the record of this case related to the specific expenses included in the cost pool and the nature of the manufacturing process provides a reasonable basis for relying on production volume to allocate Region System’s other common variable overhead expenses between subject and non-subject merchandise.

As noted above, Region System provides examples in its case brief of common variable overhead expenses which it contends vary according to production volume. Petitioner maintains that the percentage cited by Region System is inconsistent with what the Department verified. We emphasize, however, that there is no inconsistency as alleged; the figure in Region System’s case brief includes an additional expense (“forklift upkeep”) that was not explicitly noted in the Region Cost Verification Report. Either way, the fact remains that a substantial portion of the common overhead indirect cost pool is related to wire drawing, a process common to all merchandise produced by Region System.

For the final determination, we are relying on Region System’s original, volume-based allocation methodology for other common variable overhead in our cost calculations.

Comment 4: Region System Heat Treatment Service Costs

In the *Preliminary Determination*, based on an analysis of the transfer prices and market prices for heat treatment services provided to Region System by an affiliate, the Department adjusted the reported heat treatment service costs for the heat treated products to reflect the market values on the record.⁸⁶ For the final determination, Region argues that the Department should not adjust the company’s reported heat treatment costs. Region contends that the difference in the average per-unit price charged to Region System and to unaffiliated parties is not an indication that the affiliate is charging Region System a price that is below its cost of providing those services or is otherwise not on an arm’s-length basis.

Region argues that the pricing differential is due to several factors, most notably the difference in the hourly per-kilogram productivity rates between the different types of merchandise processed by the affiliate for Region System (*i.e.*, bulk nails) and for unaffiliated customers (*i.e.*, collated nails). According to Region, the productivity rate for processing collated nails is very low when compared with that of bulk nails because the collated nails are longer and thinner and therefore must be more carefully arranged on the heat treatment conveyer belt. Region System also asserts that the price differences are due in part to the fact that the rate charged to unaffiliated customers includes transportation charges, while Region System uses its own trucks to transport bulk nails to and from the affiliate’s facility. The respondent further argues that the quantity of collated nails processed for unaffiliated customers is extremely low, and that the affiliate therefore charges these customers a higher rate as compared to the rate charged to Region System. Region also notes that financial statements of the affiliate show the company operated profitably and argues that this establishes that the charges to Region System were above cost.

⁸⁵ See Petitioner’s Rebuttal Brief at page 5.

⁸⁶ See Region Preliminary Cost Calculation Memorandum at page 1.

Region contends that the higher price charged to unaffiliated customers is justified given the low productivity and quantity of nails heat treated for those customers when compared to Region System. Region notes that it provided sample production reports to support the productivity differences and that the Department obtained additional such reports during the cost verification. The respondent asserts that the Department should, for the foregoing reasons, accept the heat treatment service costs as reported.

Petitioner notes that, as an initial matter, the Department deemed it appropriate to make a transactions disregarded adjustment in the *Preliminary Determination* even though Region System had previously made identical arguments with respect to heat treatment services. Petitioner argues that there is nothing on the record to demonstrate that the apparent cost differences for heat treating bulk nails versus other products relate to an actual price difference. Petitioner asserts that the Department should be wary of Region System's cost and productivity analysis, as it is distorted by an apples-to-oranges comparison between the affiliate's heat treatment for bulk nails to that for all types of collated products. Petitioner argues that Region's reliance on the cost of heat treatment services ignores what section 773(f)(2) of the Act actually requires, which is the analysis of whether the prices of transactions between affiliated parties reflect the market value of the input.

According to Petitioner, Region did not provide any substantiating documentation during verification demonstrating a specific price difference for the price of heat treatment services for bulk nails as compared to collated products. Petitioner asserts that Region merely suggests that the apparent cost differences explains the price difference but does not demonstrate that to be the case. As such, argues Petitioner, the record fails to demonstrate price differences are specifically due to differences in the types of nails or the types of merchandise treated.

Petitioner further asserts that Region fails to demonstrate how differences in quantity affected price such that the volume differences account for the price differential. With regard to transportation, Petitioner argues that the average transportation costs cited by Region do not account for difference between charges to unaffiliated customers when compared to Region System. Finally, Petitioner believes that the fact that the affiliate's financials show a profit is not relevant here because the profit could just as plausibly be a result of the prices charged to unaffiliated customers.

Department Position: We disagree with Region and have continued to adjust the company's reported heat treatment service costs. According to section 773(f)(2) of the Act, the Department may disregard transactions between affiliated persons if those transactions do not fairly reflect the value in the market under consideration (*i.e.*, if they are not made on an arm's-length basis). In applying the "transactions disregarded" provision of the statute, the Department compares the average transfer price for an input paid to an affiliated supplier with the market price for that input.⁸⁷ Where the transfer price of an input is below its market price, the Department normally

⁸⁷ The Department's preference for establishing a market value is a respondent's own purchases of the input or service from unaffiliated suppliers, and when no such purchases are available, the Department looks to the affiliated supplier's sales to unaffiliated parties. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the*

will adjust the respondent's reported costs to reflect the market values on the record. During the POI, Region System did not obtain heat treatment services from an unaffiliated party. Therefore, as a market price, it provided the affiliate's average per-unit price charged to unaffiliated customers for heat treating nails. In the *Preliminary Determination*, the Department compared the market price provided by respondent to the affiliated transfer price, and based on that comparison, made an adjustment to Region System's reported costs to reflect the market value for heat treatment services.⁸⁸

We do not agree with the respondent that unaffiliated transactions on the record are not suitable for comparison to the reported transfer price. Region asserts that the price differential is primarily due to differences in processing efficiencies and does not indicate that the affiliated transactions were not on an arm's-length basis. According to Region, the per-unit productivity of heat treating collated nails for unaffiliated customers is much lower than the productivity of the bulk nails processed for Region System.⁸⁹ Region believes that these productivity differences validate the higher price paid by unaffiliated customers for this service. We are not convinced by Region's arguments. All nail products - whether bulk nails treated for Region System or collated nails processed for other customers - undergo the same heat treatment processing steps on identical production lines that require the same inputs (*e.g.*, water, electricity).⁹⁰ While we acknowledge that there are some differences with respect to the speeds at which bulk nails and collated nails pass through the heat treatment production lines, we do not find this sufficient to establish that the transfer and market prices on the record for this service are incomparable for purposes of the transactions disregarded analysis under section 772(f)(2) of the Act. In this case, we believe that the unaffiliated transactions provide the best available measure on the record of the value of heat treatment services in the market under consideration, as they quantify what unaffiliated purchasers have paid for the identical service.

In the respondent's view, the difference in quantity processed for unaffiliated customers when compared to those processed for Region System is yet another factor that renders the transfer and market prices incomparable. We do not agree. Although true that the quantity of nails heat treated by the affiliate for unaffiliated customers is comparatively low, we nonetheless find that the processing charges for these nails are sufficient in this case to serve as a basis for establishing market price.⁹¹ Region further asserts that the inclusion of transportation charges in the unaffiliated price likewise affects price comparability. Although, as noted above, we continue to find that the unaffiliated transactions on the record are an appropriate source for the market value

Republic of Korea, 77 FR 17413, March 26, 2012 and accompanying Issues and Decision Memorandum at Comment 17.

⁸⁸ See Region Preliminary Cost Calculation Memorandum at page 1.

⁸⁹ See Region's Case Brief at page 2.

⁹⁰ See Region's November 28, 2014 Section D supplemental response at 4. See also Region's Cost Verification Report at 21.

⁹¹ See, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France*, 70 FR 54359, September 14, 2005 and accompanying Issues and Decision Memorandum at Comment 3 (where the Department stated, regarding the application of the major input rule, that "...we do not consider the substantiality of those transactions in terms of volume to be the determining factor"). See also, *Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 74 FR 31242, June 30, 2009 and accompanying Issues and Decision Memorandum at Comment 2 (where the Department disagreed with the respondent that the small quantities purchased from unaffiliated suppliers of an input were not representative and should therefore not be used by to establish market value).

of heat treatment services, consistent with our practice, we have modified our analysis with respect to transportation costs to ensure that the transfer and market price are on the same basis.⁹²

For the final determination, we have continued to rely on charges from the affiliated processor to its unaffiliated customers as the basis for the market value of heat treatment services in our transactions disregarded analysis. Based on the results of that analysis - modified slightly from the *Preliminary Determination* as noted above - we adjusted Region System's reported costs to reflect the market price for these services.

Comment 5: Region System Financial Expense Ratio

Petitioner argues that, as proposed in the Region Cost Verification Report, the Department should recalculate Region System's reported financial expense rate to include an additional amount for interest expense associated with a particular outstanding loan from one of its directors that was identified in the notes of the company's 2013-2014 financial statements.

Department Position: We agree with Petitioner and have revised the financial expense ratio of Region System to include an additional amount for interest expense on this loan. Because the terms of this loan are business proprietary in nature, please refer to the Region Final Cost Memorandum for further discussion.⁹³

Comment 6: Whether to Revise Region System G&A Expenses to include Region Products Marketing G&A Expenses

Petitioner argues that the Department should revise Region System's G&A expense ratio to include administrative expenses it maintains were incurred on the company's behalf by an affiliate, Region Products Marketing. Petitioner notes that the Department's antidumping questionnaire instructs respondents to include in their reported G&A expenses an amount for administrative services performed on the respondent's behalf by a parent company or other affiliated party. According to Petitioner, Region Products Marketing's sales and administrative personnel are involved in the selling and distribution of the merchandise under consideration produced by Region System. Petitioner asserts that the record clearly demonstrates that the sales and administrative roles performed by Region Products Marketing are directly intertwined with the sales and distribution activities of Region System and Region International. Petitioner points out that Region System has already included a portion of the administrative expenses incurred by Region Products Marketing (*i.e.*, salary expenses) as part of its indirect selling expenses. Petitioner argues that, for the final determination, the Department should revise Region System's reported G&A expense ratio to include the remaining portion of those administrative expenses.

Region responds that the record establishes that Region Products Marketing performed only logistics and sales activities on behalf of Region International and Region System and not

⁹² See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 79 FR 54264, September 11, 2014 and accompanying Issues and Decision Memorandum at Comment 6 (where the Department noted that, in applying the major input analysis, “{t}he key is that the comparison should be an apples-to-apples comparison”).

⁹³ See Region Final Cost Memorandum.

administrative services. Region asserts that while its affiliate performed sales and logistics functions with respect to both subject and non-subject merchandise, all expenses Region Products Marketing incurred related to those activities have already been captured in the sales files. The respondent maintains that apart from logistics and sales, no administrative functions were undertaken by Region Products Marketing on behalf of Region System. According to Region, the remaining portion of the G&A expenses incurred by Region Products Marketing pertain only to traded non-subject merchandise. Region argues that the Department should therefore not revise the G&A calculation to include these expenses.

Department Position: Petitioner argues that some administrative expenses incurred by Region Products Marketing should be included in the G&A expense ratio for Region and thus included in the cost of production. At verification, we confirmed that the expenses of employees that performed limited logistics and sales activities for Region were in fact listed on the books of Region Products Marketing.⁹⁴ In such cases, it is our practice to not include such expenses in the calculation of the G&A ratio but to treat them as selling expenses.⁹⁵ Thus, we find that the administrative expenses should have been included in the calculation of Region's indirect selling expenses incurred in the home market. However, in this case the indirect expenses do not factor into the calculation of the final dumping margin, as there is no basis to grant a commission offset for Region's sales. For this reason, we have not revised Region's home-market indirect selling expenses to include the administrative expenses in our final calculations.

Comment 7: Region System G&A and Interest Expense Calculations

At the preliminary determination, based on an analysis of the transfer and market prices for heat treatment services provided by an affiliate, the Department adjusted Region System's reported heat treatment service costs.⁹⁶ Petitioner argues that the Department erred in applying the reported G&A and financial expense rates to the original, unadjusted COM. Petitioner asserts that, for the final determination, the Department should apply those ratios to a revised COM that includes the adjusted heat treatment costs.

Region responds that the Department correctly applied the G&A and financial expense ratios to the unrevised COM. The respondent asserts that it is arithmetically correct to apply any ratio on the same base which was used as the denominator in the calculation.

Department Position: We disagree with Petitioner that the G&A and financial expense ratios should be applied to a COM which includes the heat treatment service cost adjustment. The cost of goods sold used in Region System's G&A and financial expense ratio calculations reflects the actual costs booked in the company's accounting records; it does not include the adjustment made by the Department to increase the heat treatment service costs to market value. Therefore, it is correct to apply the calculated ratios to a value which likewise excludes the adjustment. This is in line with the Department's normal practice of ensuring that expense ratios and the

⁹⁴ See Region Sales Verification Report at 6 and 28-29.

⁹⁵ See *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 43661, 43670 (August 14, 1998) (where the Department found costs of the affiliated reseller were found to constitute selling expenses and to be properly excluded from the G&A calculation).

⁹⁶ See Region Preliminary Cost Calculation Memorandum at page 1.

value to which they are applied are on the same basis.⁹⁷ For the final determination, we have continued to apply the G&A and financial expense ratios to the unadjusted COM.

Comment 8: U.S. Warranty Expenses

Petitioner requests that, in calculating its final dumping margin for Region System, the Department relies upon the average warranty expense rate provided by Region System at verification and covering the period from March 2013 through February 2014, as it appears to be an accurate reflection of Region System's historical warranty experience for the period of investigation. Petitioner further requests that the expense rate be applied to all U.S. sales in its calculations.

Region System rebuts that, as it identified and reported U.S. warranty expenses on a transaction-specific basis, the Department should use these expenses in the final margin calculation for the company. It states that, in the event the Department decides to use average warranty expenses, it should apply the three-year average warranty expense ratio, covering the period March 2011 through February 2014, to all U.S. sales, as opposed to the expense rate for the one fiscal year ending in February 2014, as the three-year ratio more accurately reflects Region System's historical warranty experience than a one-year period.

Department Position: At the time of the *Preliminary Determination*, we found Region System's reported information on U.S. warranty expenses to be insufficient to include in our dumping margin calculations for the company.⁹⁸ It later submitted clarification of its information in a supplemental questionnaire response, submitted on January 12, 2015, and a minor correction of that information at verification. Thus, the record currently contains calculations of transaction-specific expenses incurred during the period of investigation and three-year historical averages of the warranty expenses incurred by Region International, based on its fiscal year and the fiscal year of Region System.

In the past, we have concluded that, where U.S. warranty expenses incurred during the period of review differed significantly from a three-year historical average of such expenses, it was appropriate to rely on the historical average to best represent the company's overall experience with respect to warranty claims.⁹⁹ In this case, the warranty expenses incurred by Region International during the period of investigation, as averaged over all sales for that period, differs significantly from the three-year historical average, based on Region International's fiscal year, of such expenses. Therefore, in keeping with past practice, we find it appropriate to select and apply this three-year average amount of expenses to all U.S. sales in our final margin calculations.

⁹⁷ See, e.g., *Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review*, 78 FR 34337, June 7, 2013 and accompanying Issues and Decision Memorandum at Comment 6.

⁹⁸ See the Memorandum to the File from Ericka Ukrow, International Trade Analyst, on the subject of "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Certain Steel Nails from Malaysia: Region International Co., Ltd.," dated December 17, 2014, 4-5.

⁹⁹ See *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) and accompanying Issues and Decision Memorandum at Comment 6.

Comment 9: Packing Expenses

Petitioner argues that the Department should apply facts available to all of Region's home market and U.S. sales with respect to packing costs. Petitioner asserts that the reported packing costs of all of the sales examined at the sales verification had significant discrepancies, and, as a result, the Department cannot rely on Region's packing costs as reported. Petitioner argues that as partial facts available, the Department should apply the lowest home market packing cost to all home market sales, and the highest reported U.S. packing cost to all U.S. sales.¹⁰⁰

Petitioner claims the Department identified numerous Region errors in packing methodology during the Department's review of packing material expenses during verification, including:

- Region initially claimed only the "Jaguar" brand logo is placed on home market sale cartons, and then admitting the "Region" logo is sometimes used once the Department observed it on cartons during verification;¹⁰¹
- Region's failure to include pallet costs in its final calculation of U.S. packing costs, in contrast to its inclusion of pallet costs in its final calculation of home market packing costs;¹⁰²
- Region's failure to include the cost of labels in its calculation of U.S. packing expenses;¹⁰³
- Region's failure to include strapping band packing material in its calculation of U.S. packing expenses;¹⁰⁴
- Inconsistencies between the cost per layer pad as reported by Region for U.S. versus home market sales;¹⁰⁵
- Discrepancy between the number of cartons per pallet in a pallet of boat nails as observed at verification versus the number of cartons per pallet of boat nails according to Region's responses;¹⁰⁶
- Incorrect reporting by Region of pallet costs for home market packing, when compared to information from a pallet invoice;¹⁰⁷ and
- Region's use of an inconsistent (value-based ratio) methodology for calculation of "stretch and HDPE film," "label/Rubber stamps," "metal clips," and "strapping

¹⁰⁰ See Petitioner Case Brief at 14.

¹⁰¹ *Id.* at 8.

¹⁰² *Id.* at 9.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 9-10.

¹⁰⁷ *Id.* at 10.

bands” costs, as compared to that used for other materials (volume-based ratio), and, additionally, the inappropriate rounding of such value-based ratios.¹⁰⁸

Petitioner argues there also were inconsistencies between the packing overhead as reported by Region for U.S. versus home market sales.¹⁰⁹

Finally, Petitioner argues Region significantly underreported packing labor costs for U.S. sales, and likely over-reported packing labor costs for home market sales, as indicated by the results of the Department’s on-site observations of labor time required to pack certain products, in conjunction with the reported hourly packing labor cost.¹¹⁰ Petitioner argues that Region, in the latter’s case brief, underestimates the amount of time the Department spent in observing packing. Petitioner states the courts have repeatedly found the nature of verification is a spot check, and that the Department’s verification checks of packing labor time (and the per pallet labor costs derived from those times) are observed data, as opposed to Region’s reported data, which Region claims are based on estimations and approximations for which the record provides no support. Petitioner claims the Department’s testing of packing labor time consistently demonstrated that the reported data were unreliable, and consistently understated home market packing costs.¹¹¹

Regarding packing expenses, Region argues the observations made by the Department during verification were based on time periods that were too short to be conclusive. Region states that the great disparity in estimated labor costs for two different observations involving packing of the same type of nails for certain home market sale products is evidence that the observations were too short to yield accurate results. Region argues that packing speeds may vary due to a number of factors and may vary at different times of days and, therefore, a time study sample has to be significantly larger than the abbreviated ones conducted by the Department at verification.¹¹² Region stated the packing labor cost Region System incurred was “identified based on approximate number of labor deployed for packing.”¹¹³ Region alleges it calculated reasonable per pallet packing costs for U.S. sales “based on the approximate number of labor deployed for packing, and its own experience over a number of years.”¹¹⁴ Region concludes that the Department should not make any adjustments to reporting costs that pertain to labor.¹¹⁵

With regard to packing overhead costs, Region states the apparent differences in the per kilogram figures for home market versus U.S. sales is due to the rounding that appears in the printed display of the figures in the worksheet, not the underlying data in the overall packing cost calculations.¹¹⁶

¹⁰⁸ *Id.* at 10-11.

¹⁰⁹ *Id.* at 9.

¹¹⁰ *Id.* at 11-13.

¹¹¹ *See* Petitioner Rebuttal Brief at 10-12.

¹¹² *See* Region Case Brief at 11-12.

¹¹³ *Id.* at 12, citing Region’s October 22, 2014 Section B-D questionnaire response at B-42 and C-46.

¹¹⁴ *Id.* at 12.

¹¹⁵ *Id.* *See, also*, Region’s Rebuttal Brief at 8, which refers the Department to its arguments in its case brief regarding packing labor costs.

¹¹⁶ *See* Region Rebuttal Brief at 5.

With regard to packing material costs, Region rebuts most of the claims made by Petitioner. Regarding pallet costs for U.S. packing, Region states that while the packing cost calculation worksheet does not assign an alphanumeric designation to the column for those pallet costs and, therefore, no such designation appears in the formulas appearing in later headings in the worksheet, those costs are nevertheless included in the calculations in the later columns and in the final calculated per kilogram packing cost for U.S. sales.¹¹⁷

With regard to strapping band packing materials for U.S. packing, Region argues that costs for those materials are included in the calculations, and that Petitioner has misunderstood a Department reference in the discussion of those materials to be referring to strapping band packing materials costs when it was actually a reference to pallet costs (which, like strapping band packing material costs, were also included in the calculations, as noted above).¹¹⁸

With regard to differences in the reported costs of layer pads for U.S. sale packing versus home market sale packing, Region agrees the Department concluded it is not evident why layer pad expenses varied by market, but states this does not lead to the conclusion that a discrepancy exists and, in any case, the reported cost for U.S. packing is higher than that for home market packing.¹¹⁹

Regarding differences in numbers of cartons per pallet observed for boat nails during verification from the standard numbers of cartons, Region noted the Department stated in its sales verification report that company officials had acknowledged numbers of cartons for home market sales can vary from the standard levels.¹²⁰

With regard to alleged differences between reported pallet costs for home market sales and per pallet value on a pallet invoice observed by the Department at verification, Region notes the final per pallet value on the invoice was correct, having been corrected by the supplier after the supplier had initially identified an incorrect value on that document. Region notes the correct value appears in its audited books, and matches those used for calculation of pallet costs for home market sale packing.¹²¹

Finally, with regard to the methodology utilized by Region to allocate miscellaneous items like metal clips, rubber bands, and OPP tape, Region argues there is nothing unreasonable about using a value-based allocation methodology for these very small volume packing materials. Region states the value on which the ratios were each applied were consistent (*i.e.*, carton costs), and notes the Department did not question this methodology in its sales verification report.¹²²

Department Position: The Department agrees with Region that most of the items identified by Petitioner in its case brief do not constitute errors. With regard to the few remaining items, information on the record can be used to correct or reasonably estimate the expenses in question.

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.* at 4-5.

¹¹⁹ *Id.* at 5-6.

¹²⁰ *Id.* at 6.

¹²¹ *Id.* at 6-7.

¹²² *Id.* at 7.

Regarding all of the packing materials addressed by Region in its rebuttal brief, we agree with Region for the reasons identified by Region. We also agree with Region's arguments with regard to packing overhead.

Regarding conflicting explanations with respect to what logos were or were not used on home market sale packing, it is not evident that variation in logos for home market sales would affect the reporting packing expenses, and thus no calculation adjustment would be appropriate.

Region did not address what Petitioner stated was its failure to include the cost of labels in its calculation of U.S. packing expenses. At verification, Region acknowledged labels are used for U.S. sale packing.¹²³ However, no such expense is referenced in the calculations of packing for U.S. sales.¹²⁴ Region's failure to report any label expenses in its U.S. packing cost calculations warrants use of facts available for this expense in accordance with section 776(a) of the Act. Given there is no evidence that Region had a valid reason for not reporting this expense associated with U.S. sales, and in fact had identified a home market expense including reference to labels, we determine Region did not act to the best of its ability by failing to report the expense, and that application of an adverse inference is appropriate in accordance with section 776(b) of the Act. For home market sale packing, the "Label/Rubber Stamp" portion of the packing material costs, based on expenses related to those items, was verified during the sales verification.¹²⁵ No information is available on the record upon which to limit the addition to U.S. packing material costs to just label expenses. Therefore, as AFA, the Department is including as an additional U.S. packing material cost per pallet the simple average of the per pallet "Label/Rubber Stamp" expenses identified by Region for the home market sales reviewed at verification.¹²⁶

With regard to packing labor costs, Region referred to its estimation of packing cost labor expenses in its questionnaire responses.¹²⁷ Region segregated packing labor costs from other costs recorded in accounts which relate to the Department's cost of manufacturing analysis. The Department confirmed that the amount Region segregated for packing labor costs was consistent with stated employee staffing levels and hourly pay rates.¹²⁸ With regard to allocations of packing expenses to particular products, Petitioner is correct that Region did not provide any specific information on the record regarding assumptions or calculations related to packing labor time. However, the Department did not ask for clarification of how labor times were utilized in Region's per pallet packing labor cost calculations, which appear within the spreadsheet pages showing calculation of Region's reported packing costs.¹²⁹ Instead, the Department conducted brief tests of the packing labor time for each market by observing products being packed in cartons. However, these tests did not account for time completing the assembly and wrapping of pallets. Furthermore, the Department's verification report provides no insight into why the

¹²³ See Region Sales Verification Report at 33-34.

¹²⁴ See Region Sales Verification Exhibit 15 at 1-4.

¹²⁵ See Region Sales Verification Report at 34.

¹²⁶ See Region Sales Verification Exhibit 15 at 6. See also Region Final Analysis Memorandum.

¹²⁷ See Region's Section B/C response at B-42. See also Region's December 3, 2014 supplemental B/C response at 26.

¹²⁸ See Region Sales Verification Report at 35-36.

¹²⁹ See Region Sales Verification Exhibit 15 at 3 (U.S. market) and 7 (home market).

results of two different packing tests for the same home market product resulted in widely divergent results, suggesting that the amount of time for the tests (1.5 minutes in one instance) may have been too short to generate reliable results.¹³⁰ Given Region's submissions pertaining to the calculation of packing labor expenses, and the absence of further Department inquiry into details related to packing labor times prior to or during verification other than limited testing as described above, we conclude no valid information exists for rejecting Region's packing labor cost calculations, and, therefore, conclude no adjustment for the final determination is warranted.

VIII. RECOMMENDATION

Based on our analysis of the comment received, we recommend adopting the position set forth above. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins for Inmax and Region in the *Federal Register*.

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date

¹³⁰ See Region Sales Verification Report at 37.