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August 28, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Steel Nails from the People's Republic of China: Decision
Memorandum for the Preliminary Results of the 2013-2014
Antidumping Duty Administrative Review

SUMMARY

The Department of Commerce ("Department") is conducting the sixth administrative review of the antidumping duty ("AD") order on certain steel nails ("nails") from the People's Republic of China ("PRC").¹ The Department selected two respondents for individual review, Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively "Stanley"), and Shandong Oriental Cherry Hardware Group., Ltd. ("Shandong Oriental Cherry"). The Department preliminarily determines that Stanley sold merchandise at below normal value ("NV") during the period of review ("POR"), August 1, 2013, through July 31, 2014. The Department also preliminarily determines that Shandong Oriental Cherry failed to cooperate to the best of its ability in participating in the review, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Tariff Act of 1930, as amended ("Act").² As a part of the application of adverse facts available ("AFA"), we preliminarily determine to treat Shandong Oriental Cherry as part of the PRC-wide entity. Additionally, the Department preliminarily determines that Shandong Oriental Cherry and five affiliated companies should be treated as a single entity (the "Shandong Oriental Cherry Entity"), based on facts available ("FA") and because of the potential for circumvention of the *Order* due to application of AFA to Shandong Oriental Cherry.³ Lastly, the Department preliminarily determines that certain companies are entitled to a separate rate and that other companies had no shipments during the POR.

¹ See *Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008).

² See "Application of Facts Available and Use of Adverse Inference" section below for further details.

³ See "Affiliation" section below for additional details.



If we adopt these preliminary results in the final results of the review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess ADs on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results. We expect to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“Act”).

Background

On September 30, 2014, the Department initiated the sixth administrative review of nails from the PRC with respect to 401 companies.⁴ On April 14, 2015, and July 10, 2015, the Department extended the deadline for issuing the preliminary results by 100 days and 20 days, respectively, thereby fully extending the deadline.⁵ The revised deadline for the preliminary results of this review is now August 31, 2015.

Because of the large number of exporters involved in this administrative review, the Department limited the number of respondents individually examined, pursuant to section 777A(c)(2) of the Act, and selected Stanley and Shandong Oriental Cherry as mandatory respondents (collectively referred to as “Respondents”).⁶ On November 20, 2014, the Department sent AD questionnaires to Respondents. Between April 2015 and July 2015, the Department issued supplemental questionnaires to Respondents. Additionally, between May 2015 and August 2015, Stanley submitted complete responses and Shandong Oriental Cherry submitted incomplete responses.

On December 8, 2014, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value (“SV”) data, and specified the deadlines for these respective submissions.⁷ On February 10, 2015, the Department extended the deadline for interested parties to submit comments and rebuttal comments on SVs for this administrative review.⁸ Between February 3, 2015, and August 3, 2015, the Department received surrogate country comments, SV comments, and rebuttal comments from interested parties.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 58729 (September 30, 2014) (“*Initiation Notice*”).

⁵ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations regarding “Certain Steel Nails from the People’s Republic of China: Extension of Deadline for Preliminary Results of 2013-2014 Antidumping Duty Administrative Review,” dated April 14, 2015, and July 10, 2015, respectively.

⁶ See Memorandum to James Doyle, Director, Office V, AD/CVD Operations, from Alexander Montoro, Case Analyst, Office V, AD/CVD Operations, regarding “Sixth Antidumping Administrative Review of Certain Steel Nails from the People’s Republic of China: Selection of Respondents for Individual Review,” dated November 6, 2014.

⁷ See Letter to All Interested Parties, from the Department, regarding “Certain Steel Nails from the People’s Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information,” dated December 8, 2014 (“*Surrogate Country Letter*”).

⁸ See Memorandum to the File from Alexander Montoro, International Trade Compliance Analyst, regarding “Certain Steel Nails from the People’s Republic of China: Postponement of Deadline for Comments on Surrogate Country List, Surrogate Country, and Surrogate Values,” dated February 10, 2015.

Scope of the Order

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 7317.00.55, 7317.00.65, 7317.00.75, and 7907.00.6000.⁹

Excluded from the scope of this order are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: 1) Non-collated (*i.e.*, hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; and an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive; 2) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive; 3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive; an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive; and 4) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive.

Also excluded from the scope of this order are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this order are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from

⁹ The Department recently added the Harmonized Tariff Schedule category 7907.00.6000, “Other articles of zinc: Other,” to the language of the *Order*. See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, regarding “Certain Steel Nails from the People’s Republic of China: Cobra Anchors Co. Ltd. Final Scope Ruling,” dated September 19, 2013.

the scope of this order are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of this order are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this order are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

DISCUSSION OF THE METHODOLOGY

Preliminary Determination of No Shipments

Between October 21, 2014, and November 26, 2014, the following companies filed no-shipment certifications indicating that they did not export subject merchandise to the United States during the POR:

1. Besco Machinery Industry (Zhejiang) Co., Ltd. (“Besco”)
2. Certified Products International Inc. (“CPI”)
3. Huanghua Jinhai Hardware Products Co., Ltd. (“Jinhai”)
4. Huanghua Xionghua Hardware Products Co., Ltd. (“Huanghua Xionghua”)
5. Nanjing Yuechang Hardware Co., Ltd. (“Yuechang”)
6. PT Enterprise Inc.
7. Qingdao Jisco Co., Ltd. and Jisco Corporation (collectively, “JISCO”)
8. Shanghai Jade Shuttle Hardware Tools Co., Ltd. (“Shanghai Jade Shuttle”)
9. Shanghai Tengyu Hardware Tools Co., Ltd. (“Shanghai Tengyu”)
10. Shanxi Yuci Broad Wire Products Co., Ltd. (“Shanxi Yuci”)
11. Zhejiang Gem-Chun Hardware Accessory Co., Ltd (“Gem-Chun”)

In order to examine these claims, the Department sent inquiries to CBP requesting that CBP inform the Department if it had any information contrary to the no-shipment claims.¹⁰

Based on the record evidence thus far, we preliminarily determine that these companies did not have any reviewable transactions during the POR. In addition, we find that it is appropriate to not rescind the review, in part, in this circumstance, and to complete the review with respect to the above named companies, issuing appropriate instructions to CBP based on the final results of the review.¹¹ Should evidence contrary to these companies’ no-shipments claims arise, we will pursue the issue in accordance with our governing statute and regulations.

¹⁰ See the various no shipments inquiries the Department sent to CBP.

¹¹ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).

Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (“NME”) country.¹² In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding contested such treatment. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

PRC-Wide Entity

Upon initiation of this review, we provided an opportunity for all companies upon which we initiated a review to complete either the separate rate application or certification.¹³ Many of the 401 reviewed companies did not submit either a separate rate application or certification, or a no-shipment certification, and we therefore determine that they are part of the PRC-wide entity.¹⁴ In addition, as we explain further below in the “Separate Rates” section and “Application of Facts Available and Use of Adverse Inference” section, Shandong Oriental Cherry failed to cooperate to the best of its ability in participating in the review, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Act. Because Shandong Oriental Cherry did not provide reliable, usable data to calculate an antidumping duty margin, we therefore determine that it is part of the PRC-wide entity.

The Department’s change in policy regarding conditional review of the PRC-wide entity applies to this review.¹⁵ Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review, and the entity’s rate is not subject to change. As such, the PRC-wide rate from the previous review (*i.e.*, the fifth administrative review) remains unchanged, and the PRC-wide entity is receiving a margin of 118.04 percent.¹⁶ As explained below in the “Separate Rates” section, the Department preliminarily finds that Shandong Oriental Cherry, and the other companies for which a review was requested, do not qualify for a separate rate, and as such, are part of the PRC-wide entity.

¹² See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

¹³ The separate-rate certification and separate-rate applications applicable to this proceeding were available at: <http://enforcement.trade.ita.doc.gov/nme-sep-rate.html>.

¹⁴ See Appendix 2 for a list of these companies in the concurrent *Federal Register* notice.

¹⁵ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013) (“*Conditional Review of the NME Entity*”).

¹⁶ See, e.g., *id.*; *Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 FR 18816, 18817 and accompanying Issues and Decision Memorandum (“*AR5 Final Results*”).

Separate Rates

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. There is a rebuttable presumption that all companies within an NME are subject to government control, and thus, should be assessed a single AD rate.¹⁷ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁸ It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,¹⁹ as amplified by *Silicon Carbide*.²⁰ However, if the Department determines that a company is wholly foreign-owned by individuals or companies located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.²¹

The Department received separate rate applications or certifications, between November 21, 2014, and November 28, 2014, from the following 21 companies ("Separate-Rate Applicants"):

1. Chiieh Yung Metal Ind. Corp.
2. Dezhou Hualude Hardware Products Co., Ltd.
3. Hebei Cangzhou New Century Foreign Trade Co., Ltd.
4. Nanjing Caiqing Hardware Co., Ltd.
5. Qingdao D&L Group Ltd.
6. SDC International Aust. PTY. LTD.
7. Shandong Dinglong Import & Export Co., Ltd.
8. Shanghai Curvet Hardware Products Co., Ltd.
9. Shanghai Yueda Nails Industry Co., Ltd.
10. Shanxi Hairui Trade Co., Ltd.

¹⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006) ("Lined Paper"); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006) ("Sawblades").

¹⁸ See *Initiation Notice*, 79 FR at 58730.

¹⁹ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"), and 19 CFR 351.107(d).

²⁰ See *Silicon Carbide*, 59 FR at 22585.

²¹ See, e.g., *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011*, 78 FR 9493 (February 6, 2013), and accompanying Decision Memorandum at 9, unchanged in final results, 78 FR 35249 (June 12, 2013); *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in final affirmative determination, 73 FR 40485 (July 15, 2013).

11. Shanxi Pioneer Hardware Industrial Co., Ltd.
12. Shanxi Tianli Industries Co., Ltd.
13. S-Mart (Tianjin) Technology Development Co., Ltd.
14. Stanley
15. Suntec Industries Co., Ltd.
16. Tianjin Jinchu Metal Products Co., Ltd.
17. Tianjin Jinghai County Hongli Industry and Business Co., Ltd.
18. Tianjin Lianda Group Co., Ltd.
19. Tianjin Universal Machinery Imp. & Exp. Corporation
20. Tianjin Zhonglian Metals Ware Co., Ltd.
21. Xi'an Metals & Minerals Import & Export Co., Ltd.

All other companies involved in the review did not submit either a separate-rate application or certification or a no-shipment certification. While Shandong Oriental Cherry submitted a separate-rate application, we find it failed to adequately respond to the NME questionnaire and withheld requested information, as explained below, and we are assigning AFA to the company for the preliminary results. Accordingly, the Department preliminarily determines that Shandong Oriental Cherry is not eligible for a separate rate. Accordingly, the Department finds that Shandong Oriental Cherry is being considered as part of the PRC-Wide Entity, as explained further below. Because these companies did not demonstrate their eligibility for separate-rate status, they remain preliminarily included as part of the PRC-wide entity and are subject to the PRC-wide rate.²²

Additionally, we note that the *Initiation Notice* included variations of company names not included in either the separate-rate applications or certifications of the Separate-Rate Applicants.²³ Because these names (1) have not been granted separate-rate status in a previous granting period and (2) do not appear on business licenses submitted to the Department, they are not recognized as representing the same entities. Consistent with our practice, we are preliminarily not including these names on the list of companies for which separate rate status applies.²⁴

A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.²⁵ The evidence provided by Stanley and the Separate-Rate Applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's

²² See Appendix 2 of the concurrent *Federal Register* notice.

²³ *Id.*; see also *Initiation*, 77 FR at 58732-58738.

²⁴ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (September 15, 2009) (“3rd AR Final”), and accompanying Issues and Decision Memorandum at Comment 17.

²⁵ See *Sparklers*, 56 FR at 20589.

business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.²⁶

B. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (“EPs”) are set by, or are subject to, the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.²⁷ The Department determines that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.²⁸

The evidence provided by Stanley and the Separate-Rate Applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) the companies set their own EPs independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies’ use of export revenue.²⁹ Therefore, the Department preliminarily finds that Stanley and the Separate-Rate Applicants established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

C. Separate Rate Calculation for Companies Not Individually Examined

As noted above, we stated that the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made, and selected exporters as mandatory respondents in this review. Stanley participated in the administrative review as a mandatory respondent. As noted above, 20 additional companies submitted timely information and remained subject to review as separate rate respondents.

The statute and the Department’s regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Section 735(c)(5)(A) of the Act instructs that we do not calculate an all-others rate

²⁶ See, e.g., Stanley’s January 13, 2015, submission, at 1-18; see also the Separate-Rate Applicants’ submissions dated from November 21, 2014 - November 28, 2014.

²⁷ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People’s Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

²⁸ *Id.*, 60 FR at 22544.

²⁹ See, e.g., Stanley’s January 13, 2015, submission, at 1-18; see also the Separate-Rate Applicants’ submissions dated from November 21, 2014 - November 28, 2014.

using any zero or *de minimis* weighted-average dumping margins or any weighted-average dumping margins based entirely on facts available (“FA”). Accordingly, the Department’s usual practice has been to average the rates for the selected companies excluding rates that are zero, *de minimis*, or based entirely on FA.³⁰

In this review, we calculated a weighted-average dumping margin for Stanley that is above *de minimis* and not based entirely on FA. Accordingly, for the preliminary results, consistent with the Act and the Department’s practice, the Department preliminarily determines that the margin to be assigned to the Separate Rate Applicants is Stanley’s calculated margin.

Affiliation

Section 771(33) of the Act provides that:

The following persons shall be considered to be ‘affiliated’ or ‘affiliated persons’:

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

The Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.³¹

19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department considers the following

³⁰ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

³¹ See SAA, H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Sess. (1994), at 838.

factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs the Department not to find that control exists on the basis of these factors unless the relationship has “the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” The regulation also directs the Department to consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

As explained below, Shandong Oriental Cherry failed to cooperate to the best of its ability in providing the requested information because it withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding.³² Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, the Department preliminarily finds it appropriate to assign AFA to Shandong Oriental Cherry. By doing so, we ensure that Shandong Oriental Cherry will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review.

The Department finds that it is appropriate to find Shandong Oriental Cherry affiliated with its five reported PRC affiliates: (1) Shandong Oriental Cherry I&E; (2) Jining Huarong Hardware; (3) Heze Products Co; (4) Jining Dragon Fasteners; and (5) Jining Yonggu Metal.³³ Specifically, with respect to whether these companies are affiliated, the record contains the following information: (1) the PRC shareholders of Shandong Oriental Cherry are family members (Family B)³⁴ and thus represent a “family grouping” that may be in a position to “exercise restraint or control” over Shandong Oriental Cherry;^{35, 36} (2) both Shandong Oriental Cherry and Shandong Oriental Cherry I&E are wholly owned by Family B;³⁷ (3) Jining Huarong Hardware

³² See section 776(a)(1)-(2) of the Act; for further detail, please see “Application of Facts Available and Use of Adverse Inference” section listed below.

³³ See Shandong Oriental Cherry’s Section A Response, at 3-4 and Exhibit A-3.

³⁴ Because the identity of Family B is business proprietary information, please see Shandong Oriental Cherry’s Section A Questionnaire Response at 2 and Exhibit A-18.

³⁵ In *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310 (CIT 1999) (“*Ferro-Union*”), the CIT stated that the definition of family, as defined in section 771(33)(A) of the Act, is not exclusive to nuclear family members and linear descendants. Specifically, the CIT noted that the “word ‘including’ ... is an indication that Congress did not intend to limit the definition of ‘family’ to the members listed in this section.” *Id.* at 1325. Finally, the CIT also found that the language of section 771(33)(F) of the Act, which defines “a person,” “can be interpreted to encompass a ‘family,’ and by “interpreting ‘family’ as a control person, the Department was giving effect to this intent.” *Id.*, at 1326. The CIT held that because “the new definition of ‘control’ thus permits a finding that several persons or groups are in a position to exercise restraint or direction over a company... it would not violate the statute to find that the six families in a position to ‘exercise restraint or control over {the respondent},’ in fact control {the respondent}.” *Id.* at 1324. Accordingly, the Department has found that a family group “exercised restraint or control” over affiliated companies, pursuant to section 771(33)(A) and (F) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decisions Memorandum at Comment 10 (“Pipe and Tube from Turkey”).

³⁶ Shandong Oriental Cherry stated that the shareholders are family members, which is supported by the independent audited financial statements for the company. See Shandong Oriental Cherry’s Section A Questionnaire Response, at 2 and Exhibit A-18 (audited FY 2013 financial statement of Shandong Oriental Cherry).

³⁷ See Shandong Oriental Cherry’s Section A Questionnaire Response at 2-3 and Exhibit A-18; Shandong Oriental Cherry’s Second Supplemental Section A Questionnaire Response at Exhibit 1 (Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Shandong Oriental Cherry I&E).

is the wholly-owned subsidiary of Shandong Oriental Cherry;³⁸ and (4) Shandong Oriental Cherry is the largest shareholder of Heze Products Co., Jining Dragon Fasteners, and Jining Yonggu Metal.³⁹ While, the Department has found that Shandong Oriental Cherry's submissions were generally so incomplete and unreliable that we could not use them the Department finds that the record evidence to which it is citing for the affiliation determination is independent, audited financial statements which were not prepared for purpose of this administrative review and thus may be relied on for purposes of determining that Shandong Oriental Cherry is affiliated with its five reported PRC affiliates.

It is also appropriate to treat Shandong Oriental Cherry and its five reported PRC affiliates as a single entity for the preliminary results. 19 CFR 351.401(f), which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (i) The level of common ownership;
 - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
 - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.⁴⁰

³⁸ See Shandong Oriental Cherry's Section A Questionnaire Response, at 2-3; Shandong Oriental Cherry's Second Supplemental Section A Questionnaire Response at Exhibit 2 (Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Jining Huarong Hardware).

³⁹ See Shandong Oriental Cherry's Section A Questionnaire Response at 3-4; Shandong Oriental Cherry's Second Supplemental Section A Questionnaire Response at Exhibit 3 (Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Heze Products Co.), Exhibit 4 (Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Jining Dragon Fasteners), and Exhibit 5 (Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Jining Yonggu Metal).

⁴⁰ See 19 CFR 351.401(f); *accord Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-75 (March 16, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51436 (October 1, 1997); *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 40948 (April 19, 2000), and accompanying Issues and Decision Memorandum at Comment 16.

To the extent that this provision does not conflict with the Department’s calculation of separate rates or enforcement of the NME provision under section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment.⁴¹ The factors listed in 19 CFR 351.401(f)(2) are not exhaustive and, in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.⁴²

In this case, we find, based on FA, that Shandong Oriental Cherry and its 5 affiliates (Shandong Oriental Cherry I&E, Jining Huarong Hardware, Heze Products Co, Jining Dragon Fasteners, and Jining Yonggu Metal) should be collapsed. They will be treated as a single entity for the preliminary results.

As to whether these companies have facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, the Department preliminarily finds that pursuant to, FA, that Shandong Oriental Cherry and its five reported PRC affiliates have production facilities for producing similar or identical products that would not require substantial retooling.

Moreover, regarding the significant potential for manipulation of price or production, independent record evidence (described above) indicates that a level of common ownership exists between Shandong Oriental Cherry and its five reported PRC affiliates. In addition, the Department finds that, based on FA, that there are common managers and directors, and intertwined operations between Shandong Oriental Cherry and its five reported PRC affiliates.⁴³ Therefore, the Department preliminarily finds that the independent record evidence regarding common ownership, along with our determination to use FA, provides us with a sufficient basis for collapsing Shandong Oriental Cherry and its five PRC affiliates. Accordingly, for purposes of these preliminary results, we have determined to collapse Shandong Oriental Cherry and its five PRC affiliates and to treat them as a single entity (*i.e.*, “the Shandong Oriental Cherry Entity”).

Application of Facts Available and Use of Adverse Inference

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall,

⁴¹ See *Freshwater Crawfish Tail Meat From the People’s Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 40948 (April 19, 2000), and accompanying Issues and Decision Memorandum at Comment 16.

⁴² See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1340-42 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

⁴³ See 19 CFR 351.401(f)(2)(ii-iii).

subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner,” the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Further, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁴ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁴⁵

A. Application of Facts Available

The Department finds that the use of facts otherwise available is warranted with respect to Shandong Oriental Cherry, pursuant to section 776(a) of the Act.

⁴⁴ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (“SAA”).

⁴⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (“*Nippon Steel*”).

As discussed below, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, the Department determines that the use of facts otherwise available is warranted with respect to Shandong Oriental Cherry. During the course of this review, the Department discovered that Shandong Oriental Cherry withheld key information that was requested by the Department for calculating an accurate margin for Shandong Oriental Cherry. Specifically, Shandong Oriental Cherry failed to provide in the form and manner requested by the Department: (1) an accurate, reliable sales reconciliation regarding its reported sales of subject merchandise to the United States during the POR; (2) an accurate, reliable factors of production (“FOP”) database that is reported on a control numbers (“CONNUMs”)-specific basis; and (3) sales data, FOP data, and full product specifications, including supporting documentation regarding the hand tool that the shooting nails are used in, from Shandong Oriental Cherry’s affiliate, Jining Dragon Fasteners Ltd., Co. (“Jining Dragon Fasteners”), regarding its sales of shooting nails⁴⁶ to the United States during the POR.⁴⁷ Additionally, Shandong Oriental Cherry along with its affiliate, Jining Dragon Fastener, significantly impeded the proceeding by not providing accurate or complete responses to the Department’s questions about its U.S. sales data and FOP data regarding its sales of subject merchandise to the United States during the POR.

Additionally, where the request for information was clear and relates to some of the central issues in an antidumping case, such as accurate sales and FOP databases, the Court of International Trade (“CIT”) has found that the respondent has “a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce.”⁴⁸ Further, the CIT has stated that the terms of sections 782(d) and (e) do not give rise to an obligation for the Department to permit a remedial response from the respondent where the respondent has not met all of the criteria of 782(e).⁴⁹

Here, the requests for information were not unclear and the respondent cannot claim that it was unaware of its obligation to submit the information, thus requiring further notification by the Department. Record evidence clearly shows that Shandong Oriental Cherry was aware of its obligation to report complete, accurate, and reliable sales and FOP data for its total sales of subject merchandise to the United States during the POR.⁵⁰ Therefore, the Department finds that Shandong Oriental Cherry had ample notification of the centrality of the issues, as well as ample

⁴⁶ Jining Dragon Fasteners uses the term shooting nails to refer to nails that it stated are used in powder-actuated nail guns.

⁴⁷ See Shandong Oriental Cherry’s multiple questionnaire responses on the record and the Department’s original questionnaire and multiple supplemental questionnaires; for a full discussion of each section, please *also see* “Shandong Oriental Cherry’s U.S. Sales Reconciliation and Sales Database” section of this memorandum, “Shandong Oriental Cherry’s FOP Database and Reporting Methodology,” and “Jining Dragon Fasteners’ Sales of Shooting Nails.”

⁴⁸ See *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (CIT 2001) (“*Tung Mung*”); *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-3 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, where Commerce questioned the respondent regarding the information, and where Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the respondent’s obligation to create an accurate record and provide Commerce with the information requested).

⁴⁹ See *Tung Mung*, 25 CIT at 789 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all of the five enumerated criteria of 782(e)).

⁵⁰ See the Department’s original questionnaire and multiple supplemental questionnaires.

opportunity to provide complete, accurate, and reliable sales and FOP databases. However, it chose to not do so.

1. Shandong Oriental Cherry's U.S. Sales Reconciliation and Sales Database

Pursuant to 776(a)(2)(B) and (C) of the Act, the Department finds that application of facts available is warranted because Shandong Oriental Cherry failed to report a complete, accurate, and reliable sales reconciliation and U.S. sales database for the subject merchandise during the POR.

The Department requested in the original antidumping questionnaire to Shandong Oriental Cherry to provide a sales reconciliation and provided detailed instructions linking the sales reported in its U.S. sales database to the Shandong Oriental Cherry's financial statements and supporting documentation (*e.g.*, general ledger, sub-ledger, *etc.*).⁵¹

In its Section C questionnaire response, Shandong Oriental Cherry submitted a sales reconciliation for its sales of subject merchandise to the United States during the POR that did not include sales for the last two months of 2014, which was one of the fiscal years ("FYs") that covered the POR.⁵² Additionally, the Department noted in reviewing the submitted sales reconciliation that Shandong Oriental Cherry did not provide an explanation for how the sales reconciliation and supporting worksheets tie to Shandong Oriental Cherry's fiscal year financial statements for the POR, as requested in the original questionnaire. Therefore, the Department requested that Shandong Oriental Cherry submit a revised sales reconciliation explaining why two months of FY 2014 did not include sales data and explain how the revised sales reconciliation ties to Shandong Oriental Cherry's financial statements and general ledger for the POR.⁵³ The Department also requested that Shandong Oriental Cherry explain why it made multiple changes to an unsolicited revised sales database that it submitted along with its supplemental Section D questionnaire response without explanation for many of these changes.⁵⁴

In its Third Supplemental Questionnaire Response, Shandong Oriental Cherry addressed the Department's clarification questions and submitted a revised sales reconciliation, as requested, including the two months of sales data that were omitted in its original sales reconciliation.⁵⁵ However, in reviewing Shandong Oriental Cherry's revised sales reconciliation and accompanying questionnaire response, the Department noted that Shandong Oriental Cherry decreased the total sales quantity of subject merchandise sales to the United States.⁵⁶

⁵¹ See Letter to Shandong Oriental Cherry from Scot Fullerton, Program Manager, Office V, "Questionnaire," dated November 20, 2014 ("Shandong Oriental Cherry's Questionnaire") at Appendix V.

⁵² See Shandong Oriental Cherry's Section C Questionnaire Response, dated January 13, 2015 ("Shandong Oriental Cherry's Section C Questionnaire Response") at Appendix 1.

⁵³ See Letter to Shandong Oriental Cherry from Scot Fullerton, Program Manager, Office V, "Third Supplemental Questionnaire," dated June 25, 2015 ("Shandong Oriental Cherry's Third Supplemental Questionnaire") at 13-4 (question 8 of "Section C").

⁵⁴ *Id.*, at 14 (question 9 of "Section").

⁵⁵ See Shandong Oriental Cherry's Third Supplemental Questionnaire Response, dated July 20, 2015 ("Shandong Oriental Cherry's Third Supplemental Questionnaire Response") at 28-29 and Exhibits 3rd SSAC-23 through SSAC-26.

⁵⁶ *Id.*, at Exhibit 3rd SSAC-23.

Specifically, the Department observed that Shandong Oriental Cherry revised the total sales quantity for POR sales of subject merchandise to the United States for a few months of the POR and submitted a revised sales database based on this change.⁵⁷ However, the Department notes that it did not request that Shandong Oriental Cherry make these changes and Shandong Oriental Cherry made these changes without providing any explanation or reason.⁵⁸

The Department finds that Shandong Oriental Cherry failed to provide a complete, accurate, and reliable reconciliation and U.S. sales database. While it is well-settled that Shandong Oriental Cherry, as the respondent, has the burden of creating an accurate and complete record during the course of the investigation,⁵⁹ Shandong Oriental Cherry failed to meet this burden despite multiple opportunities to provide the Department with complete, reliable, and accurate sales information required to calculate an accurate margin. As explained above, Shandong Oriental Cherry submitted first, an incomplete sales reconciliation, and then a revised sales reconciliation that included revisions to the total sales quantity of POR sales of subject merchandise without requisite explanations or supporting documentation from its books and records to demonstrate why these changes are accurate.⁶⁰ Indeed, because of Shandong Oriental Cherry's general ambiguity and unresponsiveness in its reporting, and its decision to adjust its total sales database twice without explanation, the Department is unable to ascertain whether it has a complete, accurate, and reliable sales reconciliation and sales database based on the latest unexplained revisions that Shandong Oriental Cherry made to its data, which it submitted just a month prior to the fully extended preliminary results.⁶¹

The Department provided Shandong Oriental Cherry with multiple opportunities, including the original questionnaire and two supplemental questionnaires,⁶² to submit a complete, accurate, and reliable sales reconciliation and database for its total POR sales of subject merchandise to the United States. Because the Department is constrained by statutory and regulatory deadlines for timely completing administrative reviews, it is not obligated to continue to send out multiple supplemental requests for information that was originally requested in the original questionnaire.⁶³ The original questionnaire was issued in November 2014, and contained a request for a full reconciliation of sales and complete sales database with a corresponding

⁵⁷ *Id.*, at Exhibit 3rd SSAC-13.

⁵⁸ *Id.*, at 28-29.

⁵⁹ *See, e.g., Pipe from the UAE Preliminary Determination*, 77 FR at 32544, quoting *Essar Steel Ltd. v. United States*, 2012 U.S. App. LEXIS 8621 at *22 (Fed. Cir. April 27, 2012) (citing *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993)).

⁶⁰ The CIT has recognized that a respondent must submit explanations and documentation necessary for the Department to gain an understanding of its reporting methodology. *See Sidenor Indus. SL v. United States*, 664 F. Supp. 2d 1349, 1357 (CIT 2009).

⁶¹ *See Grain-Oriented Electrical Steel From the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 59223 (October 1, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

⁶² *See* Shandong Oriental Cherry's Questionnaire; Letter to Shandong Oriental Cherry from Scot Fullerton, Program Manager, Office V, "First Supplemental Questionnaire," dated April 20, 2015 ("Shandong Oriental Cherry's First Supplemental Questionnaire"); and Shandong Oriental Cherry's Third Supplemental Questionnaire.

⁶³ *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 13332 (March 13, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

narrative. After each of Shandong Oriental Cherry's submissions, we issued supplemental questionnaires identifying the inadequate and deficient areas of the prior submission.⁶⁴ Moreover, the CIT has previously stated that the burden of creating an adequate record lies with the respondent, not the Department.⁶⁵

Therefore, the Department finds that application of facts otherwise available, pursuant to subsections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, is warranted based on Shandong Oriental Cherry's submissions regarding its sales reconciliation and sales database. In fact, section 782(d) of the Act expressly provides that where, as here, a person submits further information in response to an identified deficiency and the Department determines that the supplemental response is not satisfactory, the Department may disregard all or part of the original and subsequent responses.⁶⁶ Given Shandong Oriental Cherry's deficient responses to the original section C standard questionnaire and the two supplemental questionnaires, as well as Shandong Oriental Cherry's decision to revise its sales data without explanation, the Department finds against issuing an additional supplemental questionnaire to try yet again to get a complete, reliable, and accurate sales reconciliation and sales database from Shandong Oriental Cherry. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, the Department will rely upon facts otherwise available for Shandong Oriental Cherry's dumping margin for the preliminary results.

2. *Shandong Oriental Cherry's FOP Database and Reporting Methodology*

Pursuant to 776(a)(2)(A), (B) and (C) of the Act, the Department finds that the application of facts available is warranted because Shandong Oriental Cherry failed to provide a complete, accurate, and reliable CONNUM-specific FOP database for the subject merchandise during the POR, as requested by the Department, and significantly impeded this review.

In its original questionnaire responses in this review, despite specific instructions detailed in the antidumping duty questionnaire, Shandong Oriental Cherry did not follow instructions to provide full, accurate CONNUM-specific FOP database based on actual or allocated data. Specifically, in November 2014, the Department issued the NME questionnaire to Shandong Oriental Cherry.⁶⁷ Section D of the questionnaire requested respondents that are unable to provide:

actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis... {to please} provide a detailed explanation of all efforts undertaken to report the actual quantity of each FOP consumed to produce the merchandise under investigation on a CONNUM-specific basis. {P}lease

⁶⁴ See above discussion.

⁶⁵ See, e.g., *Tianjin Mach. Import & Export Corp. v. United States*, 806 F.Supp. 1008, 1015 (CIT 1992) (“[T]he burden of creating an adequate record lies with respondents and not with Commerce.”); see also *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed.Cir.1993) (“The burden of production [belongs] to the party in possession of the necessary information.”).

⁶⁶ See *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011), (“[t]otal AFA is appropriate ‘where none of the reported data is reliable or usable’ because, for example, all of the ‘submitted data exhibited pervasive and persistent deficiencies that cut across all aspects of the data.’”).

⁶⁷ See Shandong Oriental Cherry's Questionnaire.

{also} provide a detailed explanation of how you derived your estimated FOP consumption for merchandise under investigation on a CONNUM-specific basis and *explain why the methodology you selected is the best way to accurately demonstrate an accurate consumption amount.*⁶⁸

Additionally, Section D of the questionnaire instructed Shandong Oriental Cherry: “If you have any questions regarding how to compute the factors of the merchandise under consideration, please contact the official in charge *before* preparing your response to this section of the questionnaire.”⁶⁹

Despite these specific instructions, Shandong Oriental Cherry unilaterally decided, without informing the Department prior to submitting the original response that it had difficulty meeting the reporting requirements, to report its FOPs on an average basis. Specifically, Shandong Oriental Cherry’s average FOP methodology was based on using the total input weight divided by the total output weight for each workshop, which resulted in a single average FOP for the more than 100 CONNUMs reported in Shandong Oriental Cherry’s FOP database.⁷⁰

In its original Section D response, the Department noted that Shandong Oriental Cherry gave inconsistent statements, claiming that it “tracked consumption of input and output per product in each workshop by production steps using an {electronic} system... {but that since} there were too many products with different specifications... {it} allocated the FOPs in each workshop on an average basis.”⁷¹

Based on these inconsistent statements, the Department requested clarification on why Shandong Oriental Cherry was not using product-specific production records to calculate CONNUM-specific FOPs, especially for the most significant inputs (wire rod and steel plate) in its FOP database.⁷² In response, Shandong Oriental Cherry did not specifically explain why it was not using these product-specific production records, stating that there are many different specifications of nails with the same wire rods being used to produce nails of different specifications.⁷³

Noting that Shandong Oriental Cherry’s single average FOP methodology did not comply with the Department’s questionnaire requirements – unlike the other respondent, Stanley, that reported CONNUM-specific FOPs – the Department issued a second supplemental questionnaire on this issue.⁷⁴ Specifically, the Department informed Shandong Oriental Cherry that “{i}t is

⁶⁸ *Id.*, at D-2 (emphasis added).

⁶⁹ *Id.*, at D-1 (emphasis added).

⁷⁰ See Shandong Oriental Cherry’s Section D Questionnaire Response, dated January 23, 2015 (“Shandong Oriental Cherry’s Section D Questionnaire Response”) at D-4 and D-5.

⁷¹ *Id.*, at D-8.

⁷² See Shandong Oriental Cherry’s First Supplemental Questionnaire at 6 (question 23).

⁷³ See Shandong Oriental Cherry’s First Supplemental Questionnaire Response, dated May 11, 2015 (“Shandong Oriental Cherry’s First Supplemental Questionnaire Response”) at 12.

⁷⁴ See Stanley’s Section D Questionnaire Response, dated February 17, 2015 (“Stanley’s Section D Questionnaire Response”) at D-9 and Section D database; Letter to Shandong Oriental Cherry from Scot Fullerton, Program Manager, Office V, “Second Supplemental Section D Questionnaire,” dated April 27, 2015 (“Shandong Oriental Cherry’s Second Supplemental Section D Questionnaire”).

unacceptable to report a single average FOP usage ratio for all CONNUMs in your Section D database” and that Shandong Oriental Cherry needed to revise its FOPs to be on a CONNUM-specific basis using either actual quantities or estimated consumption.⁷⁵ Again, Shandong Oriental Cherry did not comply with the Department’s request, stating that it can only track input and output by workshop and that accordingly, it did not revise its single average FOP database either using actual quantities or estimated consumption to be on a CONNUM-specific basis.⁷⁶

The Department took the extraordinary step of issuing a third supplemental questionnaire to Shandong Oriental Cherry, again informing Shandong Oriental Cherry that it was unacceptable to report a single average FOP usage ratio for all CONNUMs.⁷⁷ The Department again requested that Shandong Oriental Cherry revise its FOP reporting methodology and come up with a reasonable allocation using either actual quantities or estimated consumption quantities based on a CONNUM-specific basis for each FOP.⁷⁸ While the Department noted that it allowed respondents in past reviews to report FOPs on a single average basis after some of these parties notified the Department of difficulties in meeting the reporting requirements, the Department informed Shandong Oriental Cherry that it was not allowing FOPs to be reported in such a manner in this review.⁷⁹ Instead, the Department chose to request Shandong Oriental Cherry to develop a FOP methodology that was CONNUM-specific, as requested in the original questionnaire, because the Department noted that the other respondent was able to do such and in other cases, respondents were able to develop an accurate, FOP methodology that allocated consumption for all products or a sub-product group to each specific CONNUM.⁸⁰ The Department made this request because different products will consume different amounts of the FOPs in the production process as a result of, for example, differences in size and shape, and to accurately capture the cost to produce each product the Department requests respondents to report CONNUM-specific FOPs. Specifically, the Department notes that the other respondent, Stanley, reported CONNUM-specific FOPs based on our reporting requirements that show there are differences in the amount of material consumed and scrap generated in the production of nails based on different forms, diameters, lengths, *etc.*⁸¹ Moreover, in other cases, the Department has found that allocating the consumption of materials over numerous products (*i.e.*, all subject merchandise, all subject and non-subject merchandise, *etc.*) may result in a reporting methodology that is not accurate because there is no variation in the calculation of normal value even though there are clear differences in the physical characteristics of the CONNUMs.⁸² Additionally, the Department notes that respondents in past segments of this case and other cases have been able to do so in order for us to accurately capture a dumping margin. Importantly, the

⁷⁵ See Shandong Oriental Cherry’s Second Supplemental Section D Questionnaire at 4-5 (question 1(a)-(e)).

⁷⁶ See Shandong Oriental Cherry’s Second Supplemental Section D Questionnaire Response, dated May 11, 2015 (“Shandong Oriental Cherry’s Second Supplemental D Questionnaire Response”) at 2-4.

⁷⁷ See Letter to Shandong Oriental Cherry from Scot Fullerton, Program Manager, Office V, “Third Supplemental Section D Questionnaire,” dated May 13, 2015 (“Shandong Oriental Cherry’s Third Supplemental Section D Questionnaire”).

⁷⁸ *Id.*, at 5-6.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Stanley’s Preliminary Analysis Memo at Attachment 1 (Stanley’s Preliminary Output).

⁸² See *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision Memorandum at Comment 16.

Department suggested that Shandong Oriental Cherry consider allocation methodologies, such as weight-based CONNUM-specific methodologies, used in other cases and contact the Department if Shandong Oriental Cherry had any questions developing an accurate CONNUM-specific FOP methodology.⁸³

Following the Department's multiple requests, Shandong Oriental Cherry, in its next response, stated that it revised its FOP methodology by grouping the subject merchandise with specific CONNUMs into thirteen production groups (*i.e.*, by export quantity for group to the United States) which form the primary basis for its revised allocation.⁸⁴ Shandong Oriental Cherry explained that the FOPs are allocated by the diameter of wire rod and nails to track input and output, and by different yield rates in the wire-rod and nail-making workshops to calculate CONNUM-specific FOPs for wire rod and other FOPs used in these workshops.⁸⁵ However, Shandong Oriental Cherry stated that it could not calculate CONNUM-specific FOPs for other FOPs, such as electricity or labor, which are used in different workshops. These FOPs were therefore allocated by production group.

Because the Department noted that while Shandong Oriental Cherry stated that some FOPs, such as wire rod, were now allocated on a CONNUM-specific basis but that many FOPs, including numerous direct materials, were still reported based on a single FOP usage ratio for all CONNUMs, the Department again requested that Shandong Oriental Cherry revise its reporting methodology.⁸⁶ Shandong Oriental Cherry stated in response that it could only allocate the FOPs used in the wire rod workshop on a CONNUM-specific basis and that all other FOPs could only be reported by production-group basis, resulting in different CONNUMs having the same FOP usage ratios.⁸⁷

However, as explained above, the Department noted that Shandong Oriental Cherry revised the total quantity of subject merchandise exported to the United States reported in the sales reconciliation without providing an explanation for this change and submitted a revised sales database based on this change.⁸⁸ Additionally, a few days later, in response to a request for clarification from the Department on other issues, Shandong Oriental Cherry submitted a revised chart of the total quantities for the thirteen production groups, which it explained was a result of checking its data.⁸⁹ The Department notes that the revised chart of the total quantities of the

⁸³ *Id.*, at 5-6 (citing to *Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008) (“*Washers*”); *Steel Wire Garment Hangers from the People's Republic of China*, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 8A (“*Hangers from the PRC*”).

⁸⁴ See Shandong Oriental Cherry's Third Supplemental Section D Questionnaire Response, dated June 5, 2015 (“Shandong Oriental Cherry's Third Supplemental Section D Questionnaire Response”) at 5 and Exhibit TSD-5 (the total production quantity for the thirteen production groups listed was the total quantity listed in the original U.S. sales reconciliation submitted in Shandong Oriental Cherry's Section C questionnaire response at Appendix V).

⁸⁵ *Id.*, at 5-6 and Exhibits TSD-2, 3, and 4.

⁸⁶ See Shandong Oriental Cherry's Third Supplemental Questionnaire at 16 (question 2c of “Section D”).

⁸⁷ See Shandong Oriental Cherry's Third Supplemental Questionnaire Response at 33-4.

⁸⁸ *Id.*, at Exhibit 3rd SSAC-23.

⁸⁹ See Shandong Oriental Cherry's Fourth Supplemental Questionnaire Response, dated July 22, 2015 (“Shandong Oriental Cherry's Fourth Supplemental Questionnaire Response”) at 8 and Exhibit SSD-2.

thirteen production groups was unsolicited and Shandong Oriental Cherry did not explain why the data needed to be revised.

The Department finds that the unsolicited change to the total quantities of the thirteen production groups – without explanation – raises questions regarding the accuracy of Shandong Oriental Cherry’s overall FOP allocation methodology. Specifically, as mentioned above, Shandong Oriental Cherry explained that the primary basis for its attempt to report CONNUM-specific FOPs was by grouping the subject merchandise into thirteen production groups. However, the Department notes that when Shandong Oriental Cherry submitted an unsolicited revised chart of the total quantities for the thirteen production groups, which decreased by a small percentage, Shandong Oriental Cherry did not submit a revised FOP database or explain why this change does not result in a change to its overall FOP reporting methodology. Therefore, the Department finds that it cannot ascertain – based on the unexplained change to the primary basis for Shandong Oriental Cherry’s FOP allocation methodology – whether it has an accurate and reliable FOP database for the preliminary results.

Furthermore, the Department finds that while Shandong Oriental Cherry alleges that its FOP methodology results in CONNUM-specific FOPs for some inputs, such as wire rod, there is record evidence contradicting this assertion. The Department notes that the physical characteristics in the CONNUM are ranked by form, diameter, length, *etc.*⁹⁰ The Department finds in reviewing Shandong Oriental Cherry’s alleged CONNUM-specific FOP database that Shandong Oriental Cherry is reporting the same FOP usage ratio for FOPs, such as low-carbon wire rod, for CONNUMs that have different diameters and length, which is the second and third most important physical characteristics.⁹¹ Specifically, while Shandong Oriental Cherry reported that it calculated different yield ratios to be applied to the FOP, such as low-carbon wire rod, for all nail products to calculate a CONNUM-specific FOP ratio, the Department observes that Shandong Oriental Cherry reported the same yield ratios for wire rods of different diameters.⁹² Therefore, the Department finds that, contrary to Shandong Oriental Cherry’s claim, it has not developed a CONNUM-specific allocation methodology for the FOPs, including the most significant FOPs (*i.e.*, low-carbon wire rod, medium-carbon wire rod, and steel plate) that it stated it could report on a CONNUM-specific basis, despite the Department’s multiple requests.⁹³ Furthermore, as explained above, many of the other FOPs are still reported on a single usage ratio basis for the more than 100 different CONNUMs in Shandong Oriental Cherry’s FOP database. Although some past respondents in other segments of this case reported FOPs on a single average basis, the Department finds that this segment differs in one key regard; here, we notified Shandong Oriental Cherry multiple times that we would not accept such reporting methodology for this review. More importantly, the Department requested multiple times, including in the original questionnaire and in three supplemental questionnaires, that Shandong Oriental Cherry report its FOPs on a CONNUM-specific basis using actual quantities or develop an accurate, reasonable methodology. Accordingly, the Department finds that it does

⁹⁰ See Shandong Oriental Cherry’s Questionnaire at C-2 through C-5.

⁹¹ See Shandong Oriental Cherry’s Third Section D Supplemental Questionnaire Response at Exhibit TSD-1.

⁹² *Id.*, at Exhibit TSD-3.

⁹³ *Id.*, at Exhibit TSD-1.

not have an accurate, reliable FOP database to calculate Shandong Oriental Cherry's margin for the preliminary results.

As explained above, Shandong Oriental Cherry's failure from the outset to follow specific, instructions in the Department's original NME questionnaire resulted in this review being significantly impeded, as the Department had to make multiple subsequent requests to correct major deficiencies in Shandong Oriental Cherry's FOP reporting methodology. These deficiencies still exist and present serious concerns regarding the overall accuracy of the data on the record.

3. *Jining Dragon Fasteners' Sales of Shooting Nails*

Pursuant to 776(a)(2)(A), (B), and (C) of the Act, the Department finds that the application of facts available is warranted because Shandong Oriental Cherry's affiliate, Jining Dragon Fasteners, part of the Shandong Oriental Cherry Entity, failed to provide information requested by the Department in the form and manner requested, and significantly impeded this review regarding the missing sales and FOP data for its sales of shooting nails to the United States during the POR. Specifically, Jining Dragon claimed that all its POR sales to the United States fall within the following exclusion from the scope: {a}Also excluded from the scope of this order are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. However, when asked for information supporting this claim, Jining Dragon failed to provide it.

In the Department's original questionnaire, we provided instructions for reporting information related to Shandong Oriental Cherry's eligibility for a separate rate, and corporate structure and affiliations to the Department.⁹⁴ The instructions from the questionnaire specifically requested Shandong Oriental Cherry to:

Provide a list of all the manufacturing facilities, sales office locations, research and development facilities and administrative offices involved in the manufacture and sale of the merchandise under consideration operated by your company. Please give a full address for each facility, and briefly describe the purpose of each.⁹⁵

In Shandong Oriental Cherry's original Section A questionnaire response, Shandong Oriental Cherry provided information on certain affiliates, including Jining Dragon Fasteners, and subsidiaries with respect to ownership, management, and scope of business.⁹⁶ Shandong Oriental Cherry claimed that only it was involved in the production and sale of subject merchandise to the United States.^{97, 98} Based on Shandong Oriental Cherry's claim that Jining

⁹⁴ See Shandong Oriental Cherry's Questionnaire at A-2 – A-6.

⁹⁵ *Id.*, at A-5 – A-6.

⁹⁶ See Shandong Oriental Cherry's Section A Questionnaire Response, dated December 24, 2014 (“Shandong Oriental Cherry's Section A Questionnaire Response”).

⁹⁷ *Id.*, at 3-4.

⁹⁸ According to Shandong Oriental Cherry in its original response, its alleged affiliates' production and sales activities were, as follows: (1) Shandong Oriental Cherry Hardware Import & Export Co., Ltd. (“Shandong Oriental

Dragon Fasteners sold non-scope merchandise to the United States during the POR, the Department requested that Jining Dragon Fasteners respond to portions of Section A of Shandong Oriental Cherry's questionnaire.⁹⁹ This included providing information on questions addressing separate rate eligibility, corporate structure/affiliation, accounting, and merchandise.¹⁰⁰ Most importantly, regarding the alleged non-scope merchandise that Jining Dragon Fasteners sold to the United States, the Department requested that Jining Dragon Fasteners provide the following: (1) "product specifications or model diagrams for each type of product, a full description of the types of machinery used during the production process, and a full list of all material inputs used during the production process;" and (2) "supporting documentation showing how each product's physical characteristics/specifications are covered by the specific {scope} exclusion."¹⁰¹

In its Second Supplemental Section A Questionnaire Response, the Department notes that Jining Dragon Fasteners did not provide record evidence showing how its claimed non-subject shooting nails are covered by exclusions listed in the scope of the *Order*.¹⁰² Specifically, Jining Dragon Fasteners stated that it produced and sold shooting nails to the United States during the POR, which are classified under HTSUS 7319.40.50.50, an HTSUS category not listed in the scope, and thus excluded from the scope of the *Order*.¹⁰³ However, the Department notes that Jining Dragon Fasteners did not submit record evidence demonstrating how its shooting nails meet the requirements of the scope exclusion, as requested by the Department.¹⁰⁴

Because the Department determined that the record was still unclear as to whether it was necessary to obtain sales and FOPs for Jining Dragon Fasteners's shooting nails, the Department issued a Third Supplemental Questionnaire.¹⁰⁵ The Department requested that Jining Dragon Fasteners provide record evidence, such as product specifications, model diagrams, and sales documentation for each shooting nail product, and demonstrate how they met the exclusion for

Cherry I&E") exported in-scope merchandise to third-country markets but did not export subject merchandise to the United States during the POR; (2) Jining Huarong Hardware Products Co., Ltd. ("Jining Huarong Hardware") produced and sold steel strip nails in the domestic market during the POR; (3) Jining Oriental Cherry Hardware Group Heze Products Co., Ltd. ("Heze Products Co.") produced and sold brad nails in the domestic market; (4) Jining Dragon Fasteners produced and sold shooting nails used in a gun, which were excluded from the scope of the *Order*, to the United States during the POR; and (5) Jining Yonggu Metal Products, Ltd. ("Jining Yonggu") produced and sold steel strip nails in the domestic market.⁹⁸

⁹⁹ See Letter to Shandong Oriental Cherry from Scot Fullerton, Program Manager, Office V, "Second Supplemental Section A Questionnaire," dated May 7, 2015 ("Shandong Oriental Cherry's Second Supplemental Section A Questionnaire").

¹⁰⁰ *Id.*, at 4.

¹⁰¹ *Id.*, at 9.

¹⁰² See Shandong Oriental Cherry's Second Supplemental Section A Questionnaire Response, dated June 4, 2015 ("Shandong Oriental Cherry's Second Supplemental Section A Questionnaire Response") at Exhibits I-V.

¹⁰³ *Id.*, at Exhibit IV at 10.

¹⁰⁴ *Id.*, at Exhibit IV at 18 and Exhibit 2SA-10 (Jining Dragon Fasteners' response cited to a chart detailing dimensions of each shooting nail but did not provide record evidence of the dimensions for each shooting nail regarding the full exclusion, such as used in a powder-actuated gun, that lists "fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30," for further detail, see "Scope of Order" section above).

¹⁰⁵ See Letter to Shandong Oriental Cherry from Scot Fullerton, Program Manager, Office V, "Third Supplemental Questionnaire," dated June 25, 2015 ("Shandong Oriental Cherry's Third Supplemental Questionnaire").

powder-actuated nails in the scope of the *Order*.¹⁰⁶ Additionally, the Department specifically requested that Jining Dragon submit sales and FOP information for its shooting nails, since these products were sold to the United States during the POR.¹⁰⁷

Based on Shandong Oriental Cherry's request to be excused from submitting the sales and FOP information for Jining Dragon Fastener's shooting nails, which it claimed were excluded from the scope of the *Order*, the Department withdrew its request based on Shandong Oriental Cherry meeting certain conditions.¹⁰⁸ However, the Department informed Shandong Oriental Cherry that it needed to answer all other portions of the questionnaire regarding Jining Dragon Fasteners' shooting nails, including providing the specifications of these shooting nails and any other information that would demonstrate that the products were, in fact, excluded from the scope of the *Order*.¹⁰⁹

In its Third Supplemental Questionnaire Response, Shandong Oriental Cherry submitted deficient responses regarding Jining Dragon Fasteners' shooting nails.¹¹⁰ The Department notes that while Shandong Oriental Cherry maintained that Jining Dragon Fasteners' shooting nails are excluded from the scope of the *Order* because they are used in "gunpowder-actuated guns," and submitted product specifications and sales packages,¹¹¹ none of the submitted information contained any details about how the shooting nails meet the specifics of the exclusion in the scope.¹¹²

Based on the fact that the record evidence was incomplete regarding whether Jining Dragon Fasteners' sales of shooting nails to the United States were in-scope merchandise, the Department issued a further supplemental questionnaire to Shandong Oriental Cherry. The Department requested that Shandong Oriental Cherry provide supporting documentation regarding the "hand tool... along with the material used in the hand tool to shoot the nail."¹¹³ However, besides unsupported statements that these shooting nails were used in a "shooting gun" and that the material used was "gunpowder," Shandong Oriental Cherry did not provide any record evidence demonstrating that Jining Dragon Fasteners' shooting nails met the scope of exclusion.¹¹⁴ Although Shandong Oriental Cherry did provide product specifications for Jining Dragon Fasteners' two types of shooting nails, the Department observes that these product

¹⁰⁶ *Id.*, at 6 (question 9), 7 (question 10).

¹⁰⁷ *Id.*

¹⁰⁸ See Memorandum to the File from Julia Hancock, Senior Case Analyst, Office V, "Sixth Administrative Review of Certain Steel Nails from the People's Republic of China: Shandong Oriental Cherry Hardware Group Co., Ltd. ("Shandong Oriental Cherry") Request for Excusal from Question 10 of the June 25, 2015, Supplemental Questionnaire," dated July 2, 2015 ("July 2, 2015, Request for Excusal Memorandum").

¹⁰⁹ *Id.*

¹¹⁰ See Shandong Oriental Cherry's Third Supplemental Questionnaire Response, dated July 20, 2015 ("Shandong Oriental Cherry's Third Supplemental Questionnaire Response").

¹¹¹ *Id.*, at 13 at Exhibits 3rdSSAC-8 and 3rdSSAC-9.

¹¹² *Id.*, at 11 and 13.

¹¹³ See Letter to Shandong Oriental Cherry from Scot Fullerton, Program Manager, Office V, "Third Supplemental Questionnaire," dated July 2, 2015 ("Shandong Oriental Cherry's Fourth Supplemental Questionnaire") at 4-5.

¹¹⁴ *Id.*

specifications do not contain any information regarding the hand tool or material used in the hand tool, as specifically requested by the Department regarding the cited scope exclusion.¹¹⁵

Accordingly, after the Department's multiple requests to determine whether it had obtained complete information regarding the production and sales information for Shandong Oriental Cherry's and its affiliates' sales of in-scope merchandise to the United States during the POR, the Department finds that it is reasonable to conclude that the record is incomplete. Specifically, the Department finds that it does not have the record evidence to determine whether Shandong Oriental Cherry's affiliate –Jining Dragon Fasteners' – sales of shooting nails to the United States meet the exclusion for "powder-actuated hand tools" listed in the scope of the *Order*. As explained, although the Department requested record evidence to make this determination multiple times, Shandong Oriental Cherry failed to provide the necessary information.¹¹⁶

Because of Shandong Oriental Cherry's failure to provide the requested information to demonstrate that its shooting nails are non-scope merchandise, the Department finds that it is missing the necessary information to determine whether it should have requested Jining Dragon Fasteners' sales and FOP information for calculating Shandong Oriental Cherry's margin for the preliminary results. When multiple companies are involved in such production and sale of the in-scope merchandise to the United States, the Department requires the sales and FOP information from all companies to derive, on a CONNUM-specific basis, a weighted-average FOP usage rate and sales database for the whole entity.¹¹⁷

Because Shandong Oriental Cherry failed to provide the information showing that its shooting nails were not subject merchandise, and thus the sales and FOP data for its affiliate, Jining Dragon Fasteners,' sales of shooting nails to the United States, the Department does not have complete, accurate, and reliable data upon which to calculate Shandong Oriental Cherry's margin for these preliminary results. As explained above, the Department finds that beyond unsupported statements, Shandong Oriental Cherry did not demonstrate that Jining Dragon Fasteners' shooting nails met the scope exclusion for "fasteners used in powder-actuated handtools." Therefore, because the Department is missing the sales and FOP data for Jining Dragon Fasteners' sales of shooting nails to the United States during the POR, the Department finds it does not have complete, accurate, and reliable data to calculate Shandong Oriental Cherry's margin for the preliminary results.

Further, Shandong Oriental Cherry's failure to demonstrate that Jining Dragon Fastener is not a producer and exporter of in-scope merchandise not only affects the accurate reporting of Shandong Oriental Cherry's sales and FOPs, it also undermines the Department's separate rate analysis for Shandong Oriental Cherry, as:

The Department presumes that a single weighted-average dumping margin is appropriate for all exporters in a non-market economy country. The Department

¹¹⁵ *Id.*

¹¹⁶ *Id.*; Shandong Oriental Cherry's Third Supplemental Questionnaire Response at 13 at Exhibits 3rdSSAC-8 and 3rdSSAC-9.

¹¹⁷ *Id.*, at D-2.

may, however, consider requests for separate rates from individual exporters. Individual exporters requesting a separate rate must respond to the following questions in order for the Department to consider fully the issue of separate rates.¹¹⁸

Regarding corporate structure and affiliations, the Department further noted:

The remaining questions must be answered by all companies (exporters and manufacturers), whether or not the company is requesting a separate rate.¹¹⁹

In its original questionnaire response, Shandong Oriental Cherry reported that it is a privately-held limited liability company owned by Chinese individuals.¹²⁰ The Department requires information to examine whether *de jure* or *de facto* control by the government exists such that Shandong Oriental Cherry is entitled a separate rate from the PRC-wide entity. As noted above, the Department's analysis includes Shandong Oriental Cherry, as well as its affiliates and subsidiaries. The Department's incomplete information with regard to Jining Dragon Fasteners' sales of shooting nails indicates that Shandong Oriental Cherry's original response concerning its affiliates is not reliable and incomplete. As such, it calls into question the reliability and completeness of the separate rate information submitted for Shandong Oriental Cherry, as a whole. Therefore, the Department finds that Shandong Oriental Cherry failed to provide a full response in regards to its corporate structure and affiliations, and the Department does not have reliable and complete information to conduct a separate rate analysis for Shandong Oriental Cherry.

Finally, the Department finds that, taken together, these deficiencies indicate that the Department cannot rely on Shandong Oriental Cherry's submitted information. While section 782(e)(3) of the Act states that the Department shall not decline to consider information when that "information is not so incomplete that it cannot serve as a reliable basis," the Department does not find that section 782(e)(3) applies for the preliminary results. As explained above, the Department finds that it is missing the two critical pieces of information, accurate, complete, and reliable sales and FOP databases, to calculate an accurate margin for Shandong Oriental Cherry. Without these two critical pieces of information, which includes the sales and FOPs of Shandong Oriental Cherry's affiliate, Jining Dragon Fasteners' sales of shooting nails, the Department finds that rest of Shandong Oriental Cherry's information is so incomplete that it cannot serve as a reliable basis.¹²¹ In addition, the unexplained revision to Shandong Oriental Cherry's total quantity of subject merchandise exported to the United States reported in the sales reconciliation sales database raises serious concerns about the accuracy and completeness of the entire sales database. In contrast to other cases where there minor discrepancies in only certain parts of the sales or FOP information and we found this data reconciled to the respondent's books and

¹¹⁸ See Shandong Oriental Cherry's Questionnaire, at A-4.

¹¹⁹ *Id.*, at A-5.

¹²⁰ See Shandong Oriental Cherry's Section A Questionnaire Response at 2.

¹²¹ See *Lightweight Thermal Paper from Germany: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 23220 (April 18, 2013) and accompanying Issues and Decision Memorandum at Comment 1.

records, the Department finds that this is not the situation here.¹²² Accordingly, because the Department finds it does not have complete, accurate, and reliable sales and FOP information, including for the affiliate, Jining Dragon Fasteners, to calculate a margin for Shandong Oriental Cherry for the preliminary results, the Shandong Oriental Cherry's submitted information is so incomplete that the entirety of the responses need to be disregarded for the preliminary results.

B. Use of Adverse Inference

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has “failed to cooperate by not acting to the best of its ability to comply with a request for information.”¹²³ In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.¹²⁴ Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹²⁵ The Court of Appeals for the Federal Circuit (“Federal Circuit”), in *Nippon Steel*, provided an explanation of the “failure to act to the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.¹²⁶ The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well.¹²⁷ Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.¹²⁸ The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.¹²⁹

Within the meaning of section 776(b) of the Act, the Department preliminarily finds that Shandong Oriental Cherry failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information and that the application of AFA is warranted. In sum, and as discussed in detail above, despite the Department’s detailed and specific questionnaires, Shandong Oriental Cherry failed to meet its statutory duty to reply accurately and completely to requests for information regarding its affiliates, and the production and sales of subject merchandise. For example, the Department finds that Shandong Oriental Cherry failed to provide: (1) an accurate, reliable sales reconciliation regarding its reported sales of subject

¹²² See *Steel Wire Garment Hangers from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 8.

¹²³ See section 776(b) of the Act.

¹²⁴ *Id.*; see also SAA at 870.

¹²⁵ See SAA at 870.

¹²⁶ See *Nippon Steel*, 337 F.3d at 1382.

¹²⁷ *Id.*, at 1380.

¹²⁸ *Id.*, at 1382.

¹²⁹ *Id.*

merchandise to the United States during the POR; and (2) sales data, FOP data, and full product specifications, including supporting documentation regarding the hand tool that the shooting nails are used in, from Shandong Oriental Cherry's affiliate, Jining Dragon Fasteners Ltd., Co. ("Jining Dragon Fasteners"), regarding its sales of shooting nails¹³⁰ to the United States during the POR.¹³¹ Accordingly, the Department finds that Shandong Oriental Cherry failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Therefore, we are applying AFA to Shandong Oriental Cherry for these preliminary results. Moreover, Shandong Oriental Cherry is being placed in the PRC-wide entity because it is not entitled to a separate rate, as explained above. Accordingly, since Shandong Oriental Cherry is being placed in the PRC-wide entity, it is receiving the rate of 118.04 percent, which is the rate for the PRC-wide entity from the previous AR. This rate remains unchanged pursuant to our current policy, which states that there is no conditional review of the PRC-wide entity.¹³²

Surrogate Country

As noted above, on December 8, 2014, the Department sent interested parties a letter inviting comments on surrogate country selection and SV data.¹³³ Also, as noted above, between February 3, 2015, and August 3, 2015, interested parties submitted comments and rebuttal comments on surrogate country selection and SVs.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued using the best available information in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (a) at a level of economic development comparable to that of the NME country; and (b) significant producers of comparable merchandise.¹³⁴ Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data.¹³⁵ Accordingly, we examine each factor below.

Petitioner and Stanley recommend Thailand as a surrogate country because it is at a level of economic development comparable to the PRC, is a significant producer of comparable merchandise, and has superior quality and availability of SV data. Shandong Oriental Cherry did

¹³⁰ Jining Dragon Fasteners uses the term shooting nails to refer to nails that it stated are used in powder-actuated nail guns.

¹³¹ See Shandong Oriental Cherry's multiple questionnaire responses on the record and the Department's original questionnaire and multiple supplemental questionnaires; for a full discussion of each section, please *see above* "Shandong Oriental Cherry's U.S. Sales Reconciliation and Sales Database" section of this memorandum, "Shandong Oriental Cherry's FOP Database and Reporting Methodology," and "Jining Dragon Fasteners' Sales of Shooting Nails."

¹³² See *Conditional Review of the NME Entity*, 78 FR at 65963.

¹³³ See Surrogate Country Letter.

¹³⁴ See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) ("*Policy Bulletin*").

¹³⁵ *Id.*

not specifically recommend a particular surrogate country, but also submitted SV data for Thailand.

A. Comparable Level of Economic Development

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's longstanding practice has been first to identify those countries which are at the same level of economic development as the PRC based on per capita gross national income ("GNI") data reported in the World Bank's World Development Report.¹³⁶ We note that identifying potential surrogate countries based on GNI data has been affirmed by the U.S. Court of International Trade ("CIT").¹³⁷

As explained in the Department's *Policy Bulletin*, "{t}he surrogate countries on the list are not ranked."¹³⁸ This lack of ranking reflects the Department's long-standing practice that, for the purpose of surrogate country selection, the countries on the list "should be considered equivalent"¹³⁹ from the standpoint of their level of economic development based on GNI as compared to the PRC's level of economic development and recognition of the fact that the concept of "level" in an economic development context necessarily implies a range of GNIs, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country fulfills the statutory requirement to value FOPs using data from "one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country..."¹⁴⁰ In this regard, "countries that are at a level of economic development comparable to that of the nonmarket economy country" necessarily includes countries that are at the same level of economic development as the NME country.

Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department also considers other countries that interested parties propose that meet the statutory requirements. Countries on the segment record that are at the same level of economic development as the PRC are given equal consideration for the purposes of selecting a surrogate country. Countries which are not at the same level of economic development as the PRC's, but still at a level of economic development comparable to the PRC, are selected only to the extent that data considerations outweigh the difference in levels of economic. As noted above, GNI is the primary indicator of a country's level of economic development.

For this review, the Department determines that Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand, are countries at the same level of economic development as the PRC, based on per capita gross national economic income.¹⁴¹

¹³⁶ See, e.g., *Ninth AR Final*, 79 FR 19053 at Comment I.a.

¹³⁷ See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).

¹³⁸ See *Policy Bulletin*.

¹³⁹ *Id.*

¹⁴⁰ See section 773(c)(4) of the Act.

¹⁴¹ See *Surrogate Country Letter*.

B. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."¹⁴² Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.¹⁴³ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.¹⁴⁴ "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."¹⁴⁵ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.¹⁴⁶

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.¹⁴⁷ Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"¹⁴⁸ it does not preclude reliance on additional or alternative metrics. In this case, because production data of comparable merchandise are not available, we first analyzed exports of comparable merchandise from the seven countries, as a proxy for production data. We obtained export data using the Global Trade Atlas ("GTA") for HTS 7317.00: Nails, Tacks, Drawing Pins, Staples (Other Than In Strips), And Similar Articles, Of Iron Or Steel, Excluding Such Articles With Heads Of Copper. The countries reported the following export volumes for the POR: (1) Bulgaria (4,100 kilograms); (2) Colombia (5,202,704 kilograms); (3) Ecuador (580,813

¹⁴² See *Policy Bulletin* at 2.

¹⁴³ The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.*, at note 6.

¹⁴⁴ See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

¹⁴⁵ See *Policy Bulletin* at 2.

¹⁴⁶ *Id.*, at 3.

¹⁴⁷ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

¹⁴⁸ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

kilograms); (4) Indonesia (1,219,678 kilograms); (5) South Africa (2,549,103 kilograms); and (6) Thailand (16,247,405 kilograms).¹⁴⁹

C. Data Availability

The *Policy Bulletin* states that, if more than one country is at a level of economic development comparable to that of the NME and is a significant producer, “then the country with the best factors data is selected as the primary surrogate country.”¹⁵⁰ Importantly, the *Policy Bulletin* explains further that “data quality is a critical consideration affecting surrogate country selection” and that “a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.”¹⁵¹

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or a countries that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, represent a broad-market average, and are specific to the input.¹⁵² The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.¹⁵³ Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.¹⁵⁴ The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.¹⁵⁵

Petitioner, Stanley, and Shandong Oriental Cherry all submitted data from Thailand for surrogate valuation purposes. No SV information exists on the record for Bulgaria, Colombia, Ecuador, Indonesia, or South Africa, nor has any party argued that one of these countries should be selected as the surrogate country. As a result, we have not considered these countries for surrogate country selection purposes. For this administrative review, as in the three prior

¹⁴⁹ See Memorandum to the File, from Kenneth Hawkins, International Trade Compliance Analyst, “Sixth Administrative Review of Certain Steel Nails from the People’s Republic of China,” dated concurrently with and hereby adopted by this memorandum (“Prelim SV Memo”).

¹⁵⁰ See *Policy Bulletin*.

¹⁵¹ *Id.*

¹⁵² See, e.g., *Lined Paper*, and accompanying Issues and Decision Memorandum at Comment 3.

¹⁵³ See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁵⁴ See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (“*Sixth Mushrooms AR*”), and accompanying Issues and Decision Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁵⁵ See, e.g., *Sixth Mushrooms AR*, 71 FR 40477 and accompanying Issues and Decision Memorandum at Comment 1.

administrative reviews, the Thai data submitted by parties encompasses all the FOPs we need to calculate SVs for in this review based on a single surrogate country.

D. Conclusion

In light of the record evidence, the Department finds Thailand to be a reliable source for SVs because it is at the same level of economic development as the PRC, is a significant producer of comparable merchandise, and has contemporaneous, publicly available, and reliable data. Given the above facts, the Department selects Thailand as the primary surrogate country for this review. A detailed explanation of the SVs appears below in the “Normal Value” and “Factor Valuations” sections of this notice.

Date of Sale

19 CFR 351.401(i) states that, normally, the Department will use the date of invoice, as recorded in the producer or exporter’s records kept in the ordinary course of business, as the date of sale. However, the regulations permit the Department to use a different date if it better reflects the date on which the exporter or producer establishes the material terms of sale. Stanley, as in previous reviews, explained that because of alterations or cancellations, the earlier of invoice date or shipment date is the appropriate date of sale because it reflects the date on which the material terms no longer change.¹⁵⁶ Consistent with the regulatory presumption for invoice date and because the Department found no evidence on the record contrary to Stanley’s claims, for these preliminary results, the Department used the invoice date as the date of sale except when shipment date preceded invoice date. In those instances, consistent with the Department’s practice¹⁵⁷ and as Stanley provided evidence that the material terms of sale were set on shipment date, the Department used the shipment date as the date of sale.¹⁵⁸

Comparisons to Normal Value

To determine whether Stanley’s sales of subject merchandise from the PRC were made in the United States at less than NV, we compared its constructed export price (“CEP”), to NV as described below.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the

¹⁵⁶ See Stanley’s January 13, 2015, section A questionnaire response at 25-30.

¹⁵⁷ See *Certain Steel Nails from the People’s Republic of China: Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 77 FR 53845, 53850-51 (September 4, 2012) (unchanged in AR3 Final).

¹⁵⁸ See Stanley’s January 13, 2015, section A questionnaire response at Exhibit A-10(a), (b), and (c).

Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.¹⁵⁹ In investigations, pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation.¹⁶⁰ The Department finds the differential pricing analysis used in those investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.¹⁶¹ The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts

¹⁵⁹ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).

¹⁶⁰ See, e.g., *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and the accompanying Issues and Decision Memorandum at Comment 3; and *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and the accompanying Issues and Decision Memorandum at Comment 3.

¹⁶¹ See, e.g., *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 70533 (November 26, 2013), and accompanying Issues and Decision Memorandum at Comment 2.

for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales are considered to have passed the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs (or CEPs) that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of EPs (or CEPs) that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justification in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

For Stanley, based on the results of the differential pricing analysis, the Department finds that 76.8 percent of its U.S. sales pass the Cohen's *d* test, which confirms the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.¹⁶² This finding supports consideration of the application of an average-to-transaction method to all U.S. sales. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because a 25 percent or greater relative change in the weighted-average dumping margin exists between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold.¹⁶³ Accordingly, the Department determined to use the average-to-transaction method for all U.S. sales.¹⁶⁴

U.S. Price

A. Constructed Export Price

Pursuant to section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under section 772(c) and (d) of the Act. For Stanley's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the PRC-based company by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, the Department valued these services using SVs (*see* "Factor Valuations" section below for further discussion). For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed

¹⁶² See Stanley's Preliminary Analysis Memorandum, dated concurrently with this notice ("Stanley Analysis Memo") at Attachment 2.

¹⁶³ *Id.*

¹⁶⁴ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*") in the manner described above.

description of all adjustments made to U.S. price for each company, *see* the company-specific analysis memoranda, dated concurrently with these preliminary results.

B. Value-Added Tax

The Department's recent practice in NME cases is to adjust EP or CEP for the amount of any unrefunded VAT, in accordance with section 772(c)(2)(B) or the Act.¹⁶⁵ In changing the practice, the Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly by the amount of the tax, duty or charge paid, but not rebated.¹⁶⁶ Where the irrecoverable VAT is a fixed percentage of CEP or EP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. CEP or EP downward by this same percentage.¹⁶⁷ The Department's methodology, as explained above and applied in this review, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one.

The Department requested that the sole respondent that we are calculating a margin, Stanley, report net unrefunded VAT for the subject merchandise.¹⁶⁸ Stanley reported that the official VAT rate for exports of subject merchandise is 17 percent and the refund rate is five percent, under the applicable PRC regulations.¹⁶⁹ Thus, Stanley incurred an effective VAT rate of 12 percent on exports of nails.

Because Stanley reported that it pays VAT associated with subject merchandise that is not refunded at a rate of 12 percent, the Department adjusted Stanley's net price for the unrefunded VAT, in order to calculate a CEP net of VAT.¹⁷⁰ We note that this is consistent with the Department's longstanding policy and the intent of the state, that dumping comparisons be tax-neutral.¹⁷¹

Normal Value

¹⁶⁵ *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012) ("Methodological Change").

¹⁶⁶ *See id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.

¹⁶⁷ *Id.*

¹⁶⁸ *See* the Department's November 20, 2014, AD Questionnaire.

¹⁶⁹ *See* Stanley's February 12, 2015, submission.

¹⁷⁰ *See* Stanley Analysis Memo.

¹⁷¹ *See Methodological Change, (citing Antidumping Duties; Countervailing Duties*, 62 FR27296, 27369 (May 19, 1997) and Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. I 03-316, vol. I, 827, reprinted in 1994 U.S.C.C.A.N. 3773, 4172); *see also Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2011-2012*, 78 FR 78333 (December 26, 2013) and accompanying Preliminary Decision Memorandum at Issue 9, unchanged in Final Results.

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that the respondents provide information regarding the weighted-average FOPs on a CONNUM-specific basis, either using actual quantities or develop a reasonable methodology, across all of the companies' plants and suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier.¹⁷² This methodology ensures that the Department's calculations are as accurate as possible.¹⁷³

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by the respondents in the production of nails include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on the respondents' reported FOPs for materials, energy, and labor.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by the respondents, the Department calculated NV based on the FOPs reported by these companies for the POR. The Department used Thai import data and other publicly available Thai sources in order to calculate SVs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.¹⁷⁴

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Thai import SVs a surrogate-freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and converted all applicable FOPs to a per-kilogram basis.

¹⁷² See the Department's November 20, 2014, AD Questionnaire at Section D and D-2.

¹⁷³ See, e.g., *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

¹⁷⁴ See, e.g., *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

Furthermore, with regard to the Thai import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized.¹⁷⁵ We have reason to believe or suspect that prices of inputs from India, Indonesia, and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.¹⁷⁶ Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an “unspecified” country from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.¹⁷⁷ Therefore, we have not used prices from these countries either in calculating the Thai import-based SVs or in calculating ME input values.

On August 2, 2013, the Department amended 19 CFR 351.408.¹⁷⁸ Pursuant to amended 19 CFR 351.408(c)(1), for all proceedings initiating after September 3, 2013, when a respondent sources inputs from an ME supplier and paid for the inputs in ME currency in meaningful quantities, the Department uses the actual price paid by the respondent to value those inputs, if substantially all of the factor, by total volume, is purchased from the market economy supplier.¹⁷⁹ In accordance with the amended regulation, substantially all is defined to be 85 percent or more of the total volume purchased of the factor.¹⁸⁰ Information reported by Stanley demonstrates that certain inputs were sourced and produced from an ME country and paid for in ME currencies.¹⁸¹ The information reported by Stanley also demonstrates that such inputs were purchased in significant quantities (*i.e.*, 85 percent or more) from ME suppliers. As a consequence, the Department used Stanley’s actual ME purchase prices to value these inputs. Where appropriate, freight expenses were added to the ME price of the input.

For the preliminary results, the Department used Thai Import Statistics from the GTA to value certain raw materials, byproducts, and packing material inputs that Respondents used to produce subject merchandise during the POR, except where listed below. Parties placed data from the GTA for Thailand on the record for the aforementioned items, and the GTA is a source that it regularly used by the Department because the data therein meet the Department’s SV criteria.

¹⁷⁵ See Section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015); *see also*, *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

¹⁷⁶ See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.; *Certain Lined Paper Products From Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying Issues and Decision Memorandum at 1.

¹⁷⁷ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People’s Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502 (May 10, 2005).

¹⁷⁸ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ See Stanley’s February 17, 2015, section D response at 12 and Exhibit D-6.

We valued electricity and water using values from Thai utilities. Specifically, we valued electricity using data from the Thai Board of Investment, a government agency. We valued water using a value from the Thai Metropolitan Waterworks Authority.¹⁸²

We valued brokerage and handling (“B&H”) using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport that is published in *Doing Business 2014: Thailand* by the World Bank.¹⁸³ The reported prices were contemporaneous with the POR.

We used Thai transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *Doing Business 2014: Thailand*. This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container from the largest city in Thailand to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Bangkok to the nearest seaport. We calculated a per-kilogram, per-kilometer surrogate inland freight rate based on the methodology used by the World Bank.¹⁸⁴

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.¹⁸⁵ In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A from the International Labor Organization’s (“ILO”) *Yearbook of Labor Statistics* (“ILO Yearbook”).

For these preliminary results, we valued labor using manufacturing-specific data from the quarterly-specific POR data (fourth quarter of 2013 and first, second, and third quarters of 2014) from the Government of Thailand, National Statistical Office, Labor Force Survey of Whole Kingdom, (“POR Manufacturing-Specific NSO Data”).¹⁸⁶ Although the POR Manufacturing-Specific NSO Data are not from the ILO, the Department finds that this fact does not preclude us from using this source for valuing labor. In *Labor Methodologies*, the Department decided to change to the use of ILO Chapter 6A data from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs. The Department did not, however, preclude all other sources for evaluating labor costs in NME AD proceedings. Rather, we continue to follow our practice of selecting the “best information available” to determine SVs for inputs such as labor. We find that the POR Manufacturing-Specific NSO Data are the best available information for valuing labor for this segment of the proceeding. Specifically, the POR Manufacturing-Specific NSO Data is contemporaneous with the POR and is manufacturing-specific. As stated above, the Department used Thailand data

¹⁸² For more information on the electricity and water SV calculations, *see* the Prelim SV Memo.

¹⁸³ For more information on the B&H SV calculation, *see* the Prelim SV Memo.

¹⁸⁴ For more information on the truck freight SV calculation, *see* the Prelim SV Memo.

¹⁸⁵ *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

¹⁸⁶ For more information on the labor SV calculation, *see* the Prelim SV Memo.

reported under the POR Manufacturing-Specific NSO data, which reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Additionally, where the financial statements used to calculate the surrogate financial ratios include itemized detail of labor costs, the Department made adjustments to certain labor costs in the surrogate financial ratios.

The Department's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.¹⁸⁷ Moreover, for valuing factory overhead, selling, general, and administrative ("SG&A") expenses and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.¹⁸⁸ In addition, the CIT has held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producer's experience.¹⁸⁹ To value factory overhead, SG&A expenses, and profit, the Department used the 2013 financial statements from LS Industry Co., Ltd., and the 2014 financial statements from Bangkok Fastening Co., Ltd., both of which are Thai producers of identical merchandise.¹⁹⁰

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

¹⁸⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

¹⁸⁸ See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 2; see also section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).

¹⁸⁹ See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹⁰ For more information on the surrogate financial ratios calculations, see the Prelim SV Memo.

28 AUGUST 2015
(Date)