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February 23, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Second Antidumping Duty Administrative Review

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SUMMARY

We have analyzed the case and rebuttal briefs received from Petitioner,[1] the three mandatory respondents,[2] and other interested parties[3] for the second administrative review of the antidumping duty order on certain steel nails from the People's Republic of China ("PRC").[4] In addition to the mandatory respondents, there are 15 other companies receiving a separate rate for the final results of this review.[5] As a result of our analysis, we have made changes to the Preliminary Results.[6] The period of review ("POR") is August 1, 2009, through July 31, 2010.

[1] Mid Continent Nail Corporation.
[2] 1)The Stanley Works (Langfang) Fastening Systems Co., Ltd. ("Stanley (Langfang)") and Stanley Black & Decker, Inc. ("The Stanley Works")/Stanley Fastening Systems, LP (collectively "Stanley"); 2) Tianjin Jinghai County Hongli Industry & Business Co. ("Hongli"); and 3) Tianjin Jinchi Metal Products Co., Ltd. ("Jinchi").
[3] Itochu Building Products Co., Inc., Certified Products International Inc., Chiieh Yungs Metal Ind. Corp., Huanghua Jinhai Hardware Products Co., Ltd., Shangdong Dinglong Import & Export Co., Ltd., Tianjin Zhonglian Metals Ware Co., Ltd., Hengshui Mingyao Hardware & Mesh Products Co., Ltd., Huanghua Xionghua Hardware Products Co., Ltd., Shanghai Jade Shuttle Hardware Tools Co., Ltd., Shanghai Yueda Nails Industry Co., Ltd., Shanxi Tianli Industries Co., Ltd., China Staple Enterprise (Tianjin) Co., Ltd., Qidong Liang Chyuan Metal Industry Co., Ltd., Romp (Tianjin) Hardware Co., Ltd., CYM (Nanjing) Ningquan Nail Manufacture Co., Ltd. a.k.a. CYM (Nanjing), Nail Manufacture Co., Ltd., Shanxi Pioneer Hardware Industrial Co., Ltd. and Mingguang Abundant Hardware Productions Co., Ltd. ("GDLSK Respondents") and Zhejiang Gem-Chun Hardware Accessory Co., Ltd. ("Gem-Chun").
[4] See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China, 73 FR 44961 (August 1, 2008) ("Order").
[5] These companies include: 1) Dezhou Hualude Hardware Products Co., Ltd.; 2) Hengshui Mingyao Hardware & Mesh Products Co., Ltd.; 3) Huanghua Jinhai Hardware Products Co., Ltd.; 4) Huanghua Xionghua Hardware Products Co., Ltd.; 5) Koram Panagene Co., Ltd.; 6) Qingdao D & L Group Ltd.; 7) Romp (Tianjin) Hardware Co., Ltd.; 8) Shandong Dinglong Import & Export Co., Ltd.; 9) Shanghai Curvet Hardware Products Co., Ltd.; 10)

We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum.

DISCUSSION OF THE ISSUES:

General Issues

Comment 1: Zeroing

Stanley

- In Dongbu[7] and JTEKT[8] the Federal Circuit remanded the final results to the Department to explain its position that section 771(35)(A) of the Act of 1930, as amended 19 U.S.C. 1677(35) could be interpreted to use zeroing in administrative reviews but not investigations. The Department has yet to provide an adequate explanation.
- The Department stated its intent to end zeroing in administrative reviews.[9]
- Rather than "zero" out the negative margins, the Department should use the negative margins to offset the positive margins.

Petitioner

- The Department should continue using its zeroing methodology.
- The court cases cited by Stanley do not state that zeroing is impermissible in administrative reviews, they merely require the Department provide a more complete explanation.

GDLSK Respondents

- The Department should not use the zeroing methodology.
- In JTEKT, the Federal Circuit remanded the results to the Department to explain its rationale of applying zeroing in administrative reviews. In the event the Department is required to end its use of zeroing in administrative reviews, the Department will be required to apply that decision to this review.

Department's Position: We have not changed our calculation of the weighted-average dumping margin, as suggested by the respondents, in these final results.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value ("NV") exceeds the export price or constructed export price ("EP") of the subject

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Shanghai Jade Shuttle Hardware Tools Co., Ltd.; 11) Shanghai Yueda Nails Industry Co., Ltd.; 12) Shanxi Tianli Industries Co.; 13) Tianjin Lianda Group Co., Ltd.; 14) Tianjin Universal Machinery Imp & Exp Corporation; and 15) Tianjin Zhonglian Metals Ware Co., Ltd. (collectively, "Separate Rate Respondents").

[6] See Certain Steel Nails From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review and Preliminary Intent To Rescind New Shipper Review, 76 FR 56147 (September 12, 2011) ("Preliminary Results").

[7] See Dongbu Steel Co. v. United States, 635 F.3d 1363 (CAFC 2011) ("Dongbu").

[8] See JTEKT Corp. v. United States, 642 F.3d 1378 (CAFC 2011) ("JTEKT").

[9] See Antidumping Proceedings: Calculation of Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings, 75 FR 81533 (December 28, 2010) ("Proposed Modification for Antidumping Administrative Reviews").

merchandise" (emphasis added). The definition of "dumping margin" calls for a comparison of NV and EP or constructed export price ("CEP"). Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act and 19 C.F.R. 351.414 of the Department's regulations provide the methods by which NV may be compared to EP (or CEP). Specifically, the statute and regulations provide for three comparison methods: average-to-average, transaction-to-transaction, and average-to-transaction. These comparison methods are distinct from each other, and each produces different results. When using transaction-to-transaction or average-to-transaction comparisons, a comparison is made for each export transaction to the United States. When using average-to-average comparisons, a comparison is made for each group of comparable export transactions for which the EPs (or CEPs) have been averaged together (averaging group).

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate EPs and constructed EPs of such exporter or producer." The definition of "weighted average dumping margin" calls for two aggregations which are divided to obtain a percentage. The numerator aggregates the results of the comparisons. The denominator aggregates the value of all export transactions for which a comparison was made.

The issue of "zeroing" versus "offsetting" involves how certain results of comparisons are treated in the aggregation of the numerator for the "weighted average dumping margin" and relates back to the ambiguity in the word "exceeds" as used in the definition of "dumping margin" in section 771(35)(A). Application of "zeroing" treats comparison results where NV is less than EP or CEP as indicating an absence of dumping, and no amount (zero) is included in the aggregation of the numerator for the "weighted average dumping margin". Application of "offsetting" treats such comparison results as an offset that may reduce the amount of dumping found in connection with other comparisons, where a negative amount may be included in the aggregation of the numerator of the "weighted average dumping margin" to the extent that other comparisons result in the inclusion of dumping margins as positive amounts.

In light of the comparison methods provided for under the statute and regulations, and for the reasons set forth in detail below, the Department finds that the offsetting method is appropriate when aggregating the results of average-to-average comparisons, and is not similarly appropriate when aggregating the results of average-to-transaction comparisons, such as were applied in this administrative review. The Department interprets the application of average-to-average comparisons to contemplate a dumping analysis that examines the pricing behavior on average of an exporter or producer with respect to the subject merchandise, whereas under the average-to-transaction comparison methodology the Department undertakes a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the average-to-average comparison methodology allows for an overall examination of pricing behavior on average. The Department's interpretation of section 771(35) of the Act to permit zeroing in average-to-transaction comparisons, as in this administrative review, and to permit offsetting in average-to-

average comparisons reasonably accounts for differences inherent in the distinct comparison methodologies.

Whether "zeroing" or "offsetting" is applied, it is important to note that the weighted-average dumping margin will reflect the value of all export transactions, dumped and non-dumped, examined during the POR; the value of such sales is included in the aggregation of the denominator of the weighted-average dumping margin. Thus, a greater amount of non-dumped transactions results in a lower weighted-average dumping margin under either methodology.

The difference between "zeroing" and "offsetting" reflects the ambiguity the Federal Circuit has found in the word "exceeds" as used in section 771(35)(A). Timken Co. v. United States, 354 F.3d 1334 (CAFC 2004) ("Timken"). The courts repeatedly have held that the statute does not speak directly to the issue of zeroing versus offsetting.[10] For decades the Department interpreted the statue to apply zeroing in the calculation of the weighted-average dumping margin, regardless of the comparison method used. In view of the statutory ambiguity, on multiple occasions, both the Federal Circuit and other courts squarely addressed the reasonableness of the Department's zeroing methodology and unequivocally held that the Department reasonably interpreted the relevant statutory provision as permitting zeroing.[11] In so doing, the courts relied upon the rationale offered by the Department for the continued use of zeroing, i.e., to address the potential for foreign companies to undermine the antidumping laws by masking dumped sales with higher priced sales: "Commerce has interpreted the statute in such a way as to prevent a foreign producer from masking its dumping with more profitable sales. Commerce's interpretation is reasonable and is in accordance with law."[12] The Federal Circuit explained in Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value." See Timken, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner applied by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to

[10] See PAM, S.p.A. v. United States, 265 F. Supp. 2d 1362, 1371 (CIT 2003) ("PAM") ("{The} gap or ambiguity in the statute requires the application of the Chevron step-two analysis and compels this court to inquire whether Commerce's methodology of zeroing in calculating dumping margins is a reasonable interpretation of the statute."); Bowe Passat Reinigungs-Und Waschereitechnik GmbH v. United States, 926 F. Supp. 1138, 1150 (CIT 1996) ("Bowe Passat") ("The statute is silent on the question of zeroing negative margins."); Serampore Indus. Pvt. Ltd. v. U.S. Dep't of Commerce, 675 F. Supp. 1354, 1360 (CIT 1987) ("Serampore") ("A plain reading of the statute discloses no provision for Commerce to offset sales made at {less than fair value} with sales made at fair value. . . . Commerce may treat sales to the United States market made at or above prices charged in the exporter's home market as having a zero percent dumping margin.").

[11] See, e.g., Koyo Seiko Co. v. United States, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008) ("Koyo 2008"); NSK Ltd. v. United States, 510 F.3d 1375, 1379-80 (CAFC 2007) ("NSK"); Corus Staal BV v. United States, 502 F.3d 1370, 1375 (CAFC 2007) ("Corus II"); Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (CAFC 2005) ("Corus I"); Timken, 354 F.3d at 1341-45; PAM, 265 F. Supp. 2d at 1370 ("Commerce's zeroing methodology in its calculation of dumping margins is grounded in long-standing practice."); Bowe Passat, 926 F. Supp. at 1149-50; Serampore, 675 F. Supp. at 1360-61.

[12] Serampore, 675 F. Supp. at 1361 (citing Certain Welded Carbon Steel Standard Pipe and Tube From India: Final Determination of Sales at Less Than Fair Value, 51 FR 9089, 9092 (Mar. 17, 1986)); see also Timken, 354 F.3d at 1343; PAM, 265 F. Supp. 2d at 1371.

dumped sales. See, e.g., Timken, 354 F.3d at 1343; Corus I, 395 F.3d at 1343; Corus II, 502 F.3d at 1370, 1375; and NSK, 510 F.3d at 1375.

In 2005, a panel of the World Trade Organization (WTO) Dispute Settlement Body found that the United States did not act consistently with its obligations under Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 when it employed the zeroing methodology in average-to-average comparisons in certain challenged antidumping duty investigations. See Panel Report, United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/R (Oct. 31, 2005) ("EC-Zeroing Panel"). The initial WTO Dispute Settlement Body Panel Report was limited to the Department's use of zeroing in average-to-average comparisons in antidumping duty investigations. See EC-Zeroing Panel, WT/DS294/R. The Executive Branch determined to implement this report pursuant to the authority provided in Section 123 of the Uruguay Round Agreements Act (URAA) (19 U.S.C. § 3533(f), (g)) (Section 123). See Final Modification for Investigations, 71 FR at 77722; and Antidumping Proceedings: Calculation of the Weighted – Average Dumping Margin During an Antidumping Investigation; Change in Effective Date of Final Modification, 72 FR 3783 (Jun. 26, 2007) (together, Final Modification for Investigations). Notably, with respect to the use of zeroing, the Panel found that the United States acted inconsistently with its WTO obligations only in the context of average-to-average comparisons in antidumping duty investigations. The Panel did not find fault with the use of zeroing by the United States in any other context. In fact, the Panel rejected the European Communities' arguments that the use of zeroing in administrative reviews did not comport with the WTO Agreements. See EC-Zeroing Panel at 7.284, 7.291.

Without an affirmative inconsistency finding by the Panel, the Department did not propose to alter its zeroing practice in other contexts, such as administrative reviews. As the Federal Circuit recently held, the Department reasonably may decline, when implementing an adverse WTO report, to take any action beyond that necessary for compliance. See Thyssenkrupp Acciai Speciali Terni S.p.A. v. United States, 603 F. 3d 928, 934 (CAFC 2010). Moreover, in Corus I, the Federal Circuit acknowledged the difference between antidumping duty investigations and administrative reviews, and held that section 771(35) of the Act was just as ambiguous with respect to both proceedings, such that the Department was permitted, but not required, to use zeroing in antidumping duty investigations. See Corus I, 395 F. 3d at 1347. In light of the adverse WTO Dispute Settlement Body finding and the ambiguity that the Federal Circuit found inherent in the statutory text, the Department abandoned its prior litigation position – that no difference between antidumping duty investigations and administrative reviews exists for purposes of using zeroing in antidumping proceedings – and departed from its longstanding and consistent practice by ceasing the use of zeroing. The Department began to apply offsetting in the limited context of average-to-average comparisons in antidumping duty investigations. See Final Modification for Investigations, 71 FR at 77722. With this modification, the Department's interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the URAA was specifically limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department did not, at that time, change its practice

of zeroing in other types of comparisons, including average-to-transaction comparisons in administrative reviews.[13] See id., 71 FR at 77724.

The Federal Circuit subsequently upheld the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations while recognizing that the Department limited its change in practice to certain investigations and continued to use zeroing when making average-to-transaction comparisons in administrative reviews. See U.S. Steel Corp., 621 F. 3d. at 1355 n.2, 1362-63. In upholding the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations, the Federal Circuit accepted that the Department likely would have different zeroing practices between average-to-average and other types of comparisons in antidumping duty investigations. Id., at 1363 (stating that the Department indicated an intention to use zeroing in average-to-transaction comparisons in investigations to address concerns about masked dumping). The Federal Circuit's reasoning in upholding the Department's decision relied, in part, on differences between various types of comparisons in antidumping duty investigations and the Department's limited decision to cease zeroing only with respect to one comparison type. Id., at 1361-63. The Federal Circuit acknowledged that section 777A(d) of the Act permits different types of comparisons in antidumping duty investigations, allowing the Department to make average-to-transaction comparisons where certain patterns of significant price differences exist. See id., at 1362 (quoting sections 777A(d)(1)(A) and (B) of the Act, which enumerate various comparison methodologies that the Department may use in investigations); see also section 777A(d)(1)(B) of the Act. The Federal Circuit also expressly recognized that the Department intended to continue to address targeted or masked dumping through continuing its use of average-to-transaction comparisons and zeroing. See U.S. Steel Corp., 621 F. 3d at 1363. In summing up its understanding of the relationship between zeroing and the various comparison methodologies that the Department may use in antidumping duty investigations, the Federal Circuit acceded to the possibility of disparate, yet equally reasonable interpretations of section 771(35) of the Act, stating that "{b}y enacting legislation that specifically addresses such situations, Congress may just as likely have been signaling to Commerce that it need not continue its zeroing methodology in situations where such significant price differences among the EPs do *not* exist." Id. (emphasis added).

We disagree with the respondent(s) that the Federal Circuit's decisions in Dongbu and JTEKT require the Department to change its methodology in this administrative review. These holdings were limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews, but the Federal Circuit did not hold that these differing interpretations were contrary to law. Importantly, the panels in Dongbu and JTEKT did not overturn prior Federal Circuit decisions affirming zeroing in administrative reviews, including SKF, in which the Court

[13] On February 14, 2012, in response to several WTO dispute settlement reports, the Department adopted a revised methodology which allows for offsets when making average-to-average comparisons in reviews. 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"). The Final Modification for Reviews makes clear that the revised methodology will apply to antidumping duty administrative reviews where the preliminary results are issued after April 16, 2012. Because the preliminary results in this administrative review were completed prior to April 16, 2012, any change in practice with respect to the treatment of non-dumped sales pursuant to the Final Modification for Reviews does not apply here.

affirmed zeroing in administrative reviews notwithstanding the Department's determination to no longer use zeroing in certain investigations. See SKF v. United States, 630 F.3d 1365 (CAFC 2011). Unlike the determinations examined in Dongbu and JTEKT, the Department, in these final results, provides additional explanation for its changed interpretation of the statute subsequent to the Final Modification for Investigations – whereby we interpret section 771(35) of the Act differently for certain investigations (when using average-to-average comparisons) and administrative reviews. For all these reasons, we find that our determination is consistent with the holdings in Dongbu, JTEKT, U.S. Steel, and SKF.

The Department's interpretation of section 771(35) of the Act reasonably resolves the ambiguity inherent in the statutory text for multiple reasons. First, outside of the context of average-to-average comparisons,[14] the Department has maintained a long-standing, judicially-affirmed interpretation of section 771(35) of the Act in which the Department does not consider a sale to the United States as dumped if NV does not exceed EP. Pursuant to this interpretation, the Department treats such a sale as having a dumping margin of zero, which reflects that no dumping has occurred, when calculating the aggregate weighted-average dumping margin. Second, adoption of an offsetting methodology in connection with average-to-average comparisons was not an arbitrary departure from established practice because the Executive Branch adopted and implemented the approach in response to a specific international obligation pursuant to the procedures established by the Uruguay Round Agreements Act for such changes in practice with full notice, comment, consultations with the Legislative Branch, and explanation. Third, the Department's interpretation reasonably resolves the ambiguity in section 771(35) of the Act in a way that accounts for the inherent differences between the result of an average-to-average comparison and the result of an average-to-transaction comparison.

The Department's Final Modification for Investigations to implement the WTO Panel's limited finding does not disturb the reasoning offered by the Department and affirmed by the Federal Circuit in several prior, precedential opinions upholding the use of zeroing in average-to-transaction comparisons in administrative reviews as a reasonable interpretation of section 771(35) of the Act. See, e.g., SKF USA, Inc. v. United States, 537 F. 3d 1373, 1382 (Fed. Cir. 2008); NSK, 510 F. 3d at 1379-1380; Corus II, 502 F. 3d at 1372-1375; Timken, 354 F. 3d at 1343. In the Final Modification for Investigations, the Department adopted a possible construction of an ambiguous statutory provision, consistent with the Charming Betsy doctrine, to comply with certain adverse WTO dispute settlement findings.[15] Even where the Department maintains a separate interpretation of the statute to permit the use of zeroing in certain dumping margin calculations, the Charming Betsy doctrine bolsters the ability of the Department to apply an alternative interpretation of the statute in the context of average-to-average comparisons so that the Executive Branch may determine whether and how to comply with international

[14] The Final Modification for Reviews adopts this comparison method with offsetting as the default method for administrative reviews, however, as explained in note 4 this modification is not applicable to these final results.

[15] According to Murray v. Schooner Charming Betsy, 6 U.S. 64, 118 (1804), "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country." The principle emanating from the quoted passage, known as the Charming Betsy doctrine, supports the reasonableness of the Department's interpretation of the statute in the limited context of average-to-average comparisons in antidumping duty investigations because the Department's interpretation of the domestic law accords with international obligations as understood in this country.

obligations of the United States. Neither section 123 nor the Charming Betsy doctrine require the Department to modify its interpretation of section 771(35) of the Act for all scenarios when a more limited modification will address the adverse WTO finding that the Executive Branch has determined to implement. Furthermore, the wisdom of Commerce's legitimate policy choices in this case – i.e., to abandon zeroing only with respect to average-to-average comparisons – is not subject to judicial review. Suramerica de Aleaciones Laminadas, C.A. v. United States, 966 F. 2d 660, 665 (CAFC 1992). These reasons alone sufficiently justify and explain why the Department reasonably interprets section 771(35) of the Act differently in average-to-average comparisons relative to all other contexts.

Moreover, the Department's interpretation reasonably accounts for inherent differences between the results of distinct comparison methodologies. The Department interprets section 771(35) of the Act depending upon the type of comparison methodology applied in the particular proceeding. This interpretation reasonably accounts for the inherent differences between the result of an average-to-average comparison and the result of an average-to-transaction comparison.

The Department may reasonably interpret section 771(35) of the Act differently in the context of the average-to-average comparisons to permit negative comparison results to offset or reduce positive comparison results when calculating "aggregate dumping margins" within the meaning of section 771(35)(B) of the Act. When using an average-to-average comparison methodology, see, e.g., section 777A(d)(1)(A)(i) of the Act, the Department usually divides the export transactions into groups, by model and level of trade (averaging groups), and compares an average EP or constructed EP of transactions within one averaging group to an average NV for the comparable merchandise of the foreign like product. In calculating the average EP or constructed EP, the Department averages all prices, both high and low, for each averaging group. The Department then compares the average EP or CEP for the averaging group with the average NV for the comparable merchandise. This comparison yields an average result for the particular averaging group because the high and low prices within the group have been averaged prior to the comparison. Importantly, under this comparison methodology, the Department does not calculate the extent to which an exporter or producer dumped a particular sale into the United States because the Department does not examine dumping on the basis of individual U.S. prices, but rather performs its analysis "on average" for the averaging group within which higher prices and lower prices offset each other. The Department then aggregates the comparison results from each of the averaging groups to determine the aggregate weighted-average dumping margin for a specific producer or exporter. At this aggregation stage, negative, averaging-group comparison results offset positive, averaging-group comparison results. This approach maintains consistency with the Department's average-to-average comparison methodology, which permits EPs above normal value to offset EPs below NV within each individual averaging group. Thus, by permitting offsets in the aggregation stage, the Department determines an "on average" aggregate amount of dumping for the numerator of the weighted-average dumping margin ratio consistent with the manner in which the Department determined the comparison results being aggregated.

In contrast, when applying an average-to-transaction comparison methodology, see, e.g., section 777A(d)(2) of the Act, as the Department does in this administrative review, the Department

determines dumping on the basis of individual U.S. sales prices. Under the average-to-transaction comparison methodology, the Department compares the EP or CEP for a particular U.S. transaction with the average normal value for the comparable merchandise of the foreign like product. This comparison methodology yields results specific to the selected individual export transactions. The result of such a comparison evinces the amount, if any, by which the exporter or producer sold the merchandise at an EP or CEP less than its NV. The Department then aggregates the results of these comparisons – i.e., the amount of dumping found for each individual sale – to calculate the weighted-average dumping margin for the period of review. To the extent the average NV does not exceed the individual EP or CEP of a particular U.S. sale, the Department does not calculate a dumping margin for that sale or include an amount of dumping for that sale in its aggregation of transaction-specific dumping margins.[16] Thus, when the Department focuses on transaction-specific comparisons, as it did in this administrative review, the Department reasonably interprets the word "exceeds" in section 771(35)(A) of the Act as including only those comparisons that yield positive comparison results. Consequently, in transaction-specific comparisons, the Department reasonably does not permit negative comparison results to offset or reduce other positive comparison results when determining the "aggregate dumping margin" within the meaning of section 771(35)(B) of the Act.

Put simply, the Department interprets the application of average-to-average comparisons to contemplate a dumping analysis that examines the pricing behavior, on average, of an exporter or producer with respect to the subject merchandise, whereas under the average-to-transaction comparison methodology the Department continues to undertake a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the average-to-average comparison methodology allows for a reasonable examination of pricing behavior, on average. The average-to-average comparison method inherently permits non-dumped prices to offset dumped prices before the comparison is made. This offsetting can reasonably be extended to the next stage of the calculation where average-to-average comparison results are aggregated, such that offsets are (1) implicitly granted when calculating average EPs and (2) explicitly granted when aggregating averaging-group comparison results. This rationale for granting offsets when using average-to-average comparisons does not extend to situations where the Department is using average-to-transaction comparisons because no offsetting is inherent in the average-to-transaction comparison methodology.

In sum, on the issue of how to treat negative comparison results in the calculation of the weighted-average dumping margin pursuant to section 771(35)(B) of the Act, for the reasons explained, the Department reasonably may accord dissimilar treatment to negative comparison results depending on whether the result in question flows from an average-to-average comparison or an average-to-transaction comparison. Accordingly, the Department's interpretations of section 771(35) of the Act to permit zeroing in average-to-transaction comparisons, as in the underlying administrative review, and to permit offsetting in average-to-

[16] As discussed previously, the Department does account, however, for the sale in its weighted-average dumping margin calculation. The value of any non-dumped sale is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped transactions is included in the numerator. Therefore, any non-dumped transactions results in a lower weighted-average dumping margin.

average comparisons reasonably accounts for the differences inherent in distinct comparison methodologies.

Regarding other WTO reports cited by the respondent(s) finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement, the Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA. See Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375; and NSK, 510 F.3d 1375. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of the Department's discretion in applying the statute. See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. 3533(g).

Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that any of the U.S. sales transactions examined in this review are found to exceed NV, the amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

Comment 2: Surrogate Financial Ratios

Petitioner

- The Department should use the financial statements of Sundram Fasteners Limited ("Sundram"), because Sundram is a producer of fasteners, which are comparable, and have a similar production process, to nails, using steel wire rod ("SWR") as a main input. Sundram has not received subsidies which the Department has previously found to be countervailable.
- The Department should not continue to average the financial statements of Bansidhar Granites ("Bansidhar"), Nasco Steel Pvt., Ltd. ("Nasco"), and J&K Wire and Steel ("J&K"), because two of these financial statements (Nasco's and J&K's) are for the period April 2008-March 2009, which is not contemporaneous with the POR and which was also during an economic downturn.
- Bansidhar produces less than 20 percent identical merchandise.
- Bansidhar, Nasco, and J&K, operate on a smaller scale than the mandatory respondents and thus are not suitable to use as surrogate financial companies.
- Should the Department continue to use the financial statements of Bansidhar or J&K, it should correct calculation errors.

Stanley

- The Department should continue to average the financial statements it used in the Preliminary Results, i.e., Nasco, J&K, and Bansidhar.
- The Department should not make changes to the calculation of J&K's ratio as Petitioner contends.
- The Department should not use either Lakshmi or Sundram's financial statements because both companies receive subsidies and produce merchandise unique to the automotive industry, which are not similar to nails.

GDLSK Respondents

- The Department should continue to use the financial statements of Nasco, J&K, and Bansidhar because they produce identical merchandise and consume SWR.
- Although the financial statements of Nasco and J&K are from 2008-2009, the Department favors specificity over contemporaneity because ratios, as opposed to values, are not subject to inflation.
- The argument that Bansidhar, Nasco and J&K are smaller companies compared to the respondents, and thus should not be used as surrogates, has previously been rejected by the Department.
- The Department should not use Sundram's financial statements because Sundram receives subsidies and does not produce nails; rather, Sundram produces automotive screws.
- The Department has a preference to use statements for companies producing identical merchandise over companies producing comparable merchandise.

Department's Position: In the Preliminary Results, the Department averaged the financial ratios of three Indian companies, Bansidhar, Nasco, and J&K, to obtain the surrogate financial ratios. For the final results, the Department will average the financial statements of Bansidhar and Sundram, as together they represent the best available information on the record for calculating financial ratios.

In selecting surrogate values, section 773(c)(1) of the Act, instructs the Department to use "the best available information" from the appropriate market-economy country, and section 773(c)(3)(D) of the Act states the factors of production should include "representative capital costs." In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy ("ME") surrogate companies based on the "specificity, contemporaneity, and quality of the data."[17] Further, Congress instructed the Department to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[18]

The record contains five financial statements: Bansidhar 2009-2010, J&K 2008-2009, Nasco 2008-2009, Sundram 2009-2010, and Lakshmi 2009-2010. The Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficiently reliable and representative data on the record for purposes of calculating the surrogate financial ratios.[19] The Department reviewed the financial statements for Lakshmi and determined that they received countervailable subsidies during the POR under

[17] See 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 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

[18] See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988).

[19] See, e.g., Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630 (June 28, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

programs previously investigated by the Department.[20] As a result, the Department will not use the financial statement of Lakshmi.

Because the statements from J&K and Nasco cover fiscal periods prior to the POR, and we have other statements on the record that more closely correspond to the POR, the Department will not use the J&K and Nasco statements for the final results. While we note GDLSK Respondent's cite FMTC[21] and Pure Magnesium[22] to support their argument that contemporaneity is not the only consideration in selecting surrogate values, we also note that the Department has a practice of using only contemporaneous data when there are viable financial statements from comparable producers rather than relying on non-contemporaneous data from identical or other comparable producers. Here, as discussed below, we have viable data on the record from comparable producers whose financial statements more closely corresponds to the POR and thus have no reason to use the other financial statements.[23]

Thus, two financial statements remain, those of Bansidhar and Sundram. Both are for periods that overlap the POR. Further, based on our examination of the financial statements, neither company received countervailable subsidies during the POR from programs previously investigated by the Department. While Sundram operates an auto manufacturing plant in a special economic zone ("SEZ"), and the Department has previously found the SEZ Act to be countervailable,[24] Sundram's financial statement does not identify any specific line item showing that it received SEZ benefits. Further, while the Department has found certain sections of the Income Tax Act to be countervailable,[25] the Department has not found Section 35 (2AB), the only section identified in Sundram's financial statement, to be countervailable. As such, we find that Sundram's financial statement does not give us reason to believe or suspect it received countervailable subsidies during the POR from programs previously investigated by the Department that would preclude us from using it as a surrogate company.

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[20] Specifically, the export promotion capital goods scheme. See Lakshmi's financial statement at 46; see also, e.g., Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 45034 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

[21] See Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part, 76 FR 66036 (October 25, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

[22] See Pure Magnesium From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

[23] See, e.g., Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009) , and accompanying Issues and Decision Memorandum at Comment 13.

[24] See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty New Shipper Review, 76 FR 30910 (May 27, 2011), and accompanying Issues and Decision Memorandum at Comment 4.

[25] See, e.g., Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India, 71 FR 41034 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment (IV)(A)(6). Similarly, Stanley cites to a European Union case finding certain sections of the Income Tax Act countervailable. Again, Section 35(2AB) of the Income Tax Act was not identified by the European Union.

Petitioner argues that Bansidhar's smaller size disqualifies it as a suitable surrogate because its experience does not reflect that of the respondents. As we explained in the previous administrative review, we find size alone is not a dispositive factor.[26] The Department has long found that disparate production volume alone does not render unreasonable the data from a surrogate producer.[27] Additionally, the Federal Circuit and CIT have upheld the Department's use of smaller companies because "excluding smaller companies based on distortions in economies of scale would also necessitate excluding the larger companies based on economies of scale, thereby impermissibly excluding all data from all surrogate companies."[28]

Guidance regarding surrogate values for manufacturing overhead, general expenses, and profit is provided by 19 CFR 351.408(c)(4), which states that these values will normally be based on public information from companies that are in the surrogate country and that produce merchandise that is identical or comparable to the subject merchandise.

Petitioner contends that since the majority of Bansidhar production is of comparable merchandise, i.e., bolts, we should instead consider it a producer of comparable, rather than of identical, merchandise. Often, financial statements do not contain this level of detail, rendering this analysis impossible. Thus, we have not generally based our decisions on such an analysis in the past. However, consistent with the Department's new practice, as discussed below, the Department finds it reasonable to conduct this analysis of the company's product mix at such a level of detail when the evidence on the record permits.

Although we found Bansidhar to be a producer of identical merchandise in the previous review, we have refined our practice with regard to how we determine whether a company is a producer of "identical" or "comparable" merchandise. We also note that each review stands alone.[29] In the prior review, we considered Bansidhar a producer of identical merchandise and did not draw a link between the amount of identical merchandise and the resulting ratios. However, we have now determined that where such detailed evidence is available in the record of the proceeding, we will analyze a surrogate company's product mix to make a determination of whether it is more reasonable to consider the company an "identical" producer as a whole or more reasonable

[26] See Certain Steel Nails From the People's Republic of China: Final Results of the First Administrative Review, 76 FR 16379 (March 23, 2011) ("AR1") and accompanying Issues and Decision Memorandum at Comment 3.
[27] See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (December 5, 2003) and accompanying Issues and Decision Memorandum at Comment 1 ("Simply because the production process of the surrogate producer results in smaller production volumes does not render it unfit as a surrogate."); see also Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at Comment 4 ("Regarding the petitioner's arguments about capacity, we do not believe that size or capacity of the surrogate producer always poses a necessary consideration.").
[28] See Lifestyle Enter. v. United States, 768 F. Supp. 2d 1286, 1306 (Ct. Int'l Trade 2011) citing Dorbest Ltd. v. United States, 604 F.3d 1363, 1374 (Fed. Cir. 2010).
[29] See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review 67 FR 11283 (March 13, 2002) at and accompanying Issues and Decision Memorandum at Comment 3 ("What transpired in previous reviews is not binding precedent in later reviews"). The Department's interpretation of the statute was affirmed by the CIT in Shandong Huarong Machinery Co. v. United States, 2005 CIT Lexis 57, Slip. Op. 2005-54, (May 2, 2005) ("As Commerce points out each administrative review is a separate segment of proceedings with its own unique facts").

to consider the company a producer of comparable merchandise depending on the facts of each case.

Here, the record demonstrates that Bansidhar produces bolts, nails, and wire, representing 71, 17, and 11 percent of production, respectively.[30] A similar comparison for Sundram based on production volumes is not possible due to differing units of measure reported in its financial statement. However, Sundram produces a range of products including fasteners, which we have found to be comparable merchandise and which constitute its single largest product line representing 42 percent of income,[31] and various other products such as automotive gears, shafts, pump assemblies, *etc*.[32] In evaluating the specific facts in this case, we agree with Petitioner and find that Bansidhar's financial statement reflects that of a company that primarily makes comparable merchandise with limited amounts of identical merchandise. Therefore, we find Bansidhar to be a producer of comparable, rather than identical, merchandise.

In response to respondents' arguments about whether Sundram is an appropriate producer of comparable merchandise, we note that in AR1, the record did not contain evidence that Sundram consumed SWR. In the current review we have an affidavit stating that Sundram was supplied with, and consumed, SWR to produce fasteners.[33] Drawing SWR is an integral component of the production process of the respondents. Therefore evidence on the record demonstrates that Sundram consumes SWR and we find that Bansidhar and Sundram are both producers of comparable merchandise.

Further, their financial statements are for periods that overlap the POR and do not provide evidence that either company received countervailable subsidies during the POR, from programs previously investigated by the Department. Further, consistent with Section 773(c)(3)(D), when taken together as comparable producers, these two companies' financial statements reflect a broad representation of the experience of the surrogate industry.

In summary, we find that Bansidhar's and Sundram's financial statements together constitute the best available information on the record for purposes of calculating surrogate financial ratios. With respect to Petitioner's arguments about errors in Bansidhar's ratio calculations, we agree. The Department inadvertently added the raw materials closing balance rather than subtracting it from the raw materials total. The Department also inadvertently omitted depreciation from overhead and omitted change in finished goods from the denominator of the SG&A and Interest ratio. These errors have been corrected in these final results.

Additionally, upon further review, and consistent with our use of Bansidhar's financial statement in other cases,[34] we have decided that EPF Expenses should be classified as SG&A, opening and closing stock of finished goods should be classified as trading cost & change in finished goods,

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[30] See Petitioner's Surrogate value Submission at Exhibit 2, dated October 14, 2011, identifying Sundram's range of products; see also Bansidhar's Financial Statement at 27-28.
[31] See Sundram's Financial Statement at 60.
[32] See id.
[33] See Petitioner's Surrogate Value Submission at Exhibit 6, dated October 14, 2011.
[34] See 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 (October 11, 2011).

balance written off should be classified as SG&A, and dividend received should be classified as profit.

Comment 3: Steel Wire Rod Surrogate Value

Stanley:

- The Department should value the SWR input by using Indian HTS subheading 7213.91.90, "bars and rods, in irregularly wound coils, of iron or non-alloy steel: Of circular cross-section measuring less than 14mm in diameter: Other," from Global Trade Atlas ("GTA").
- The bi-weekly data published by India's Joint Planning Committee ("JPC") is not representative of prices throughout the entire POR as it contains only eight bi-weekly observations, it arguably comprises only eight of the 365 days of the POR.

Petitioner:

- The Department should follow its practice of using the JPC data as the Department has found they best satisfy its SV selection criteria. The JPC data provides a more specific description to the wire rod consumed by Stanley during the production process of the subject merchandise.

No other party commented on this issue.

Department's Position: We agree with Petitioner. Section 773(c)(1) of the Act directs the Department to use "the best available information" from the appropriate ME country to value FOPs. In selecting the most appropriate SVs, the Department considers several factors including whether the SV is: (1) publicly available, (2) contemporaneous with the POR, (3) represents a broad market average, chosen from an approved surrogate country, (4) are tax and duty-exclusive, and (5) specific to the input.[35] 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 on a case-by-case basis.[36] As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" available SV is for each input.[37]

The JPC data provide a more specific match to the input in question (i.e., the SWR consumed by all three respondent companies had a measurement of 6.5 mm in diameter, which is extremely close to the 6mm SWR in the JPC data). Moreover, the JPC price data reflect the overall market

[35] See, e.g., First Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 64695 (October 20, 2010), and accompanying Issues and Decision Memorandum at Comment 3.

[36] 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), and accompanying Issues and Decision Memorandum at Comment 1 ("Mushrooms from the PRC"); 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.

[37] See Mushrooms from the PRC at Comment 1.

price and are maintained on a regular basis (i.e., the data represent bi-weekly average price information collected by the JPC from the steel industry).[38] The Department finds that the JPC data are representative of the prices throughout the POR, in that they contain data points for four different markets in India (Kolkata, Delhi, Mumbai and Chennai) covering bi-weekly average price reports during the POR. As to Stanley's argument that the GTA data reflect daily transactions while the JPC data only reflect information on eight of 365 days, we find that this contention is unsupported by the record. While the JPC data may indeed contain only eight data points, these observations cover a range of dates within the POR as the data is published twice each month,[39] and each data point appears to represent an average of the collected price data for the entire two-week period.[40] Lastly, as the JPC data states the prices are inclusive of excise duty and sales/VAT tax,[41] we adjusted the prices accordingly.[42]

Regarding the HTS subheading proposed by Stanley (i.e., 7213.91.90,"bars and rods, in irregularly wound coils, of iron or non- alloy steel: Of circular cross-section measuring less than 14mm in diameter: Other), we find that the JPC data is more specific to the input in question than the GTA data because the Indian HTS category under which it enters is a basket category that includes many different sizes of SWR (i.e., SWR with diameters ranging from below 14 mm), as well as steel bars, which are not used in the production process at all.

While the Department commonly uses Indian import statistics (i.e., GTA) to value inputs, we do not have a precedent of always choosing this one source over other sources. Rather, we seek to use the best available information for each input.[43] We thus find that the JPC data,[44] as used in the Preliminary Results (consistent with the Investigation[45] and AR1[46] of this same proceeding), continues to represent the best available information on the record for valuing the SWR input because it satisfies all of the Department's surrogate value selection criteria. In contrast, the alternative data proffered by Stanley is not specific to the input consumed by the respondents during the production of the subject merchandise.[47] Accordingly, we have continued to use the JPC data to value SWR in these final results.

Comment 4: Cash Deposit and Liquidation Instructions

GDLSK Respondents

[38] See GDLSK Respondents' Second Pre-Prelim Surrogate Value Rebuttal Submission, dated June 24, 2011.
[39] See id., at Exhibit 1D.
[40] See id.
[41] See id.
[42] See Memorandum to the File, through Matthew Renkey, Acting Program Manager, Import Administration, from Ricardo Martinez Rivera, International Trade Analyst: Surrogate Values for the Preliminary Results of Antidumping Duty Administrative Review of Certain Nails from the People's Republic of China, dated August 31, 2011, at Exhibit 3
[43] See Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008), and accompanying Issues and Decision Memorandum at Comment 2.
[44] The JPC is a joint industry/government board that monitors Indian steel prices.
[45] See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) ("Investigation").
[46] See AR1 and accompanying Issues and Decision Memorandum at Comment 4.
[47] See Stanley's Section D Questionnaire Response, at 14, dated February 11, 2011.

- The Department failed to list Jinchi's importer by name in its liquidation instructions.
- The Department should add the cash deposit rates assigned to Certified Product International, Inc. ("CPI")'s producers to the liquidation instructions. Additionally, the Department should insert language to the cash deposit and liquidation instructions explaining the producer's rate should apply to entries exported by CPI.
- The Department should remove CYM Nanjing from the list of companies identified as no longer having separate rates because the Department previously determined CYM Nanjing made no shipments and rescinded its review.
- The Department incorrectly identified Shanxi Tianli as Shanxi Tianli Industries Co rather than Shanxi Tianli Industries Co., Ltd.

Petitioner

- The Department should reject GDLSK Respondents' argument that CBP should be instructed to assess cash deposit rates on future entries using the rates assigned to the Chinese manufacturers rather than the rates assigned to CPI. CPI's role as the exporter must be examined in each review.

Department's Position: With respect to Jinchi's liquidation instructions, we agree with GDLSK Respondents that the importer identified in its case brief[48] should be listed in Jinchi's liquidation instructions. Jinchi identified this importer in its section C narrative.[49] The Department inadvertently did not identify this importer. This will be corrected in Jinchi's final liquidation instructions.

With respect to the company specific numbers of CPI's producers, we agree with both GDLSK Respondents and Petitioner, in part. At the Preliminary Results, we preliminary rescinded the review with respect to CPI after determining CPI made no shipments.[50] The Department finds that CPI, a Taiwanese reseller,[51] had entries from 10 combination rates assigned to it involving PRC producers and itself as the exporter. For the purposes of responding to this issue, these 10 combinations can be divided into two groups, six combinations where record evidence has been presented in the course of this review that the six Chinese producers involved in the combination had knowledge that the sales they made to CPI,[52] a Taiwanese reseller, were destined for the United States, and four other combinations. With respect to the six producers with knowledge, the Department notes that these six unaffiliated suppliers will be liquidated at the separate rate they were assigned in either the investigation or subsequent reviews, as applicable. Therefore, we will insert language in the liquidation instructions explaining that because the six Chinese

[48] For the business proprietary identification of the importer's name, see GDLSK Respondents' Case Brief, at 9, dated November 1, 2011.

[49] See Jinchi's Supplemental Section C, submitted May 16, 2011, at 16.

[50] See Preliminary Results, 76 FR at 56148.

[51] See CPI's Separate Rate Application, dated November 10, 2010. See also Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (discussing Department's reseller policy). Under the Department's reseller policy, where a producer sells goods to a reseller knowing its goods are destined for the United States, the goods are considered to be exported by the producer rather than the reseller. See id. Although the reseller policy does not apply to NME countries, CPI is a Taiwanese, i.e., market economy, company and thus subject to the reseller policy.

[52] See CPI's Response to No Shipment Supplemental Questionnaire, dated March 25, 2011, for the identification of these six producers.

producers had knowledge the sales were destined for the United States, the merchandise should be liquidated at the producers' rate, rather than CPI's rate. We agree with Petitioner that we should not insert language to this effect in the cash deposit instructions because CPI's role needs to be examined in each review.

For the entries from the four combinations that CPI did not acknowledge using during the POR, we will instruct CBP to assess antidumping duties at the rate in effect at the time of entry.

With respect to CYM Nanjing, we agree with GDLSK Respondents that at the Preliminary Results, we preliminarily indicated our intent to rescind the review[53] and continue to find for these final results that CYM Nanjing did not make shipments during the POR.[54] Therefore, the Department has not made any determination with respect to CYM Nanjing's separate rate status in this review. Accordingly, the Department is not listing CYM Nanjing among the companies that no longer have a separate rate in this review.

With respect to Shanxi Tianli, we agree with GDLSK Respondents that the Department inadvertently omitted "Ltd." In the final liquidation and cash deposit instructions, the Department will identify Shanxi Tianli as "Shanxi Tianli Industries Co., Ltd."

Company-Specific Issues

Stanley

Comment 5: Application of Partial FA or Partial AFA

Petitioner

- The Department should apply partial adverse facts available ("AFA") to the tolling FOPs Stanley was unable to obtain. The Department's preliminary solution of applying a combination of reported FOPs for missing toller's FOP data, as neutral facts available ("FA") benefits Stanley by assuming the tollers that did not report factors are just as efficient as those who did.
- Stanley requested a review and therefore failed to act to the best of its ability by not reporting all FOP data.

Stanley

- Partial AFA is not warranted in this instance because Stanley cooperated to the best of its ability by providing the majority of its tolling FOPs and documenting the reasons it was unable to do so for certain tollers.

Department's Position: We agree with Stanley. Stanley was unable to obtain a portion of galvanizing FOPs from certain galvanizing tollers as well as the FOPs from a nail toller that processed some of Stanley's wire rod into nails. In the Preliminary Results, the Department stated that for Stanley's missing FOPs from its tollers, we would apply neutral FA in accordance with section 776(a) of the Act. Further, we stated that for missing FOPs from unaffiliated

[53] See Preliminary Results, 76 FR at 56148.

[54] See Certain Steel Nails from the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review, issued concurrently with this memorandum.

suppliers, we would preliminary apply neutral FA but issue questionnaires directly to the suppliers after the Preliminary Results. Subsequent to the Preliminary Results, in a post-preliminary supplemental, Stanley demonstrated that it maintained ownership of the wire rod and paid for the processing services rather than purchasing subject merchandise from an unaffiliated supplier;[55] therefore, we did not issue any questionnaires to Stanley's nail toller. We continue to find that application of partial FA, rather than partial AFA, for the tolling FOPs Stanley was unable to obtain is appropriate.

Section 776(a)(1) and (2) of the Act provides that, if an interested party: (A) withholds information requested by the Department, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 776(b) of the Act authorizes the Department to use an adverse inference with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information. Specifically, the statute directs the Department to rely on information derived from: 1) the petition, 2) the final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record.

Consistent with our treatment of unreported FOP data from tollers in Tapered Roller Bearings,[56] and AR1,[57] the Department does not agree that Stanley's actions warrant AFA. Stanley identified all of its tollers in its questionnaire in a timely manner[58] and documented its unsuccessful attempts to obtain the tolling FOPs.[59] The Department did not find it necessary to request the missing FOP information from Stanley's tollers because we were able to use accurate data from Stanley's own experience and from Stanley's other galvanizers for this stage of production, and the portion of FOPs Stanley was unable to obtain represented only a small quantity. [60] We continue to make a distinction between tollers and unaffiliated suppliers, consistent with our reasoning in Tapered Roller Bearings and AR1, because tollers simply perform a function at one stage in the production process, whereas unaffiliated suppliers provide finished merchandise that is independently subject to the order. Finally, because Stanley documented that it attempted to obtain this information, we do not find that Stanley failed to cooperate within the meaning of Section 776(b) of the Act.

Therefore, for the semi-finished nail toller, we continue to use Stanley's own production data as Stanley produces the same nails. For the galvanizing FOPs Stanley was unable to obtain, we will continue to use the reported FOPs from Stanley's reported galvanizers because Stanley did not perform any galvanizing itself.

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[55] See Stanley's Post-preliminary Supplemental Response, dated September 26, 2011.
[56] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009), and accompanying Issues and Decision Memorandum at Comment 4.
[57] See AR1 and accompanying Issues and Decision Memorandum at Comment 17.
[58] See Stanley's Section A Questionnaire Response at Exhibit A-26, dated January 21, 2011.
[59] See Stanley's Supplemental Section D at 1-8, dated May 6, 2011.
[60] For the business propriety discussion of the percentage of tolling FOPs that Stanley was unable to obtain, see Memorandum to the File, from Alexis Polovina, Senior Analyst, Stanley's Percentage of Missing Toller Factors.

Comment 6: Stanley's Surrogate Values

A. Copper Plated Steel Welding Wire

Stanley

- The Department should use Indian import data from the GTA for HTS 7217.30.20 "Wire, Iron or Non-Alloy Steel, Plated or Coated with Other Base Metals: Of a Thickness above 18 SWG but up to 26 SWG," instead of HTS 7229.90.16, because Stanley reported it consumed copper-coated wire of non-alloy steel of a thickness between 21 and 23 Standard Wire Gauge.

Petitioner

- The Department should continue to value Stanley's copper plated steel welding wire with GTA for HTS 7229.90.16, "Wire of Alloy Steel, O/T Stainless, Copper Coated Wire, Not Insulated," because Stanley did not provide any proof demonstrating HTS 7217.30.20 better represents Stanley's welding wire input.

Department's Position: We have followed the surrogate value selection criteria as outlined above in Comment 3 for this and all surrogate values discussed below and continue to find that HTS 7229.90.16 best represents the copper plated steel welding wire consumed by Stanley.

Stanley reported that it consumed "copper-plated, non-alloy steel welding wire….of a thickness between 0.60 mm (23 Standard Wire Gauge ("SWG")) and 0.76 mm (21 SWG)."[61] We find that HTS 7229.90.16, "Wire of Alloy Steel, O/T Stainless, Copper Coated Wire, Not Insulated," best matches Stanley's input of steel wire because it specifically pertains to steel wire coated with copper. Consistent with AR1,[62] we continue to find that HTS 7217.30.20 does not offer a better match for Stanley's wire because it could pertain to iron wire rather than steel wire, and the coating could be of a metal other than copper. Although HTS 7217.30.20 identifies the thickness of the wire, HTS 7229.90.16 is a better match because it specifically identifies steel wire and copper coating which Stanley consumed in its production process.

B. Sodium Sulfate

Stanley

- The Department should use Indian import data from the GTA for HTS 2833.19.10 "Sodium hydrogen sulphate (acid sulphate)," instead of HTS 2833.19.90.

No other party commented on this issue.

Department's Position: We agree with Stanley. Stanley provided the chemical formula for the sodium sulfate used by Stanley, $NaHSO_4$,[63] and based on this description, HTS 2833.19.10 "Sodium hydrogen sulphate (acid sulphate)," appears to be a more accurate description of the sodium sulfate consumed by Stanley than HTS 2833.19.90 "Other sodium sulphates." Therefore, for the final results, we have valued sodium sulfate using HTS subheading 2833.19.10 as the best available information.

[61] See Stanley's Section D Questionnaire Response, at 19, dated February 11, 2011.
[62] See AR1 and accompanying Issues and Decision Memorandum at Comment 6A.
[63] See Stanley's Section D Questionnaire Response, at 34, dated February 11, 2011.

C. Glass Balls

Stanley

- The Department should weight-average the GTA for HTS 7002.10.00 "Glass in balls (other than microspheres of heading 7018)" with the GTA for HTS 7018.20.00 "Glass microspheres not exceeding 1mm diameter," because Stanley consumed three different size ranges of glass balls.

Petitioner

- The Department should continue to value glass balls with the GTA for HTS 7002.10.00 because there is no evidence on the record supporting Stanley's claim that it consumed different sizes of glass balls.

Department's Position: We agree with Stanley. Stanley explained in its narrative that it consumed glass balls of sizes ranging from 0.8-5mm, in the following percentages 0.8-1mm = 30 percent, 1-2mm = 50 percent, and 4-5mm = 20 percent. [64] As 30 percent of the glass balls consumed by Stanley were less than 1mm, the Department has determined that Stanley's suggestion of weight-averaging HTS 7018.20.00 "Glass microspheres not exceeding 1mm diameter," with HTS 7002.10.00 "Glass in balls (other than microspheres of heading 7018)" better matches the glass balls consumed by Stanley. Therefore, for the final results, the Department has weight-averaged HTS 7002.10.00 with HTS 7018.20.00. However, in future reviews, we will require Stanley to break out glass balls into different FOPs by size.

D. Plastic Film

Stanley

- The Department should use Indian import data from the GTA for HTS 3920.10.12 "Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene: sheets of polyethylene: flexible, plain," instead of HTS 3920.

No other party commented on this issue.

Department's Position: We agree with Stanley. Stanley reported the plastic film it consumed during the POR consisted of large, plain, and colorless sheets of polyethylene.[65] HTS 3920.10.12 "Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene: sheets of polyethylene: flexible, plain," appears to be a more accurate description than HTS 3920 "Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials," of the plastic film consumed by Stanley because HTS 3920 includes other materials Stanley did not report consuming. Therefore, for the final results we have valued plastic film using HTS subheading 3920.10.12 as the best available information.

E. Plastic Strapping

Stanley

[64] See id. at 35.
[65] See id. at 59.

- The Department should use Indian import data from the GTA for HTS 3920.20.20 "Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of propylene: flexible, plain," instead of HTS 3921.90.99.

No other party commented on this issue.

Department's Position: We agree with Stanley. Stanley reported that it consumed plastic strapping made from polypropylene.[66] HTS 3920.20.20 "Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of propylene: flexible, plain," appears to be a more accurate description than HTS 3921.90.99 "Other plates, sheets, film, foil and strip: other: other," because HTS 3920.20.20 specifically includes polymers of propylene. Therefore, for the final results we have valued plastic strapping using HTS subheading 3920.20.20 as the best available information.

Comment 7: Foreign Inland Freight

Stanley

- The Department double counted Stanley's foreign inland freight by deducting this field from U.S. price because Stanley reported all freight costs, including foreign inland freight, in the international freight field.

No other party commented on this issue.

Department's Position: We agree with Stanley. Stanley explained that its transportation expenses were handled by two market economy companies which provided door-to-door service.[67] All movement costs were calculated by aggregating the freight forwarding invoices and distributing them among international freight, brokerage and handling, U.S. inland freight, and U.S. duty.[68] Therefore, for the final results we have removed the inland fright cost (the distance from plant to port multiplied by the truck surrogate value).

Hongli

Comment 8: Application of Partial FA or Partial AFA

Petitioner

- Hongli failed to cooperate to the best of its ability as Hongli's supplier submitted the FOPs for its cut plate masonry nails only after it was apparent that the Department could use a finished nail (i.e., higher value) surrogate value to value these nails. Therefore, the Department should apply partial AFA to these purchased nails.

Hongli

[66] See id. at 61.
[67] See id. at 2-4.
[68] See id. at 43-51.

- Hongli's supplier submitted a complete and timely response to the Department's post-Preliminary Results questionnaire.
- Petitioner has neither challenged the veracity or completeness of this response, nor did it raise any issues with regard to this response in its case brief.

Department's Position: In the Preliminary Results, the Department stated that because Hongli documented its attempts to obtain the FOPs from its unaffiliated supplier, but was unable to obtain the information,[69] the Department applied neutral FA for certain purchased nails.[70] As neutral FA, the Department applied the weighted average margin of Hongli's other U.S. sales, as it did not produce these nails in-house. In addition, the Department also stated that it intended to issue a questionnaire directly to the unaffiliated producer and request the missing FOP data.[71] Subsequent to the Preliminary Results, at the Department's request, Hongli's supplier submitted timely and complete FOP data for these purchased nails.[72] Moreover, as Hongli states, Petitioner did not challenge the completeness or accuracy of this response either through deficiency comments or though its case briefs. Therefore, we determine that the use of facts otherwise available is not warranted pursuant to Section 776(a) of the Act (noted above in Comment 5). The Department now has the requested FOP data on the record, which it is able to use to value the cut plate masonry nails Hongli sold during the POR.

Comment 9: Steel Plate Surrogate Value

Hongli

- The Department should value steel plate used by Hongli's supplier to produce masonry nails using a value from the Joint Plant Committee ("JPC") in India, a reliable source meeting the Department's selection criteria, which the Department has relied upon in prior segments of this proceeding.
- For the initial four months of the POR (as JPC data is absent), the Department should value the steel plate using Steelworld prices as: (1) Steelworld prices track JPC prices in those months where the two sources overlap; and (2) Steelworld prices were placed on the record by Petitioner.
- The Department should not use the GTA India import data for plate classified under HTS 7208.53.10, as this value is twice that of the other sources on the record and thus aberrationally high because it's twice that of the other sources on the record. Further, this data is comprised of imports from only one country that Hongli claims is known for producing high-end specialty steel.
- All the other sources on the record corroborate the JPC and Steel world prices and not the GTA data.

Petitioner

- The Department should not utilize the JPC and Steelworld data to value steel plate because this data encompasses products dissimilar from what was used to produce the

[69] We note that Hongli attempted to submit these FOPs prior to the Preliminary Results, but the Department rejected the submission as untimely and unsolicited.
[70] See Preliminary Results, 76 FR at 56149.
[71] See id.
[72] See Hongli's Supplier's response, dated September 28, 2011.

masonry nails. Instead the Department should utilize the GTA Indian import data which covers imports of the steel plate used by Hongli's supplier more precisely.

- The corroborative data Hongli placed on the record are of little probative value and/or aberrational in nature because they are for products dissimilar to the steel plate actually used.

Department's Position: As noted above in Comment 8, for the final results, we are valuing Hongli's masonry nails using the submitted FOPs from its supplier, of which the main input is cut steel plate. As such, Section 773(c)(1) of the Act directs the Department to use "the best available information" from an appropriate market-economy country to value FOPs. In selecting the most appropriate SV, the Department considers several factors including whether the SV is: publicly available, contemporaneous with the POR, represents a broad market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.[73] The Department's preference is to satisfy the breadth of the aforementioned selection criteria. 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.[74] As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available surrogate value for each input.[75] In addition, it is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternatives only when a suitable value from the primary surrogate country does not exist on the record.[76] In this review, the record contains a suitable value for cut plate from the primary surrogate country, India.

Specifically, in this review, parties have proposed using three sources from the primary surrogate country, India, to value steel cut plate: Joint Plant Committee ("JPC"); Steelworld data (proposed by Hongli); and GTA India Import (proposed by Petitioner). With regard to the JPC data, the Department determines that all three sources: 1) are publicly available, 2) represent a broad market average, 3) are tax-exclusive, and 4) are contemporaneous with the POR.

[73] See, e.g., First Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 64695 (October 20, 2010), and accompanying Issues and Decision Memorandum at Comment 3 ("Sodium Hex").

[74] See Certain Preserved Mushrooms from the PRC: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1 ("Mushrooms from the PRC"); see also Freshwater Crawfish Tail Meat from the PRC; 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.

[75] See Mushrooms from the PRC and accompanying Issues and Decision Memorandum at Comment 1.

[76] See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment IV; See also Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 3.

With respect to specificity, Hongli's supplier reported that it purchased and used cut steel plate of a certain thickness to make the subject merchandise.[77] See Hongli Analysis Memo for business proprietary information ("BPI") details regarding this issue. Therefore, the Department disagrees with Hongli that JPC and Steelworld data for cut steel plate are specific to the input in question because these sources are for significantly thicker cut steel plate than what Hongli's supplier used to make the subject merchandise. Thus, the Department finds that the JPC and Steelworld data are not the best sources available on the record to value steel cut plate. The Department also notes that the other sources on the record, which Hongli suggests corroborate the JPC and Steelworld data, have no probative value as the data are: 1) for hot rolled plate of an unknown thickness (Europe MEPS, World HR Steel Plate, and India MEPS); 2) export values (GTA Germany)[78]; and/or 3) from or including countries outside the approved surrogate country list (US import data, GTA Germany, Europe MEPS, and World HR Steel Plate). With regard to the corroborative value of the Philippine import data respondents used as a benchmark against the Indian GTA value, the Department notes that even though it is from an approved surrogate country and specific to the input, the record does not contain similar information from other countries on the approved surrogate country list (i.e., Indonesia, Thailand, Ukraine, and Peru), for cut steel plate of the proper thickness. Thus, we have a one-to-one comparison between the Indian GTA data and the Philippine GTA data and, given this set of facts, the Department is unable to draw any definitive conclusion indicating that the Indian GTA value may be aberrationally high when the only viable comparison is between two data points.[79] Moreover, it is the Department's practice to rely on data from the primary surrogate country wherever possible.

With regard to the GTA India import data, we note that the data are: 1) publicly available, 2) tax-exclusive, and 3) contemporaneous with the POR. With regard to broad market average, although we agree that the GTA import data is from one country, we note that it represents nation-wide data and thus reflects a broad market average. With regard to specificity, we find that Hongli has failed to demonstrate that the GTA Indian data is inclusive of specialty steel and thus not representative of the input used by Hongli. In fact, Hongli stated that the masonry nails it sold used medium carbon steel of a higher quality than that used in the nails it produced in-house using low carbon steel.[80] In addition, and more importantly, the description of the HTS number[81] for the GTA India data states that the data are for products with a thickness range that matches the plate used by Hongli's supplier.[82] Thus, the Department finds that the GTA Indian import data for HTS data 7208.53.10 are specific to the input, and given the above discussion, finds this source the most suitable value with which to value the steel cut plate used by Hongli's supplier.

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[77] See Analysis of the Final Results of the Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Tianjin Jinghai County Hongli Industry and Business Co., Ltd. ("Hongli"), dated February 9, 2012 ("Hongli Analysis Memo").

[78] The Department notes that it has rejected similar export data for benchmarking purposes. See, e.g., Shanghai Eswell Enter. Co. v. United States, 31 C.I.T. 1570 (Ct. Int'l Trade 2007).

[79] See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011) and accompanying Issues and Decision Memorandum at Comment 12.

[80] See Hongli's February 11, 2011, submission (re-filed on April 29, 2011) at questions 6-8.

[81] See Hongli's June 24, 2011, submission at Exhibit 4.

[82] See Hongli's Supplier's response dated September 28, 2011, at Exhibit 5.

Comment 10: Shrink Wrap Surrogate Value

Hongli

- The Department inadvertently valued shrink wrap using the surrogate value for plastic strap.

No other party commented on this issue.

Department's Position: We agree with Hongli and have corrected the valuation of shrink wrap.

Comment 11: Pallet Surrogate Value

Hongli

- The Department incorrectly valued pallets on a per piece basis instead of a per kilogram basis.

No other party commented on this issue.

Department's Position: We agree with Hongli and have corrected the conversion rate for pallets.

Jinchi

Comment 12: Application of Partial FA or Partial AFA

Jinchi

- The Department should continue to apply neutral FA to processing operations performed by Jinchi's tollers.
- Concerning the use of partial AFA for Jinchi's missing FOPs from its unaffiliated supplier of masonry nails, Jinchi contends that the Department, consistent with NWR,[83] should continue to use neutral FA.

Petitioner

- The application of neutral FA to gap-fill for missing FOP data improperly assumes that the missing producers have identical consumption rates as those of the individual mandatory respondents.
- Petitioner contends that the Department should apply partial AFA to the masonry nails sold by Jinchi to the United States. Citing Creatine,[84] the Petitioner argues that Jinchi's unaffiliated supplier of masonry nails failed to provide the FOP data requested by the Department, and thus, have not acted to the best of its ability.

Department's Position: In the Preliminary Results, the Department stated that for Jinchi's missing FOPs from tollers, as well as for Jinchi's missing FOPs from its unaffiliated supplier of

[83] See Narrow Woven Ribbons with Woven Selvedge from Taiwan: Notice of Final Determination of Sales at Less Than Fair Value, 75 FR 41804 (July 19, 2010), and accompanying Issues and Decision Memorandum at Comment 19 ("NWR").

[84] See Creatine Monohydrate from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 71104 (December 20, 1999), and accompanying Issues and Decision Memorandum at Comment 2 ("Creatine").

masonry nails, we would apply neutral FA in accordance with section 776(a) of the Act. Further, we stated that for the missing FOPs from the unaffiliated supplier of masonry nails, we would preliminarily apply neutral FA but issue a questionnaire directly to the supplier after the Preliminary Results. Subsequent to the Preliminary Results, in a post-preliminary supplemental, Jinchi's unaffiliated supplier responded that it was unable to provide such information.[85] In reaching our determination on whether to apply neutral FA or AFA to Jinchi, we followed the statutory provisions outlined above in Comment 5. This issue for Jinchi thus involves two parts: 1) whether to apply FA or AFA for Jinchi's unreported tolling FOPs; and 2) whether to apply FA or AFA for the missing FOPs from Jinchi's supplier of subject plate-cut masonry nails.

Consistent with our treatment of unreported FOP data from tollers[86] in Tapered Roller Bearings,[87] and AR1,[88] the Department does not agree that Jinchi's actions warrant AFA. Jinchi identified all of its tollers in its questionnaire in a timely manner[89] and documented its unsuccessful attempts to obtain the tolling FOPs.[90] We did not find it necessary to request the missing FOP information from Jinchi's tollers because as explained above in Comment 5, we continue to make a distinction between tollers and unaffiliated suppliers, consistent with our reasoning in Tapered Roller Bearings and AR1. Tollers simply perform a function at one stage in the production process, in contrast to unaffiliated suppliers who provide finished merchandise that is independently subject to the order. Finally, because Jinchi documented that it attempted to obtain this information, we do not find that Jinchi failed to cooperate within the meaning of Section 776(b) of the Act.

However, with respect to the unreported FOPs for the masonry nails, we agree with Petitioner that partial AFA is appropriate. We note that there are no FOP data on the record for the masonry nails produced by Jinchi's unaffiliated supplier. Thus, necessary information is missing from the record within the meaning of Section 776(a) of the Act. In this regard, the Department reiterates that it is crucial for suppliers of subject merchandise to provide their own FOP data because suppliers actually provide finished merchandise independently subject to the Order, in contrast to tollers who only perform a process at one stage of the production. Additionally, the Department is not persuaded an identical fact pattern exists between NWR and the instant case. Specifically, the Department did not have the same time constraints in this case as it did in NWR, and the Department also issued the antidumping questionnaire directly to Jinchi's unaffiliated supplier of masonry nails. Moreover, the Department finds that Jinchi's unaffiliated supplier is an interested party to this proceeding as discussed in Creatine and TRB11. By not providing the requested data after the Department requested the information directly from it, this interested party has failed to cooperate to the best of its ability within the meaning of Section 776(b) of the Act. Therefore, for the final results, the Department will not apply neutral facts available for the masonry nails purchased by Jinchi. Instead, the Department will apply AFA for the masonry nails purchased by Jinchi, using as the AFA rate the highest calculated NV for

[85] See Letter from GDLSK, dated September 28, 2011.
[86] The processes performed by Jinchi's tollers include: wire-drawing, galvanizing, and semi-finished nail making.
[87] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009), and accompanying Issues and Decision Memorandum at Comment 4.
[88] See AR1 at Comment 17.
[89] See Jinchi's Supplemental Section A Questionnaire Response at Exhibit 13, dated April 7, 2011.
[90] See Jinchi's Supplemental Section C&D at Exhibits 17-19, dated May1 6, 2011.

subject nails. The Department notes that there is a similar fact pattern to that of Honey[91] in which the respondent's unaffiliated beekeeper failed to provide the Department with the requested cost of production information. In Honey, the Department applied the highest cost of production in the record to the respondent's unaffiliated beekeeper as partial AFA. Similarly, for the final results, the Department is using the highest calculated NV for subject nails as the AFA plug for Jinchi's purchased masonry nails.

Comment 13: Sawdust

Jinchi

- The Department should correct an error in its calculation of Jinchi's margin by using the correct SV to calculate saw dust.

No other party commented on this issue.

Department's Position: We agree with Jinchi. Specifically, the Department inadvertently valued HTS subheading 3403.99.00: "Other Lubricating Preparations," to calculate Jinchi's consumption of sawdust. Therefore, for the Final Results, the Department will value HTS subheading 4401.30: "Sawdust and Wood Waste and Scrap," to calculate Jinchi's consumption of sawdust.

Comment 14: Sigma Cap Distances

Jinchi

- The Department should correct a clerical error in its calculation of Jinchi's margin by using the sigma cap freight distances for several FOPs.

No other party commented on this issue.

Department's Position: The Department disagrees with Jinchi, in part. In calculating the freight rate for SVs based on import data, the Department uses the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, in accordance with court decision in Sigma Corp. v. United States, 24 C.I.T. 97, 86 F. Supp 2d 1344 (CIT 2000) ("Sigma"). However, pursuant to Department practice,[92] for surrogate values that were not based on import data, we did not apply the sigma cap.

Eight of the freight calculations involved SVs based on import data.[93] The Department hereby acknowledges that we inadvertently miscalculated the freight distances because we used the

[91] See Honey from Argentina: Final Results of Antidumping Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 72 FR 25245 (May 4, 2007), and accompanying Issues and Decision Memorandum at comment 3 ("Honey").

[92] See Saccharin from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 68 FR 27530 (May 20, 2003), and accompanying Issues and Decision Memorandum at Comment 4.

[93] The eight freight calculations for which the Department used surrogate values based on import data are as follows: MIDBSWR_FREIGHT; SAWDUST_FREIGHT; WAXPAPER_ FREIGHT; PBANDING_FREIGHT; PALLETKG_FREIGHT; PLYWOODCOVER_FREIGHT; PLYWOODPOLE_FREIGHT; and PCONNER_FREIGHT.

actual freight distance in lieu of the sigma capped freight distance. Therefore, for the Final Results, the Department will use the sigma capped freight distances for these eight instances.

Conversely, the Department did not use import data for the remaining three[94] freight calculations. As such, it is Department practice not to apply the sigma capped freight distance for freight calculations whose surrogate value is derived from domestic surrogate country data (e.g., JPC, Indian Bureau of Mines). Therefore, for the Final Results, the Department will continue to use the actual freight distances for these three freight calculations whose surrogate value is derived from domestic surrogate country data.

Gem-Chun

Comment 15: No Shipments

Gem-Chun

- The Department preliminarily rescinded the review with respect to Gem-Chun because Gem-Chun certified it made no shipments during the POR. However, the Department incorrectly stated Gem-Chun is part of the PRC-wide rate because it did not file a separate rate certification.

No other party commented on this issue.

Department's Position: We agree with Gem-Chun. In the Preliminary Results, the Department incorrectly stated that Gem-Chun is part of the PRC-wide entity.[95] In this review the Department has determined that Gem-Chun had no shipments of subject merchandise during the POR and is rescinding the review.

[94] The three freight calculations for which the Department used surrogate values based on domestic surrogate country data are as follows: SWR_FREIGHT; MCARBSWR_FREIGHT; and COAL_FREIGHT.

[95] See Preliminary Results, 76 FR at 56151.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
Paul Piquado
Assistant Secretary
for Import Administration

_____
Date