



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-909

AR: 8/01/11-7/31/12

Public Document

E&C/V: MR, JB

March 31, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Senior Advisor
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 Fourth
Antidumping Duty Administrative Review

Summary

The Department of Commerce ("Department") analyzed the comments submitted by Petitioner,¹ mandatory respondents,² and other interested parties³ in the fourth administrative review of the antidumping duty order on certain steel nails from the People's Republic of China ("PRC"). Following the *Preliminary Results*⁴ and the analysis of the comments received, we made changes to the margin calculations for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Background

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the

¹ Mid Continent Nail Corporation ("Petitioner").

² The Stanley Works (Langfang) Fastening Systems Co., Ltd. ("Stanley Langfang"), and Stanley Black & Decker, Inc. ("SBD") (collectively, "Stanley"), and Qingdao JISCO Co., Ltd. and ECO System Corporation (d/b/a JISCO Corporation) (collectively, "JISCO"), collectively ("Respondents").

³ Certified Products International Inc. ("CPI") and China Staple Enterprise (Tianjin) Co. ("China Staple").

⁴ See *Certain Steel Nails from the People's Republic of China: Preliminary Results of the Fourth Antidumping Duty Administrative Review*, 78 FR 56861 (September 16, 2013) ("*Preliminary Results*") and accompanying Preliminary Decision Memorandum.



closure of the Federal Government from October 1, through October 16, 2013.⁵ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.⁶ After the *Preliminary Results*, parties submitted surrogate value ("SV") comments and rebuttal comments on October 31, 2013, and November 12, 2013, respectively. Parties also submitted case and rebuttal briefs on all issues not relating to JISCO on December 18, 2013, and December 23, 2013, respectively. Between January 6, 2014, and January 11, 2014, we conducted a verification of JISCO and subsequently issued our verification report.⁷ Parties submitted case and rebuttal briefs on all JISCO-related issues on February 27, 2014, and March 4, 2014, respectively. On January 23, 2014, the Department extended the deadline in this proceeding by 60 days.⁸ The revised deadline for the final results of this review is now March 31, 2014.

Scope of the Order

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

Excluded from the scope of this order are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: 1) Non-collated (*i.e.*, hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail,

⁵ See Memorandum for the Record from Paul Piquado, Assistant Secretary for the Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

⁶ See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended*, 70 FR 24533, 24533 (May 10, 2005).

⁷ See Memorandum to the File, from Javier Barrientos, Senior Case Analyst, Office V, and Susan Pulongbarit, Senior Case Analyst, Office V, "Verification of the Sales and Factors of Production of Qingdao JISCO Co., Ltd.; JISCO Corporation & ECO System Co., Ltd (collectively, "JISCO") in the Antidumping Duty Review of Certain Steel Nails from the People's Republic of China ("PRC")," dated February 19, 2014.

⁸ See Memorandum to Gary Taverman, "Certain Steel Nails from the People's Republic of China: Extension of Deadline for Final Results of the Fourth Antidumping Duty Administrative Review," dated January 23, 2014.

having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; and an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive; 2) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive; 3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive; an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive; and 4) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive.

Also excluded from the scope of this order are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this order are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this order are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

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

Discussion of the Issues:

General Issues

Comment 1: SV for Steel Wire Rod

JISCO

- Use the two September 2013 price quotes from Tata Steel Limited (Thailand) (“Tata Steel”) (deflated) to value steel wire rod (“SWR”) as they are more size and carbon content specific, and are corroborated by Thai export data.
- Do not use the Thai Global Trade Atlas (“GTA”) data as they are basket categories (<14mm and broad carbon/silicon content bands).
- If Thai GTA data are used, do not use the overly broad 2011 data, and only use the 2012 data that are more specific in terms of carbon/manganese content. For example, the 2011 data for medium carbon SWR contained a single harmonized tariff schedule (“HTS”) subheading reflecting a carbon content range of 0.25 to 0.65 percent, while the 2012 data reflect narrower

carbon content ranges, *i.e.*, 0.18 to 0.40, 0.40 to 0.45, 0.45 to 0.50, and 0.55 to 0.60 percent carbon.

Stanley

- Only objected to one HTS category (7213.91.00.090 “Other”) within the Thai GTA data, arguing that it was a basket category containing SWR of varying carbon content and not specific to Stanley’s use.

Petitioners

- Continue using the contemporaneous 11 digit HTS Thai GTA data as in the *Preliminary Results*, but use only the HTS numbers that are specific to that which Respondents used.
- For 2012 low carbon SWR, do not use the 2012 HTS data the Department used in the *Preliminary Results*, as none of those HTS categories capture the silicon requirement of the Respondents. Instead, use the Thai GTA HTS 7213.91.00.090 “Other,” as this HTS must capture the products not captured by the other HTS categories with respect to silicon and carbon content (*i.e.*, that used by Respondents).
- JISCO has not shown that the 2011 portion of the Thai GTA data are not usable, and excluding this part of the data will distort the resultant SV.
- Do not use the Tata Steel price quotes as they are not actual prices, not broad-market averages, and not contemporaneous with the period of review (“POR”).
- The Thai export data analysis that supposedly corroborates the price quotes is incomplete and not probative to prices paid in Thailand.

Department’s Position: In valuing factors of production (“FOPs”), section 773(c)(1) of the Tariff Act of 1930, as amended, (“Act”) instructs the Department to use “the best available information” from the appropriate market economy country. As steel nails are made from drawn SWR, this steel input constitutes most of the material cost and is the most important factor in the proper valuation of steel nails.⁹ When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.¹⁰ Below, we have used these criteria to examine the Thai GTA data and the Tata Steel price quotes to determine which of these sources represents the best available data to value the respondents’ SWR.

Regarding the Tata Steel price quotes, we note that they are tax and duty exclusive and from Thailand, a surrogate country that is a significant producer and at the same level of economic development as the PRC. With regard to public availability, we note that these price quotes were obtained by JISCO Corporation (nails producer and respondent) and from CHEP Asia (an affiliate of CHEP USA, a customer of JISCO during the POR).¹¹ Although the price quotes were

⁹ See Memorandum to the File, Final Results Analysis Memorandum for Stanley, (March 31, 2014) (“Stanley Final Analysis Memo”) at Exhibit 4; *see also* Memorandum to the File, Final Results Analysis Memorandum for JISCO (“JISCO Final Analysis Memo”) (March 31, 2014) at Exhibit 4.

¹⁰ See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006) (“CLPP”), and accompanying Issues and Decision Memorandum at Comment 3.

¹¹ See JISCO’s October 31, 2013, submission at Exhibits 1 and 2.

obtained by a nails producer and a nails customer, nothing in the quotes or on the record indicates that they could not be obtained by a member of the public. Thus, we find these price quotes to be publicly available.

With regard to specificity, we first note that JISCO's sources requested price quotes from Tata Steel for 6.5mm SWR with a carbon content of 0.17 percent for low carbon and 0.43 percent for medium carbon.¹² In response, Tata Steel supplied two price quotes encompassing four price listings for 5.5mm wire rod: one low carbon listing (0.13-0.18 percent carbon); and three medium carbon listings (one 0.34-0.41 percent, and two for 0.39-0.46 percent carbon).¹³ With regard to the single low carbon price listing, we note that the carbon range falls within that of both respondents.¹⁴ With regard to medium carbon, the two common price listings (*i.e.*, 0.39-0.46 percent) match one of the Respondents and all three price listings cover the other Respondent.¹⁵ With regard to diameter, the Tata price quotes do not cover either of the Respondents for either low or medium carbon SWR.¹⁶ Thus, given the lack of coverage with respect to diameter for both respondents, we find that the Tata price quotes are not specific to that used by respondents. We note that JISCO submitted some Thai export data to corroborate the price quotes. However, the analysis JISCO undertook relies on partial data for a subset of HTS numbers. Moreover, the export data are not probative to the prices paid by Thai producers because the export data reflect the volume and values of products that have left the country inclusive of movement expenses and are not necessarily prices that Thai producers received.

With regard to broad market average, as stated above, JISCO submitted only two price quotes from the same producer. Although JISCO argues Tata Steel is the only medium carbon SWR producer in Thailand, and thus the only domestic source for medium carbon SWR, the only record evidence supporting this is a statement in an affidavit.¹⁷ Moreover, the affidavit regarding the price quote for low carbon SWR, which is used to larger extent than medium carbon SWR by both Stanley and JISCO, does not make the same definitive statement.¹⁸ In addition, JISCO's submitted price quotes only have one listing for low carbon, and as noted above, low carbon SWR is the input used to produce the vast majority of the products for the largest respondent, Stanley.¹⁹ Moreover, these price quotes encompass only two days of data within a week of each other. Given this, we do not find that JISCO's submitted price quotes are a broad market average as they are from a single producer and from only two days for medium carbon and only one day for the low carbon. Moreover, with regard to contemporaneity, we note that the price quotes are dated in September 2013 (a year after the end of the POR). Thus, we do not find the price quotes contemporaneous with the POR.

¹² *Id.*

¹³ *Id.*

¹⁴ See BPI Memorandum for the Final Results, dated March 31, 2013.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See JISCO's October 31, 2013, submission at Exhibit 1. The affidavit indicates that this assertion was based upon research; however, any such research was not submitted on the record of this review.

¹⁸ *Id.* at Exhibit 2.

¹⁹ See Stanley's January 18, 2013, Section D Response at 23.

Finally, we note that the Department has a strong preference not to rely on price quotes for factor valuation purposes because such quotes do not represent actual transaction prices.²⁰ The Department further finds that it normally does not know the conditions under which price quotes were solicited and whether or not they were self-selected from a broader range of quotes.²¹ The Department also determines that price quotes represent the experience of one or two price offers, rather than actual transactions, and are not necessarily representative of commercial prices.²² Thus, given their deficiencies with regard to specificity, broad market average and contemporaneity criteria, and given the uncertainty with regard to how these price quotes were obtained and selected, we do not find that the price quotes on the record of this segment of the proceeding constitute the best information available, especially given that other suitable sources are on the record as explained below.

Regarding the Thai GTA import prices, as an initial matter they meet (without dispute from the parties) the following selection criteria: public availability, being from a country that is a significant producer at the same level of economic development as the PRC, contemporaneity, broad market average, and being tax and duty free. We also note that parties' comments relate to just one selection criteria, specificity to the factor.

In the *Preliminary Results*, we used Thai GTA import prices for the valuation of low and medium carbon SWR.²³ These data are comprised of information spanning two periods (August-December 2011 and January-July 2012), as the Thai HTS categories for these categories underwent a re-categorization. With regard to both low and medium carbon SWR, for the *Preliminary Results* we used data that encompassed all data available (*i.e.*, for low carbon, four HTS categories for 2011 and six HTS categories for 2012, and for medium carbon one HTS for 2011 and six HTS categories for 2012).²⁴

With regard to JISCO's argument that only the 2012 GTA data should be used as it is more specific than the 2011 data with regard to carbon content and other metals, we disagree. The only element the Department identified as relevant to the CONNUM and the SV calculation is carbon,²⁵ and JISCO has not demonstrated that these other metals are also relevant. Furthermore, for low carbon the Department specified a range for carbon content of less than 0.25 percent, and for medium carbon it specified a range for carbon content between 0.25 and 0.60 percent.²⁶ In this regard, the 2011 Thai GTA data fall within these bands and, thus, are not

²⁰ 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) ("*Pure Magnesium*") and accompanying Issues and Decision Memorandum at Comment 10.

²¹ *Id.*

²² See *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 67304 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 6.

²³ See *Fourth Antidumping Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Results*, dated September 3, 2013 ("*Prelim SV Memo*") at II.A and Attachment 3.

²⁴ *Id.*

²⁵ See the Department's Original Questionnaires to Stanley and JISCO dated November 21, 2012, at C-8 "STEELU."

²⁶ *Id.*

overly broad as they do not exceed the model matching bands specified by the Department, and which were developed with input from interested parties during the original investigation. Thus, simply because the 2012 Thai GTA data specify other elements do not make them more specific for our SV purposes as these other elements do not factor into our CONNUM characteristics for low or medium carbon products in this proceeding. Given this, we find that regardless of whether the data are from 2011 or 2012, the Thai GTA data are the best information available on the record to value this input.

With regard to Petitioner's argument regarding using the Thai GTA HTS 7213.91.00.090 "Other" category, we note that we considered and did not use this HTS category for the *Preliminary Results*. This HTS category encompasses other SWR without specification for diameter or carbon content. Lacking these specifications, we do not find a need to use this more general HTS category as the record contains SWR SV data specific to that used by Respondents.

Additionally, after further review, we agree with parties that some of these HTS categories are not applicable to the inputs used by Respondents in terms of carbon content.²⁷ For low carbon SWR, 2011 HTS categories 7213.91.00.010 and 7213.91.00.020 and 2012 HTS categories 7213.91.90.010, 7213.91.90.011, 7213.91.90.033 will not be used as these fall outside the specifications of the SWR used by Respondents. For medium carbon SWR, 2012 HTS categories 7213.91.90.015, 7213.91.90.017, and 7213.91.90.024 will not be used as these likewise fall outside the specifications of the SWR used by Respondents.

With regard to the remaining HTS categories, for low carbon SWR, 2011 HTS 7213.91.00.030 encompasses that used by both Respondents, and HTS 7213.91.00.040 encompasses that used by one of them. For 2012, HTS categories 7213.91.90.012, 7213.91.90.034, and 7213.91.90.035 encompass that used by both Respondents. For medium carbon SWR, 2011 HTS 7213.91.00.050 encompasses that used by both Respondents. For 2012, HTS 7213.91.90.014 encompasses that used by both Respondents, and HTS categories 7213.91.90.013 and 7213.91.90.023 encompass that used by one of them. As with low carbon, the medium carbon data also provided full coverage for both Respondents' usage types. With regard to diameter, again, all HTS categories provide coverage for that used by Respondents, unlike the Tata Steel price quotes which do not. Because much of this information is Business Proprietary Information ("BPI"), for a further explanation and analysis of this issue, see the BPI HTS Analysis Memorandum.

Comment 2: Surrogate Financial Ratios

A. Selection of Surrogate Financial Companies

Petitioner

- Use the average of the financial ratios calculated from the 2012 financial statements of L.S. Industry Co., Ltd. ("LSI") and Hitech Fastener Manufacturer (Thailand) Co., Ltd. ("Hitech"), as they are the most contemporaneous with the POR and are mainly comparable producers.

²⁷ See BPI Memorandum for an HTS analysis with regard to low and medium carbon steel wire rod for each Respondent ("BPI HTS Analysis Memorandum").

Bangkok Fastening Co., Ltd. (“Bangkok Fastening’s”) 2011 financial statements are not as contemporaneous and should not be used.

JISCO

- Use the financial ratios from the 2012 LSI and 2011 Bangkok Fastening financial statements, which both produce identical merchandise, and whose statements are both contemporaneous. If Hitech’s financial statements are used, the resulting ratios should be weight-averaged because Bangkok Fastening is by far the largest producer in terms of sales and thus comprises such a large portion of the financial data.

Stanley

- Average the 2011 Bangkok Fastening financial statements along with the both 2011 and 2012 financial statements of LSI.

JISCO/Stanley

- Hitech produces screws, rivets, and other items, but not nails, nor is there any record evidence that it consumes SWR. In addition, the production of screws is not comparable to nails. Moreover, Hitech’s statements are distortive.

Department’s Position: In normal value (“NV”) calculations in non-market economy (“NME”) proceedings, the Department calculates surrogate overhead, selling, general, and administrative (“SG&A”) expenses, and profit ratios from surrogate financial statements that are: (1) from an appropriate surrogate country; (2) from a producer of identical or comparable merchandise; (3) contemporaneous with the POR; and (4) publicly available.²⁸ The Department also explained that “{its} criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent’s experience, and publicly available information.”²⁹ The Department also seeks to use financial statements of companies that have earned a profit.³⁰ The Department also prefers to use financial statements from the primary surrogate country where available.³¹

In the *Preliminary Results*, the Department used an average of the 2011 financial statements for LSI and Bangkok Fastening because they were the best information on the record and because they produced identical merchandise.³² For the final results, Stanley submitted the 2012 financial statements for LSI, and Petitioner submitted the 2011 and 2012 financial statements for

²⁸ See, e.g., *Drill Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 1966 (January 11, 2011) and accompanying Issues and Decision Memorandum at Comment 5.

²⁹ See *Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007) and accompanying Issues and decision Memorandum at Comment 1.C.

³⁰ See, e.g., *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009) and accompanying Issues and Decision Memorandum at Comment 1.A.

³¹ See 19 CFR 351.408(c)(2) and (4).

³² See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 12 and 21; see also Prelim SV Memo at 10 and Attachment 10.

Hitech, a producer of screws.³³ Thus, the Department has five financial statements (from three companies) for consideration in the final results.

We first note that these three surrogate ratio companies (LSI, Bangkok Fastening and Hitech) meet our criteria with respect to being: contemporaneous, profitable, free of countervailable subsidies, and from Thailand, a surrogate country that is a significant producer and at the same level of economic development as the PRC.³⁴ No party challenged this and we continue to find that they satisfy these criteria.

With regard to whether LSI and Bangkok Fastening are producers of identical or comparable merchandise, we note that where possible, we look to the product mix and, where detailed information is available, we will make a determination of whether it is more reasonable to find a company a producer of identical or comparable merchandise.³⁵ In the instant case, there is not sufficient product mix detail in the financial statements to determine the exact percentages of identical versus comparable or other merchandise. However, in the *Nails AR3 Final*, we found both to be producers of identical merchandise because both were producers of nails.³⁶ Here, as in the *Nails AR3 Final*, the information on the record establishes that both were producers of nails. For LSI, its products consist, among other items, of concrete nails, common nails, furniture nails, rectangular boat nails, square boat nails, shoe tacks nails, tacks nails, brass nails, zinc nails, needle nails, large head nail, cupped brad head nail, and roof nails.³⁷ For Bangkok Fastening, its products consist of nails, as well as other items.³⁸ Thus, because we know these companies produce nails (*i.e.*, identical merchandise), even though the record does not contain further detail regarding their product mix, we continue to find that these companies to be producers of identical merchandise as they produce nails.

With regard to Hitech, information on the record indicates that it does not produce any nails, but rather produces comparable merchandise, *i.e.*, screws and other products.³⁹ Although it produces comparable merchandise and its financial statements are otherwise usable, consistent with our practice, there is no need to consider using a company that makes only comparable merchandise when there are usable financial statements on the record from companies that produce identical

³³ See, respectively, Stanley's October 31, 2013, submission at SV-45; and Petitioner's October 31, 2013, submission at Attachment 4.

³⁴ See the Department's Letter to All Interested Parties, "Fourth Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Country List," dated February 8, 2013.

³⁵ See *Certain Steel Nails From the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) and accompanying Issues and Decision Memorandum at Comment 2; see also *Stanley Works (Langfang) Fastening Systems Co., Ltd. and the Stanley Works/Stanley Fastening Systems, LP v. United States*, Slip Op. 13-118 (Ct. Int'l Trade 2013) (September 3, 2013).

³⁶ See *Certain Steel Nails from the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review*; 2010-2011, 78 FR 16651 (March 18, 2013) and accompanying Issues and Decision Memorandum at Comment 1.D.a.

³⁷ See Petitioner's March 29, 2013, submission at Exhibit 2.

³⁸ *Id.*

³⁹ See Petitioner's October 31, 2013, submission at Attachment 7.

merchandise.⁴⁰ Thus, we find that the Hitech financial statements are not the best information on the record for surrogate valuation purposes, given that there are suitable producers of identical merchandise on the record. Therefore, we will not use Hitech's financial statements for the final results. With regard to whether Hitech consumes steel wire rod, this issue is rendered moot because we already excluded it from further consideration. Nonetheless, the record lacks sufficient detail even to perform such an analysis.

Returning to our analysis of LSI and Bangkok Fastening, with regard to only using 2012 financial statements, we disagree with Petitioner and find that the 2011 Bangkok Fastening financial statements should also be used, as they do overlap the POR by five months and their inclusion provides a broader average. Additionally, with regard to weight averaging the surrogate ratios, we disagree with JISCO as this is contrary to our consistent practice of relying on a simple average.⁴¹ With regard to LSI, we note that the record contains the financial statements for this company for years 2011 and 2012. In addition, Stanley proposed that in the event the Department decides to use LSI, that it use both calendar years. However, it is the Department's practice that when faced with two contemporaneous financial statements for the same company, the Department will use the financial statements that overlap the POR the most because averaging two financial statements from the same company would be deriving financial ratios based on data that are less contemporaneous and creating a temporally less representative method for deriving financial ratios than simply using the most contemporaneous financial statements.⁴² Thus, in this instance, the Department will use LSI's 2012 financial statements as they overlap the POR by seven months, as opposed to five months for the 2011 financial statements.

Therefore, given the above, we find the 2011 Bangkok Fastening and 2012 LSI financial statements to be the best information on the record for surrogate valuation purposes and will use the simple average of their calculated financial ratios for the final results.

B. Adjustments to Surrogate Ratios

JISCO

- Exclude (as the Department did for LSI) the transportation expense "Parking & Transportation" in the calculation of Bangkok Fastening's surrogate ratios because it relates to inland and ocean freight which are accounted for elsewhere in the calculations.
- The Department properly classified SG&A and non-SG&A labor in the surrogate financial statements.

⁴⁰ See, e.g., *Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review*, 72 FR 42386 (August 2, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

⁴¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003) and accompanying Issues and Decision Memorandum at Comment 1B; see also *Rhodia, Inc. v. United States*, Slip Op. 2-109 at 9 (Ct. Int'l Trade, 2002) (*Rhodia*).

⁴² See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2.A.

Petitioners

- Do not exclude “Parking & Transportation” from Bangkok Fastening’s SG&A financial ratios numerator as “Transportation” relates to expenses similar to “Parking.”
- Do not remove certain labor line items (for LSI, “Staff Allowance” and “Social Security and Compensation” and for Bangkok Fastening, “Staff Wages”) from the SG&A ratio numerator calculation as these relate to SG&A type labor and Respondents’ labor FOP relates only to production labor.

Department’s Position: With regard to Bangkok Fastening’s “Transportation and Parking” line item in the financial statements, a closer look at Bangkok Fastening’s accounts indicates a less structured itemization (Materials and Supplies Used, Staff Expenses, Depreciation, Other Expenses, and Financing Cost) than LSI’s.⁴³ The account in question for Bangkok Fastening appears under “Other Expenses.” This account reveals that Bangkok Fastening assigned many items to this “Other” account, with items being classified as either materials, labor, energy, overhead or SG&A.⁴⁴ This is unlike LSI, which included its “Transportation” expenses under Cost of Sales/Selling Expenses, which includes other selling expense type items and which we interpreted as transportation expenses related to sales.⁴⁵ Thus, the record does not support JISCO’s argument that Bangkok Fastening’s “Transportation and Parking” line item necessarily relates to outbound freight (and, thus, should be excluded). For example, this line item could relate to SG&A type transportation and/or parking that is not necessarily related to outbound movement expenses.⁴⁶ Therefore, we will continue to classify this line item in Bangkok Fastening’s financial statements as SG&A.

With regard to certain labor classifications, first we address those present in Bangkok Fastening’s financial statement. The company reported “wages/salaries” in three separate line items (two under “Staff Expenses” those being “Salary” and “Wage,” and one under “Other Expenses,” that being “The Wages of the Plate/Rolled Wire”). Petitioners make an argument that we incorrectly removed certain labor “Wage” from their proposed SG&A ratio numerator calculation, as this relates to SGA type labor and Respondents’ labor FOP “Plated/Rolled Wire” relates only to production labor. However, the description “Plated/Rolled Wire” does not imply that it is all-inclusive and would cover the various other types of nails/fastening labor, *e.g.*, nail making, tumbling, threading, collating, *etc.* Moreover, we believe that “Wage” under “Staff Expenses” relate to direct labor as the company included a separate line item for SGA type labor, that being “Salary.” Thus, we will continue to classify “Wage” as direct labor and not SG&A because “Wage” relates to direct labor, which is included in the materials, labor, and energy denominator.

With regard to LSI, under the “Total Cost of Management” account, for the *Preliminary Results* we classified two items under “Labor,” which were “Welfare” and “Social Security and Compensation.” We classified these two items as “Labor” as there is neither a separate line item

⁴³ See Stanley’s April 18, 2013, submission at SV-39; see also Petitioner’s April 18, 2013, submission at Exhibit 10.

⁴⁴ *Id.*

⁴⁵ See Stanley’s October 31, 2013, submission at exhibit SV-45; see also Stanley’s April 18, 2013, submission at Exhibit SV-38.

⁴⁶ We note that Bangkok Fastening did provide an “Inbound Freight” item under “Materials and Supplies Used,” thus we did not consider the line item in question to relate to materials or overhead purchases acquisitions. See *id.*

for these items under “Cost of Services” (where “Direct Labor” and “Wages” appear), nor is there any indication that “Direct Labor” and “Wages” include these types of compensation. Moreover, the Thailand National Statistics Office (“NSO”) 2007 labor data that the Department relied on for the *Preliminary Results* encompasses similar types of compensation:

“...the 2007 NSO data include (1) wages/salaries; (2) overtime payment, bonus, special payment, cost of living allowance and commission; (3) fringe benefits such as “food, beverages, lodgings, rent, medical care, transportation recreational and entertainment services, etc.,” and (4) employers’ contribution to social security, *e.g.*, “social security fund, workmen’s compensation fund and health insurance, *etc.*”⁴⁷

Thus, the Department properly classified “Welfare” and “Social Security and Compensation” as Labor and will continue to do so for the final results.

Comment 3: SV for Welding Wire

Stanley

- Do not use HTS 831120, as this subheading is for material coated with flux material and is not specific to the input used to collate nails.
- Use HTS 7217.30, as several U.S. Customs and Border Protection (“CBP”) decisions state that that would be the proper subheading.

Petitioner

- Continue to use HTS 831120, as flux is required to weld and Stanley has not demonstrated that its welding wire was not fluxed.
- The CBP decision is inapposite as Stanley, again, has not demonstrated that its welding wire was not fluxed.

Department’s Position: In the *Preliminary Results*, the Department valued Respondents’ welding wire using Thai GTA data classified under HTS number 831120 “Cored Wire Of Base Metal, For Electric Arc-Welding.”⁴⁸ After further review, the description for HTS 831120 which we used in the *Preliminary Results* indicates that it is more representative of products that are coated and/or cored (*i.e.*, hollowed-out and filled) with flux material.⁴⁹ However, there is no indication that Respondents’ copper-coated steel wire was either coated with flux material or hollowed-out and filled at all.

With regard to the CBP decisions, we disagree with Petitioner that they do not have probative value because these rulings were based on tariff classification requests for copper coated steel wire, less than 1mm, to be used as welding wire and with no flux in or on it, *i.e.*, very similar to

⁴⁷ See *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) and accompanying Issue and Decision Memorandum at Comment 4.

⁴⁸ See Prelim SV Memo at 5 and Attachment 2.

⁴⁹ See Stanley’s October 31, 2013, submission at AV-41

that used by respondents.⁵⁰ Furthermore, these ruling state that they would be classified under a subheading of HTS 721730 (*i.e.*, 721730304510).

A closer reading of the HTS schedule indicates that HTS 721730 “Wire Of Iron Or Nonalloy Steel, Plated Or Coated With Base Metal Other Than Zinc” would provide a better match to Respondents’ inputs than 831120 because there is no indication that Respondents’ copper-coated welding wire was cored or coated with flux material and because it more closely matches the description under HTS 7217.30 (*i.e.*, steel wire plated with base metal other than Zinc). Moreover, the available record evidence suggests that the input used by Respondents is regular non-alloy steel wire coated with copper.⁵¹

Comment 4: Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations

Stanley

- The Court of International Trade (“CIT”) held that the 2008 “withdrawal” of the targeted dumping regulation violated the notice and comment requirements of the Administrative Procedures Act, 5 U.S.C. 500, *et seq.*, (“APA”), and did not fit within any of the exceptions to those requirements.
- The DP methodology contravenes the targeted dumping regulation, 19 CFR 351.414(f) (2008), which the CIT held is still in effect.
- Accordingly, the Department is required to have an allegation of targeted dumping before applying a targeted dumping analysis, rely on appropriate “statistical techniques,” and limit the application of the average-to-transaction (“A-to-T”) method to those sales which are found to have met the criteria to be “targeted dumping.”

Petitioner

- The Department properly withdrew the targeted dumping regulations in 2008, and the arguments raised by Stanley have been consistently rejected in other cases.

Department’s Position: We disagree with Stanley that the withdrawal of the targeted dumping regulation violated the APA such that Stanley is entitled to its application. While the CIT recently held that the issuance of the Department’s interim final rule withdrawing the targeted dumping regulation was defective,⁵² the CIT’s ruling is not final and conclusive as that matter is still in litigation. In addition, the regulations at issue, 19 CFR 351.414(f) and (g), and 19 CFR 351.301(d)(5) (2007), established criteria for analyzing allegations and making targeted dumping determinations in less-than-fair-value investigations, not in the context of an administrative review as here.⁵³ Furthermore, the targeted dumping regulation was properly withdrawn pursuant to the APA. During the withdrawal process, the Department engaged the public to participate in its rulemaking process. In fact, the Department’s withdrawal of its regulations in

⁵⁰ *Id.* at SV-42

⁵¹ See, *e.g.*, JISCO’s May 30, 2013, Supplemental Section D response at 23, and JISCO Verification Report at 11, 17 and Exhibit 20; see also Stanley’s January 18, 2013, Section D response at 28.

⁵² See *Gold East Paper*, 918 F. Supp. 2d at 1327-28.

⁵³ See 19 CFR 351.414(f)-(g) and 19 CFR 351.301(d)(5) (2007); *Withdrawal Notice*, 73 FR at 74930-31.

December 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis. The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulation by posting a notice in the *Federal Register* seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(1)(B) of the Act.⁵⁴ As the notice explained, because the Department received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit comments.⁵⁵ Various parties submitted comments in response to the Department's request.⁵⁶

After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.⁵⁷ Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."⁵⁸ Several of the submissions⁵⁹ received from parties explained that the Department's proposed methodology was inconsistent with the statute and should not be adopted.⁶⁰ Moreover, several entities explicitly stated that the Department should not establish minimum thresholds for accepting allegations of targeted dumping because the statute contains no such requirements.⁶¹

These comments suggested that the regulation was impeding the development of an effective remedy for masked dumping. Indeed, after considering the parties' comments the Department explained that because "the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping."⁶² For this reason, the Department determined that the regulation had to be withdrawn.⁶³ Although this withdrawal was effective immediately, the Department again invited parties to submit comments, and gave them an additional 30 days to do so.⁶⁴ The comment period ended on January 9, 2009, with several parties submitting comments.⁶⁵

⁵⁴ See *Targeted Dumping in Antidumping Investigations; Request for Comment*, 72 FR 60651 (October 25, 2007).

⁵⁵ *Id.*

⁵⁶ See *Public Comments Received December 10, 2007*, Department of Commerce, <http://enforcement.trade.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index.html> (December 10, 2007) (listing the entities that commented).

⁵⁷ See *Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations*, 73 FR 26371, 26372 (May 9, 2008).

⁵⁸ *Id.*

⁵⁹ The public comments received June 23, 2008, and submitted on behalf of several domestic parties can be accessed at: <http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html>.

⁶⁰ See, e.g., Letter from Kelley, Drye and Warren to the Department: "Comments on Targeted Dumping Methodology, Comments," ("Letter from Kelley Drye") dated June 23, 2008, at 2.

⁶¹ See, e.g., letter from Committee to Support U.S. Trade Laws, to the Department: "Comments on Targeted Dumping Methodology" at 25; see also Letter from Kelley Drye at 29.

⁶² See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930, 74931 (December 10, 2008) ("Withdrawal Notice").

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See *Public Comments Received January 23, 2009*, Department of Commerce, (January 23, 2009).

The course of the Department's decision-making process demonstrates that it sought to actively engage the public. This type of public participation is fully consistent with the APA's notice and comment requirement.⁶⁶ Moreover, various courts rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.⁶⁷ Rather, where the public is given the opportunity to comment meaningfully consistent with the statute, the APA's requirements are satisfied. The touchstone of any APA analysis is whether the agency, as a whole, acted in a way that is consistent with the statute's purpose.⁶⁸ Here, similar to the agency in *Mineta*, the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in *Mineta*, the Department also considered the comments submitted and based its final decision, at least in part, upon those comments. Just as the court in *Mineta* found all of those facts to indicate that the agency's actions were consistent with the APA, so too the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA.

The APA does not require that a final rule that the agency promulgates must be identical to the rule that it proposed and upon which it solicited comments.⁶⁹ Here, the Department actively engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulation demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, even if the two rounds of comments that the Department solicited before the withdrawal of the regulation were insufficient to satisfy the APA's requirements, the Department properly declined to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."⁷⁰ The Court of Appeals for the Federal Circuit ("Federal Circuit") recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide.⁷¹ In *National Customs Brokers*, the Federal Circuit rejected a plaintiff's argument that CBP failed to follow properly the APA in promulgating certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment. Moreover, although CBP solicited comments on the published regulations, it stated that it "would not consider substantive comments until after it implemented the regulations and reviewed the comments in light of experience" administering

⁶⁶ See, e.g., *Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1299–1300 (D.C. Cir. 2000) (holding that the Environmental Protection Agency's decision to not implement a rule upon which it had sought comments did not violate the APA's notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).

⁶⁷ See *Fed. Express Corp. v. Mineta*, 373 F.3d 112, 120 (D.C. Cir. 2004) ("*Mineta*") (holding that the Department of Transportation's promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).

⁶⁸ *Id.*

⁶⁹ See, e.g., *First Am. Discount Corp. v. CFTC*, 222 F.3d 1008, 1015 (D.C. Cir. 2000).

⁷⁰ See 5 USC 553(b)(B).

⁷¹ See, e.g., *National Customs Brokers and Forwarders Ass'n of Am., Inc. v. United States*, 59 F.3d 1219, 1223 (Fed. Cir. 1995) ("*National Customs Brokers*").

those regulations.⁷² CBP explained that “good cause” existed to comply with the APA’s usual notice and comment requirements because the new requirements did not impose new obligations on parties, and emphasized its belief that the regulations should “become effective as soon as possible” so that the public could benefit from “the relief that Congress intended.”⁷³ The Court recognized that this explanation was a proper invocation of the “good cause” exception and explained that soliciting and considering comments was *both* unnecessary (because Congress had passed a statute that superseded the regulation) “*and* contrary to the public interest because the public would benefit from the amended regulations.”⁷⁴ For this reason, the Court affirmed the regulation against the plaintiff’s challenge.⁷⁵

The Department’s basis for invoking the “public interest” exception here is almost identical to the one that the Federal Circuit sustained in *National Customs Brokers*. The regulations that the Department withdrew were designed to implement the provision that Congress codified at section 777A(d)(1)(B) of the Act. However, these regulations were originally promulgated before the Department had ever performed any such analysis in an actual proceeding.⁷⁶ Perhaps reflecting this dearth of practical experience, the regulations imposed several requirements that were not part of the statute. *Compare* 19 USC 1677f-1(d)(1)(B) *with* 19 CFR 351.414(f), (g).⁷⁷ After receiving comments on various proposals to amend its methodology under this regulation and deliberating on the issue, the Department determined that the regulations “may have established thresholds or other criteria that ha{d} prevented the use of this {alternative} comparison methodology to unmask dumping.”⁷⁸ These criteria, the Department noted, were inadvertently denying “relief to domestic industries suffering material injury from unfairly traded imports”—relief that Congress intended to grant by passing the statutory provision in the first instance.⁷⁹ Immediate withdrawal of the regulation was therefore necessary to allow parties to take advantage of the statutory remedy.⁸⁰ This interest in granting congressionally-mandated relief without undue delay is exactly the basis upon which the Federal Circuit sustained the agency’s invocation of the “public interest” exception to notice and comment procedures in *National Customs Brokers*.

In fact, the only difference between this situation and *National Customs Brokers* is that in the latter scenario Congress passed a statute that affirmatively abrogated the prior regulation. But this distinction is insignificant. When an administering agency finds that the effect of a regulation is to curtail statutorily mandated relief, the agency may act to remedy that situation,

⁷² *Id.*, at 1220–21.

⁷³ *Id.*, at 1223.

⁷⁴ *Id.*, at 1224 (emphasis).

⁷⁵ *Id.*

⁷⁶ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27374–76 (May 19, 1997) (final rule); 19 CFR 351.414(f), (g) and 351.301(d)(5) (1997).

⁷⁷ For example, 19 CFR 351.414(f)(2) provided that the Department would normally limit the application of the A-to-T methodology to those sales that constituted targeting, while the statutory provision does not contain this limitation. Similarly, the regulations provided that an allegation of targeted dumping is due no later than thirty days before the scheduled date of the preliminary determination—both requirements that are not present in the statute. See 19 CFR 351.414(f)(3) and 351.301(d)(5).

⁷⁸ See *Withdrawal Notice*, 73 FR at 74931.

⁷⁹ *Id.*

⁸⁰ See section 777A(d)(1)(B) of the Act.

regardless of whether the statutory mandate is new or old. Nor does the fact that the Department was not aware of this potential effect for a period of time justify additional delay. Rather, it was appropriate for the Department to revoke the regulation as soon as it became apparent that there may be an effect “contrary to {the Department’s} intention in promulgating the provisions and inconsistent with {the Department’s} statutory mandate. . . .”⁸¹ Immediate revocation was all the more appropriate given that the Department had *already* conducted two rounds of notice and comment and received suggestions that the regulation may have been ineffective.

In short, the regulation at issue may have had the unintentional effect of preventing the Department from employing an appropriate remedy to unmask dumping. Such effect would have been contrary to congressional intent. The Department’s revocation of such a regulation without additional notice and comment was based upon a recognized invocation of the “public interest” exception. Accordingly, there was no basis for the Department to base its analysis in the instant proceeding upon the withdrawn regulation.

Comment 5: Consideration of an Alternative Comparison Method in Administrative Reviews

JISCO

- JISCO argues that the Department lacks the statutory authority to consider an “alternative pricing analysis” in administrative reviews because the provision which provides such authority is limited to original investigations.
- The structure of section 777A of the Act unequivocally demonstrates Congress’ intent not to provide such an alternative to the Department as this provision was not included in section 777A(d)(2) of the Act which sets forth the calculation provision for administrative reviews.
- This lack of authority cannot be overcome by the Department on policy grounds to thwart Congress’ intent and limitation on the Department.

Stanley

- The Department has no statutory authority to “conduct a targeted dumping analysis” in an administrative review, and cannot claim such authority by implication or by promulgation of a regulation.

Petitioner

- The Department properly may consider an alternative comparison method in administrative reviews, and the arguments raised by Stanley and JISCO have been consistently rejected in other cases.

Department’s Position: The Department disagrees with Respondents’ claims that it does not have the statutory authority to consider an alternative comparison method in administrative reviews. Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” The definition of “dumping margin” calls for a comparison of NV and export price or

⁸¹ See *Withdrawal Notice*, 73 FR at 74931.

constructed export price. Before making the comparison called for, it is necessary to determine how to make the comparison.

Respondents argue that the Department has no statutory authority to consider the application of an alternative comparison method in administrative reviews. They also state that Congress made no provision for the Department to apply an alternative comparison method in an administrative review under section 777A(d) of the Act. Indeed, section 777A(d)(1) of the Act applies to “Investigations” and section 777A(d)(2) of the Act applies to “Reviews.” Section 777A(d)(1) of the Act discusses, for investigations, the standard comparison methods (*i.e.*, the average-to-average or A-to-A method and the transaction-to-transaction or T-to-T method), and then provides for an alternative comparison method (*i.e.*, the A-to-T method) that may be applied as an exception to the standard methods when certain criteria have been met. Section 777A(d)(2) of the Act discusses, for administrative reviews, the maximum length of time over which the Department may group comparison market prices when calculating a weighted-average NVs when using the A-to-T method. Section 777A(d)(2) of the Act has no provision specifying the comparison method to be employed in administrative reviews.

Respondents assert that in order to consider an alternative comparison method, that “it must seek amendment to the statute in order to do so.” To follow Respondents’ logic, that statute makes no provision for comparison methods in reviews at all. Such a conclusion would infer that Congress did not intend that the Department ever make a comparison in administrative reviews of NVs and export prices or constructed export prices in order to calculate a dumping margin as described in section 771(35)(A) of the Act.

To fill the gap in the statute, the Department promulgated regulations to specify how comparisons between NV and export price or constructed export price would be made in administrative reviews. With the implementation of the Uruguay Round Agreements Act (“URAA”), the Department promulgated regulations in 1997, in which 19 CFR 351.414(c)(2) stated that the Department would normally use the A-to-T method in administrative reviews. In 2010, the Department published its *Proposed Modification for Reviews*⁸² pursuant to section 123(g)(1) of the URAA. This proposal was in reaction to several World Trade Organization (“WTO”) Dispute Settlement Body panel reports which had found that the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties. Pursuant to section 123(g)(1)(D) of the URAA, in September 2011, the U.S. Trade Representative (“USTR”) submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(1)(B) of the URAA. Also in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final

⁸² See *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Proposed Rule; Proposed Modification; Request for Comment*, 75 FR 81533 (December 28, 2010) (“*Proposed Modification for Reviews*”).

rule and the final modification. As a result of this process, the Department published the *Final Modification for Reviews*.⁸³ These revisions were effective for all preliminary results of review issued after April 16, 2012, as is the situation for this administrative review.

19 CFR 351.414(b) describes the methods by which NV may be compared to export price or constructed export price in less-than-fair-value investigations and administrative reviews (*i.e.*, A-to-A, T-to-T, and A-to-T). These comparison methods are distinct from each other. When using T-to-T or A-to-T comparisons, a comparison is made for each export transaction to the United States. When using A-to-A comparisons a comparison is made for each group of comparable export transactions for which the export prices, or constructed export prices, have been averaged together (*i.e.*, for an averaging group⁸⁴). The Department does not interpret the Act or the SAA⁸⁵ to prohibit the use of the A-to-A method in administrative reviews, nor does the Act or the SAA mandate the use of the A-to-T method in administrative reviews. 19 CFR 351.414(c)(1) (2012) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. In particular, the Department determined that in both less-than-fair-value investigations and administrative reviews, the A-to-A method will be used “unless the Secretary determines another method is appropriate in a particular case.”⁸⁶

The Act, the SAA, and the Department’s regulations do not address the circumstances that could lead the Department to select a particular comparison method in an administrative review. Indeed, whereas the statute addresses this issue specifically in regards to investigations, the statute conspicuously leaves a gap to fill on this same question in regards to administrative reviews.⁸⁷ In light of the statute’s silence on this issue, the Department indicated that it would use the A-to-A method as the default method in administrative reviews, but would consider whether to use an alternative comparison method on a case-by-case basis.⁸⁸ At that time, the Department also indicated that it would look to practices employed by the Department in investigations for guidance on this issue.⁸⁹

In less-than-fair-value investigations, the Department examines whether to use the A-to-T method consistent with section 777A(d)(1)(B) of the Act:

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if:

⁸³ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (“*Final Modification for Reviews*”).

⁸⁴ See 19 CFR 351.414(d)(2).

⁸⁵ See Statement of Administrative Action (SAA), H.R. Rep. No. 103-316 (1994), reprinted in 1994 U.S.C.C.A.N. 4040.

⁸⁶ See 19 CFR 351.414(c)(1).

⁸⁷ See section 777A(d)(1)(B) of the Act; SAA at 842-43; and 19 CFR 351.414.

⁸⁸ See *Final Modification for Reviews*, 77 FR at 8107.

⁸⁹ *Id.*, 77 FR at 8102.

- (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).⁹⁰

Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an administrative review, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review to be analogous to the issue in less-than-fair-value investigations. Accordingly, the Department finds the analysis that has been used in investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. In less-than-fair-value investigations, the Department considered an alternative comparison method to unmask dumping consistent with section 777A(d)(1)(B) of the Act.⁹¹ Similarly, the Department considered an alternative comparison method to unmask dumping under 19 CFR 351.414(c)(1).⁹² For this administrative review, the Department continues to find the consideration of an alternative comparison method to be a reasonable extension of the statute where the statute made no provision for the Department to follow.

The SAA does not demonstrate that the Department may consider the application of an alternative comparison method in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that the Department may use in investigations. That provision, however, is silent on the question of choosing a comparison method in administrative reviews. Section 777A(d)(1)(A) of the Act does not require or prohibit the Department from adopting a similar or a different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states that "section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction comparison methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods."⁹³ Like the statute, the SAA does not limit the Department to undertake such an examination in investigations only.⁹⁴

⁹⁰ See section 777A(d)(1)(B) of the Act.

⁹¹ See, e.g., *Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 16431 (April 1, 2010); *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012); and *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) ("Xanthan Gum from the PRC").

⁹² See, e.g., *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012); *Stainless Steel Plate in Coils From Belgium: Antidumping Duty Administrative Review, 2010–2011*, 77 FR 73013 (December 7, 2012); *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 65272 (October 31, 2013).

⁹³ See SAA at 843.

⁹⁴ *Id.*

The silence of the statute with regard to the application of an alternative comparison method in administrative reviews does not preclude the Department from applying such a practice in this situation. Indeed, the Federal Circuit stated that the “court must, as we do, defer to Commerce’s reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency’s generally conferred authority and other statutory circumstances.”⁹⁵ Further, the court stated that this “silence has been interpreted as ‘an invitation’ for an agency administering unfair trade law to ‘perform its duties in the way it believes most suitable’ and courts will uphold these decisions ‘{s}o long as the {agency}’s analysis does not violate any statute and is not otherwise arbitrary and capricious.”⁹⁶ The Department filled a gap in the statute with a logical, reasonable and deliberative process to determine an appropriate comparison method for administrative reviews.

Comment 6: The Average-to-Transaction Method and the Denial of Offsets for Non-Dumped Sales

JISCO

- Even if the Department uses the A-to-T method as an alternative comparison method, “it nevertheless remains unlawful to use the ‘zeroing’ methodology when making such comparisons.”
- The WTO consistently finds the Department’s denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the obligations of the United States. As a result, the Department changed its practice in administrative reviews stating a preference for the A-to-A method with offsets in the *Final Modification for Reviews*.
- If for some reason, the Department decided to use the A-to-T method in the final results for JISCO, it should reject the denial of offsets for non-dumped sales as it would “violate the prior WTO and judicial decisions” and the Department has no reason for denying offsets in the final results.

Petitioner

- The Department properly denies offsets for non-dumped sales when using the A-to-T method, and the arguments raised by JISCO have been consistently rejected in other cases.

Department’s Position: The Department disagrees with JISCO. The recent decision by the Federal Circuit in *Union Steel*⁹⁷ resolved the outstanding question of whether the Department’s statutory interpretation is reasonable. The Federal Circuit affirmed the Department’s explanation that it may interpret the statute to permit the denial of offsets for non-dumped comparisons with respect to the A-to-T method in administrative reviews, while permitting the Department to grant offsets for non-dumped comparisons when applying the A-to-A method in investigations. The Federal Circuit also affirmed the Department’s explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison

⁹⁵ See *United States Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010).

⁹⁶ See *Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010), citing *U.S. Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996).

⁹⁷ *Union Steel v. United States*, 713 F.3d 1101 (Fed. Cir. 2013) (*Union Steel*).

methods used in investigations and reviews.⁹⁸ Indeed, the Federal Circuit noted that although the Department recently modified its practice “to allow for offsets when making average-to-average comparisons in administrative reviews . . . {t}his modification does not foreclose the possibility of using zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns.”⁹⁹

Likewise, in *United States Steel*,¹⁰⁰ the Federal Circuit sustained the Department’s decision to no longer apply zeroing when employing the A-to-A comparison method in investigations while recognizing the Department’s intent to continue to apply zeroing in other circumstances. Specifically, the Federal Circuit recognized that the Department may use zeroing when applying the A-to-T comparison method where patterns of significant price differences are found.¹⁰¹

As the Federal Circuit affirmed, the Department may reasonably interpret section 771(35) of the Act in the context of the A-to-A method to permit negative comparison results to offset or reduce the sum of the positive comparison results when calculating “aggregate dumping margins” within the meaning of section 771(35)(B) of the Act. In contrast, when applying the A-to-T method under 777A(d)(1)(B) of the Act, the Department determines dumping on the basis of individual U.S. sales prices. Under the A-to-T method, the Department compares the export price or constructed export price for a particular U.S. transaction with the weighted-average NV for the comparable merchandise of the foreign like product. This comparison method yields results specific to each individual export transaction. The result of such a comparison evinces the amount, if any, by which the exporter or producer sold the merchandise at an export price or constructed export price less than its weighted-average NV. The Department then aggregates the results of these comparisons (*i.e.*, the amount of dumping found for each individual U.S. sale) to calculate the numerator of the weighted-average dumping margin (*i.e.*, the total amount of dumping for the respondent). To the extent the weighted-average NV does not exceed the individual export price or constructed export price 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 comparison results.¹⁰² Thus, when the Department focuses on transaction-specific comparison results, the Department reasonably interprets the word “exceeds” in section 771(35)(A) of the Act as including only positive comparison results in the aggregate dumping margin. Consequently, when using the A-to-T method, the Department reasonably does not permit negative comparison results to offset or reduce the sum of the positive comparison results when determining the aggregate dumping margin within the meaning of section 771(35)(B) of the Act.

⁹⁸ *Id.*, at 1109.

⁹⁹ *Id.* at 1106 (internal citations omitted).

¹⁰⁰ See *United States Steel Corp. v. United States*, 621 F.3d at 1355 n.2, 1362-63 (Fed. Cir. 2010) (*United States Steel*).

¹⁰¹ *Id.* at 1363 (“{T}he exception contained in 1677f-1(d)(1)(B) indicates that Congress gave {the Department} a tool for combating targeted or masked dumping by allowing {the Department} to compare weighted average normal value to individual transaction values when there is a pattern of prices that differs significantly among purchasers, regions, or periods of time.”)

¹⁰² As discussed previously, the Department does account, however, for the sale in its weighted-average dumping margin calculation. The value of all non-dumped sales 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, all non-dumped transactions result in a lower weighted-average dumping margin.

Comment 7: Differential Pricing Analysis

Stanley

- Stanley states that “it is not reasonable to use {the} Cohen’s *d* {coefficient} as the fundamental element of a targeted dumping evaluation.” Stanley states that the purpose of the Cohen’s *d* coefficient is to “consider the difference in the means of the studies’ results in standardized units.” Stanley asserts that this purpose is not relevant as applied in the *Preliminary Results*. Stanley cites to the Department’s final determination for *Xanthan Gum from the PRC*^{103 104} as supporting this contention which the Department previously dismissed.
- Stanley claims that the term “significant” from section 777A(d)(1)(B)(i) of the Act can only mean “statistical significance.” Stanley supports this claim by referring the fourth meaning of “significant” in Webster’s dictionary which states “{o}f or pertaining to an observed departure from a hypothesis too large to be reasonably attributed to chance.” Further, Stanley states that without evaluating the “statistical significance” of its analysis then a finding of targeted dumping would “merely reflect{ } random events.”
- Stanley claims that the Cohen’s *d* test is not a “statistical test” and does not account for the possibility of it determining that sales pass the Cohen’s *d* test because of random occurrences.
- The Department’s reliance on the effect size categories of “small,” “medium” and “large” is arbitrary and relative.
- The Cohen’s *d* coefficient was developed for use in the behavioral sciences, which is “completely disconnected from the problem of identifying targeted sales.”
- Use of the Cohen’s *d* test contravenes congressional intent that the application of an alternative comparison method be an “exception” to the standard comparison method. Stanley provides new factual information in a list of the Department’s decisions involving the application of the Cohen’s *d* test and the results thereof to support its hypothesis that the Department determinations will result in the “use of the A-to-T price comparison methodology in the vast majority of cases.”
- Stanley asserts that the Cohen’s *d* test is defective because it is based on the pooled standard deviation, which when presented with homogeneous pricing behavior is distortive and leads to large quantities of sales passing the Cohen’s *d* test.
- The Department’s analysis is distorted because the Cohen’s *d* test relies on net prices, which when gross prices are uniform, merely finds sales passing the Cohen’s *d* test because of the adjustments made when calculating the net prices, such as movement expenses or imputed credit costs. In such situations, any finding of sales passing the Cohen’s *d* test is only based on differences in selling circumstances.
- Congress plainly was concerned and therefore intended, as expressed in the SAA, that the application of the A-to-T method was linked with “targeted dumping.” As a result, the Department may only consider sales which are both “below prices ‘to other customer’” and dumped. Accordingly, the Department cannot include in its analysis a consideration of

¹⁰³ See *Xanthan Gum from the PRC* and the accompanying Issues and Decision Memorandum at page 25.

¹⁰⁴ See Coe, Robert, " It's The Effects Size, Stupid: What effect size is and why it is important," paper presented at the Annual Conference of British Educational Research Association (September 12-14, 2002), <http://www.leeds.ac.uk/educol/documents/00002182.htm>.

higher prices as evidence of “targeting.” Further, no rational seller would ever engage in a strategy of targeting customers with higher prices, as this would be commercial suicide.

- Stanley quotes from the Department’s Preliminary Results that “the Department will continue to develop its approach” with regard to application of the differential pricing analysis. However, the Department has now self-initiated a number of such analyses in many proceedings all using the same approach.
- The Department first addressed the criteria under section 777A(d)(1)(B) in the less-than-fair-value investigation of *Pasta from Italy* where the Department rejected petitioner’s allegation of targeted dumping because it required further analysis and statistically meaningful conclusions. The CIT upheld the Department’s rejection of the petitioner’s allegation in *Borden*. Likewise, in this review, the Department failed to remove outliers, standardize the data, account for other reasons that could explain price differences, control for the volume or customer status, or ensure that passing sales are not the result of random occurrences, or, alternatively, the Department has not explained why it is appropriate to adopt an approach that is different from its previous “approaches.”

Petitioner

- The Department properly employed its DP analysis in the *Preliminary Results* and the arguments raised by Stanley have been consistently rejected in other cases.

Department’s Position: The Department disagrees with Stanley that the differential pricing analysis, including the Cohen’s *d* test, is unreasonable, unlawful or arbitrary. To the contrary, and as explained in the *Preliminary Results*, the Department continues to develop its approach pursuant to its authority to address potential masked dumping.¹⁰⁵ In carrying out this statutory objective, the Department determines whether “there is a pattern of export prices (or constructed export prices) for comparable merchandise that differs significantly among purchasers, regions, or periods of time, and.... why such differences cannot be taken into account using {the A-to-A or T-to-T comparison method}.”¹⁰⁶ With the statutory language in mind, the Department relied on the differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology may be appropriate.¹⁰⁷

Stanley presents several arguments regarding the Department’s differential pricing analysis in the *Preliminary Results*. As an initial matter, we note that Stanley’s arguments have no grounding in the language of the statute. Stanley does not argue that the Department’s reliance on the differential pricing analysis, including the Cohen’s *d* test, violates the statutory language. Rather, Stanley advocates for an alternative approach and puts forth several reasons why it believes the Department should modify its approach from the *Preliminary Results*. There is nothing, however, in the statute that mandates *how* the Department measure whether there is a pattern of prices that differs significantly. To the contrary, the statute is silent. As explained in the *Preliminary Results* and below, the Department’s differential pricing analysis is reasonable and consistent with the congressional intent, including the use of Cohen’s *d* test as a component in this analysis.

¹⁰⁵ See *Preliminary Results*, and accompanying Decision Memo at 14-16.

¹⁰⁶ See section 777A(d)(1)(B) of the Act (emphasis added).

¹⁰⁷ See 19 CFR 351.414(c)(1).

In particular, Stanley argues that the Cohen's *d* test contravenes congressional intent as expressed in the Statement of Administrative Action. We disagree. The SAA expressly recognizes that the statute "provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an A-to-A or transaction-to-transaction (T-to-T) methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, *i.e.*, where targeted dumping may be occurring."¹⁰⁸ As the SAA implies, the Department is not tasked with determining whether targeted dumping is, in fact, occurring. Rather, the SAA recognizes that targeted dumping may be occurring where there is a pattern of prices that differ significantly among purchasers, regions, or time periods. In our view, the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-to-A method or the T-to-T method is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the merchandise at issue.¹⁰⁹ While targeting may be occurring with respect to such sales, it is not a requirement nor a precondition for the Department to otherwise determine that the A-to-T method is warranted, based upon a finding of a pattern of prices that differ significantly as provided in the statute.

With respect to the Cohen's *d* test, the Cohen's *d* coefficient is a statistical measure which gauges the extent (or "effect size") of the difference between the means of two groups. In the final determination for *Xanthan Gum from the PRC*, the Department stated "Effect size is a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."¹¹⁰ In addressing Deosen's comment in *Xanthan Gum from the PRC*, the Department continued:

Effect size is the measurement that is derived from the Cohen's *d* test. Although Deosen argues that effect size is a statistic that is "widely used in meta-analysis," we note that the article also states that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a *true measure of the significance of the difference*." The article points out the precise purpose for which the Department relies on Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.¹¹¹

Accordingly, the Department disagrees with Stanley's claim that the Cohen's *d* test is not an appropriate and reasonable approach to examine whether there exists a pattern of prices that differ significantly.

Stanley argues that "that Cohen's *d* was created for application in the behavioral sciences, completely disconnected from the problem of identifying targeted sales."¹¹² The Department

¹⁰⁸ See SAA at 843.

¹⁰⁹ See 19 CFR 351.414(c)(1).

¹¹⁰ See *Xanthan Gum from the PRC*, Issues and Decision Memorandum at 24, quoting from Coe, Robert, "It's The Effects Size, Stupid: What effect size is and why it is important," paper presented at the Annual Conference of British Educational Research Association (September 12-14, 2002), <http://www.leeds.ac.uk/educol/documents/00002182.htm>.

¹¹¹ *Id.*; footnote omitted; quotation from Coe, emphasis included in the Issues and Decision Memorandum.

¹¹² See Stanley's Case Brief at 32.

finds Stanley's concerns misplaced. In examining whether there exists a pattern of prices that differ significantly, the Department is analyzing a respondent's pricing behavior in the U.S. market. This behavior may be influenced by economic forces, government statutes and policies, company priorities or management idiosyncrasies. This is not a "hard" science such as physics or chemistry which is governed by the laws of nature. Therefore, the Department continues to find that the inclusion of the Cohen's d test in its analysis is appropriate.

Stanley states that "Cohen's d is important where the scale of a dependent variable is not inherently meaningful" and in "such circumstances, it is common to consider the difference in the means of the studies' results in standardized units." The Department agrees as this is what the Department's application of the Cohen's d test provides. U.S. prices are measured in U.S. dollars per a stated unit of quantity. The difference in two prices, such as the difference in the mean prices for two groups (*e.g.*, ten dollars), has no inherent meaning unless it is relevant to a given benchmark. For example, a ten dollar difference in the price of two cars is substantially different than a ten dollar difference in the price of a hamburger. In absolute terms, these two values are identical. However, if each of these differences in prices is examined in relation to the value of the underlying goods, then one can understand that a ten dollar difference in the price of two hamburgers is substantial whereas a ten dollar difference in the price of two cars is not substantial.

For the Cohen's d coefficient, this examination of the price differences between test and comparison groups is relative to "pooled standard deviation." The pooled standard deviation reflects the dispersion, or variance, of prices within each of the two groups. When the variance of prices is small within these two groups, then a small difference between the weighted-average sale prices of the two groups may represent a significant difference, but when the variance within the two groups is larger (*i.e.*, the dispersion of prices within one or both of the groups is greater), then the difference between the weighted-average sale prices of the two groups must be larger in order for the difference to perhaps be significant. When the difference in the weighted-average sale prices between the two groups is measured relative to the pooled standard deviation, then this value is expressed in standardized units based on the dispersion of the prices within each group. This is the concept of an effect size, as represented in the Cohen's d coefficient.

As noted in the *Preliminary Results*, there are three generally accepted thresholds – "small," "medium," and "large" – with respect to the Cohen's d coefficient. The Department disagrees with Stanley's claim that these thresholds are arbitrary in their application. As the Department stated in the response to a similar comment from Deosen in *Xanthan Gum from the PRC*:

In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that the Cohen's d test is a "commonly used measure" to "consider the difference between means in standardized units." At best, the article may indicate that although the Cohen's d test is not perfect, it has been widely adopted. And certainly, the article does not

support a finding, as Deosen contends, that the Cohen's d test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly. (citations omitted)¹¹³

Likewise, in this review, the Department continues to find that these thresholds are not arbitrary; on the contrary, they are widely accepted. Further, in these final results as in the *Preliminary Results*, the Department required that the Cohen's d coefficient meet or exceed the "large" threshold which "provides the strongest indication that there is a significant difference between the means of the test and comparison groups."¹¹⁴ The Department finds this to be a reasonable threshold in evaluating whether there is a pattern of prices that differ significantly.

Stanley contends that the use of the pooled standard deviation is distorted because it is based on the standard deviation of the sale prices to a particular test customer, which Stanley hypothesizes amounts to "a single selling price to a specific test customer."¹¹⁵ Thus, if prices to particular customers are homogeneous, then a respondent is "trapped" into being "guilty" of differential pricing. The Department finds Stanley's argument unpersuasive. As discussed above, the Cohen's d coefficient measures the significance of the difference in the weighted-average sale prices between the test and comparison groups relative to the variances of the individual sale prices within each group. Thus, if there is little variance in prices among purchasers, regions or time periods, then small differences, in absolute terms, may be significant. On the other hand, if individual sale prices within each groups have a greater variability (*i.e.*, they are less homogeneous), then there must be a greater difference in the weighted-average sale prices between the two groups for the difference to be significant. Further, Stanley's concern of homogeneous prices to a given customer does not address sale prices that are not homogeneous between the different customers in the comparison group, even if prices are homogeneous to each of these different customers. If this is the situation, then the variance within the comparison group may very well be quite large, with a corresponding larger difference in the weighted-average sale prices between the test and comparison group being necessary to find a significant difference between the two groups.

Stanley further comments that the use of net prices rather than gross prices distorts the Department's analysis. Thus, Stanley states, differences in prices may be found to exist simply because of differences in the circumstances of the sales. The Department finds Stanley's argument to be misplaced. As discussed above, the purpose of the Department's analysis is to determine whether the A-to-A method is appropriate to measure the amount of dumping for a respondent. To calculate a weighted-average dumping margin, and the underlying A-to-A comparisons, the Department uses net U.S. prices, either based on export prices or constructed export prices. The Department does not calculate dumping margins based solely on gross prices. Accordingly, the Department finds that it is appropriate and reasonable that its examination of a pattern of prices that differ significantly to be based on net prices rather than gross prices, as net

¹¹³ See *Xanthan Gum from the PRC*, Issues and Decision Memorandum at 25, quoting from Dave Lane et al., "Effect Size," Section 2 "Difference Between Two Means."

¹¹⁴ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 15.

¹¹⁵ See Stanley's Case Brief at 35.

prices are the basis used to calculate dumping margins and determine a respondent's amount of dumping.

The Department notes that the last two arguments by Stanley appear to be at odds with each other. In the first, Stanley is concerned with homogeneous pricing to a particular customer, whereas in the second, Stanley contends that the Department should be using the gross U.S. price rather than the net U.S. price in its analysis. If the Department used the gross U.S. price as seemingly preferred by Stanley, then one would expect that prices would be even more homogeneous, as all the various adjustments between gross and net prices, which can vary sale by sale, would not be accounted for in the analysis. This would compound Stanley's first concern. However, use of net U.S. prices, against which Stanley argues, would increase the variability of the sale prices within a group and thus require a larger difference in the weighted-average sale prices between the two groups, and thus alleviate Stanley's first concern.

According to Stanley, it is insufficient for the Department to determine that a "significant difference" exists, despite the fact that this is the precise statutory language. Stanley claims that the difference must also be shown to have "statistical significance" before the Department may find that there exists a pattern of prices that differ significantly. Stanley's claim has no basis in the statutory language, which only requires a finding of a pattern of prices that differ "significantly." The statute does not require that the difference be "statistically significant," only that it be significant. Stanley fails to demonstrate that the Department's reliance on the Cohen's *d* test, which is a generally recognized statistical measure of effect size, is unreasonable and that some higher threshold, not enumerated in the statutory language, must be satisfied. Further, as discussed above, the Cohen's *d* test is a generally recognized measure of the significance of the differences of two means, and the Department has set a threshold of "large" to provide the strongest indication that there is a significant difference between the means of the test and comparison groups.

If Congress had intended to require a particular result be obtained with level of "statistical significance" of price differences as a condition for finding that there exists a pattern of prices that differ significantly, then Congress presumably would have used language beyond the stated requirement and more precise than "differ significantly" as it did, for example, with respect to enacting the sampling provision for respondent selection in section 777A(c)(2)(A) of the Act. The Department, tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, reasonably does not agree with Stanley's opinion that the term "significantly" in the statute can mean only "statistically significant", which in turn can only be determined by application of a t-test. The law includes no such directive. The analysis employed by the Department, including the use of the Cohen's *d* test, reasonably fills the statutory gap as to how to determine whether a pattern of prices "differ significantly."

Further, for the Department's application of the Cohen's *d* test, it is unnecessary to include a measure of the "statistical significance" of its results as this analysis includes all data in the "statistical population" of the respondent's sales in the U.S. market. The Cohen's *d* test "is a generally recognized *statistical measure* of the extent of the difference between the mean of a

test group and the mean of a comparison group”.¹¹⁶ Within the Cohen’s *d* test, the Cohen’s *d* coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all of the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances calculated for these two groups include no sampling error. Statistical significance is used to evaluate whether the results of an analysis rises above sampling error (*i.e.*, noise) present in the analysis. The Department’s application of the Cohen’s *d* test is based on the mean and variance calculated using the entire population of the respondent’s sales in the U.S. market, and, therefore, these values contain no sampling error. Accordingly, statistical significance is not a relevant consideration in this context.

Stanley states that the language of the statute provides that an alternative comparison method should be an “exception” to the standard comparison method. However, Stanley contends that the Department’s application of the Cohen’s *d* test is biased and designed to find “passing” rates in the vast majority of cases. Stanley supports this contention with a list of the Department’s preliminary and final determinations and results of review in which the Department used a differential pricing analysis. The Department finds Stanley’s analysis to be meritless. As described in the *Preliminary Results*, the Department’s differential pricing analysis addresses both criteria set forth in section 777A(d)(1)(B) of the Act. Both requirements must be satisfied before the Department has the option of applying an alternative comparison method in less-than-fair-value investigations. This same practice is being followed in administrative reviews, including the instant review. Stanley’s analysis in its case brief, as well as the information included in Exhibit A, is limited only to the first of these two requirements – whether there exists a pattern of prices that differ significantly. The Department does not find it unexpected or unreasonable that some sales by a respondent are found to pass the Cohen’s *d* test, *i.e.*, that a respondent’s pricing behavior results in significant differences in the prices between two groups. The Department’s analysis continues to consider the extent of the significant price differences that exist for a respondent and whether the standard comparison method can take into account such differences. Therefore, any conclusions which Stanley draws from only examining the results of the Cohen’s *d* test are incomplete and cannot be used to draw inferences regarding the appropriateness of the Department’s practice with regard to the application of an alternative comparison method. In examining the information provided in Stanley’s Exhibit A, the Department notes that for the sixteen respondents for which a final determination or final results of review had been issued, where Stanley decries the biasedness of the analysis with the fact that the “pass” rate for eight of the sixteen respondents is 78.7 percent, that the Department used an alternative comparison method for only three of these sixteen respondents¹¹⁷.

Stanley appears to agree with the Department that “the statute is silent as to whether only high priced sales or low priced sales are to be considered in the analysis.”¹¹⁸ Indeed, the statute does not require that the Department consider only lower priced sales when evaluating whether there

¹¹⁶ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 15 (emphasis added).

¹¹⁷ The three respondents are JBL Canada in Citric Acid from Canada, Jacobi in Activated Carbon from the PRC, and Sanhua in Frontseating Service Values from the PRC.

¹¹⁸ Stanley’s Case Brief at 37.

exists a pattern of prices that differ significantly. The Department has the discretion to consider sales information on the record in its analysis and to draw reasonable inferences as to what that data show. Contrary to Stanley's claim, it is reasonable for the Department to consider both lower priced and higher priced sales in the Cohen's *d* analysis because higher priced sales are equally capable as lower priced sales to create a pattern of prices that differ significantly. Further, higher priced sales will offset lower priced sales, either implicitly through the calculation of a weighted-average sale price for a U.S. averaging group, or explicitly through the granting of offsets when aggregating the A-to-A comparison results, that can mask dumping. The statute states that the Department may apply the A-to-T comparison method if "there is a *pattern of export prices . . . for comparable merchandise that differ significantly among purchasers, regions, or periods of time,*" and the Department "explains why *such differences* cannot be taken into account" using the A-to-A comparison method.¹¹⁹ The statute directs the Department to consider whether a pattern of prices differ significantly. The statutory language references prices that "differ" and does not specify whether the prices differ by being priced lower or higher than the comparison sales. The statute does not provide that the Department considers only higher priced sales or only lower priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. The Department explained that higher priced sales and lower priced sales do not operate independently; all sales are relevant to the analysis.¹²⁰ By considering all sales, higher priced sales and lower priced sales, the Department is able to analyze an exporter's pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differ significantly among purchasers, regions, or periods of time, signals that the exporter has a varying pricing behavior between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in such a pricing behavior, there is cause to continue with the analysis to determine whether the A-to-A method or the T-to-T method can account for such pricing behavior and is the appropriate tool to evaluate the exporter's amount of dumping. Accordingly, both higher and lower priced sales are relevant to the Department's analysis of the exporter's pricing behavior.

Also contrary to Stanley's claim, the statute does not require that the Department consider whether sales have been dumped to be considered part of a pattern of prices that differ significantly. The statute provides no such consideration of NVs in section 777A(d)(1)(B)(i) of the Act, only "export prices (or constructed export prices)." Furthermore, while higher or lower priced sales could be dumped or could be providing offsets for other dumped sales, this is immaterial in the Department's analysis, including the use of the Cohen's *d* test in this administrative review, and in answering the question of whether there is a pattern of export prices that differ significantly. This analysis includes no comparisons with NVs and section 777A(d)(1)(B)(i) of the Act contemplates no such comparisons.

¹¹⁹ See section 777A(d)(1)(B) of the Act (emphasis added).

¹²⁰ See *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) ("Plywood") and accompanying Issues and Decision Memorandum at Comment 5.

Stanley's argument that sales must be both targeted and dumped in order to find that there exists a pattern of prices that differ significantly appears to derive from Stanley's equating the language in the SAA with the requirements of section 777A(d)(1)(B) of the Act. Such a requirement is inappropriate. Congress provided in the statute the option of an alternative comparison method in less-than-fair-value investigations when the two stipulated requirements have been satisfied, and as explained in Comment 5 *supra*, the Department also applies this practice in administrative reviews. To reduce section 777A(d)(1)(B) , however, to a concern over targeting, rather than the statutory requirement of whether there exists a pattern of prices that differ significantly, is to misconstrue the statute and to insert requirements which do not exist therein.

Further, Stanley argues that "targeting" higher priced sales makes no commercial sense and, therefore, should not be considered as a part of a pattern of prices that differ significantly. As discussed above, the Department disagrees with the notion that the term "targeted dumping" in the SAA, as interpreted by Stanley, establishes the requirements set forth in section 777A(d)(1)(B)(i) of the Act. Additionally, the Department disagrees with Stanley's assumption that in the Department's dumping analysis in general, and in addressing the criteria under section 777A(d)(1)(B) of the Act in particular, that the intent of the respondent is relevant. The fact that a respondent's pricing behavior may be motivated by the priority to maximize returns for the owners, promote market penetration, provide for the indigent in the respondent's surrounding region, or commit "commercial suicide"¹²¹ is immaterial to the Department. The statute does not include a requirement that the Department must account for some kind of causality for any observed pattern of prices that differ significantly. Congress did not speak to the intent of the producers or exporters in setting export prices that exhibit a pattern of significant price differences. Nor is an intent-based analysis consistent with the purpose of the provision, as noted above, which is to determine whether the A-to-A method is a meaningful tool to measure whether, and if so, to what extent, dumping is occurring. Consistent with the statute and the SAA, the Department determined whether a pattern of prices that differ significantly exists. Neither the statute nor the SAA requires that the Department conduct an additional analysis to account for potential reasons for the observed pattern of prices that differ significantly.

Stanley takes exception with the fact that the Department states that it will continue to develop its approach, yet in all of the proceedings in which it uses its differential pricing analysis, it applies it in a rigid, mechanical manner. The Department disagrees. First, on an overarching basis, the Department continues to expand its experience in the consideration of an alternative comparison method and how to address the criteria in section 777A(d)(1)(B) of the Act. This is reflected in how the Department's practice evolved over the last 19 years since the implementation of the URAA. On a case-by-case basis, the Department also considers the factual information and arguments on the record for each segment of a proceeding and evaluates whether the approach taken to address the criteria in section 777A(d)(1)(B) should be altered. In particular, for the differential pricing analysis applied in this review, the Department stated:

¹²¹ See Stanley's Case Brief at 39.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.¹²²

No parties submitted information or argument in the instant review that the Department should alter any aspect of its analysis, including the definitions of the defaults groups as first defined in *Xanthan Gum from the PRC*.¹²³ Therefore, the Department considered no such changes. Stanley argues that the Department's current approach based on a differential pricing analysis fails to account for factors which the Department included in its final determination for the less-than-fair-value investigation of *Pasta from Italy*. This determination was upheld by the court in *Borden*.¹²⁴ Accordingly, Stanley insists that the Department must explain its departure from its practice in *Pasta from Italy*. The Department disagrees with Stanley that such an explanation has not been provided. The investigation of *Pasta from Italy* was the first instance in which the Department examined the question of whether the newly adopted A-to-A method in investigations was appropriate to determine a respondent's margin of dumping. As elaborated above, over the past 18 years since this investigation, the Department's knowledge, understanding and experience in addressing this question has grown immensely. In response to this experience, as well as other revisions in the Department's practice, the Department concerns related to the application of the A-to-A method have changed as well as how it addresses the criteria set forth under section 777A(d)(1)(B) of the Act, which has been the vehicle by which the Department addresses such concerns. Each of the changes in how the Department approaches these criteria have been accompanied by deliberative and reasoned discussions behind such changes, with the result that the progression of these changes have now resulted in the Department's use of a differential pricing analysis.

Comment 8: Whether the Department Properly Rejected Certain Information in Stanley's Rebuttal SV Submission

Stanley

- Stanley argues that the Department abused its discretion in rejecting certain information in its October 31, 2013, rebuttal SV submission and allowed Petitioner to "game the system" with its own affirmative SV submission. Stanley states that the information the Department rejected was available on the public record of an administrative review in the PRC steel threaded rod case.

Petitioner

- The Department properly rejected Stanley's untimely submission of new, alternative SV data in a rebuttal submission, consistent with its practice.

¹²² See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 16.

¹²³ See also *Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013) and the accompanying Decision Memorandum at 5, where the Department first applied a differential pricing analysis in an administrative review.

¹²⁴ See *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221 (CIT 1998).

Department's Position: We already addressed this matter in our November 22, 2013, letter to parties and continue to agree with Petitioner. The Department stated therein:

As to Petitioner's allegation that Stanley's rebuttal SV submission contained untimely new factual information, we agree. Stanley's untimely submission of a new, previously absent-from-the-record financial statement (Exhibit SV-48) was

contrary to the Department's explicit instructions in the *Preliminary Results*. Other information also appears to be untimely new factual information (Exhibits SV-46 and SV-47) and will also be stricken from the record. (citation omitted in quote)

In fact, the situation in the case cited by the Department in its letter is directly analogous to that here, involving a wholly new, alternative financial statement submitted by a party in a rebuttal SV submission:

However, we are taking this opportunity to clarify the meaning of 19 CFR 351.301(c)(1) as it pertains to the submission of financial statements as rebuttal to surrogate value submissions. Although we agree with GSC that parties are allowed to submit information to rebut, correct, or clarify the information submitted by other parties within 10 days as the regulation states, in the context of surrogate value submissions, it is not intended to provide an opportunity to submit wholly new surrogate values or financial ratios, such as the financial statements at issue here. Rather, the regulation permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record; it does not envision the submission of additional, previously absent-from-the-record *alternative* surrogate value or financial ratio information. While this distinction can be subtle in certain circumstances, new surrogate financial ratios are clearly new alternative information rather than information that rebuts, clarifies, or corrects information already on the record. Moreover, the Department has concerns that submission of wholly new surrogate value information submitted citing this regulation can generate further submission of yet more "rebuttal" information and has the potential to seriously erode the finality of the record necessary for interested parties to make complete assessments of the record for the purposes of the submission of complete briefs, in accordance with long-standing Department practice. As stated in the preamble to the regulations, "at this point in the proceeding, the Department and the parties have an interest in finalizing the addition of new factual information to the record." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27332 (May 19, 1997). Therefore, parties should take note that financial statements that are introduced as

rebuttal to a surrogate value submission of financial statements generally will not fall within the meaning and applicability of 19 CFR 351.301(c)(1).¹²⁵

Moreover, that case spurred the Department to insert new boilerplate language in all subsequent *Federal Register* notices for the preliminary results of NME antidumping cases in order to avoid such situations and such language was included in the *Preliminary Results*.¹²⁶ Therefore, we continue to find we appropriately removed from the record the untimely new factual information submitted by Stanley.

Company-Specific Issues

Comment 9: Whether the Department Properly Accepted Certain Information in One of Stanley's Supplemental Section C Responses

Petitioner

- The Department should reject Stanley's October 23, 2013, supplemental section C response and remove it from the record.
- Stanley's untimely ministerial errors allegations improperly influenced the Department's decision to accept Stanley's untimely factual information.
- Allowing Stanley's unsolicited and untimely-presented factual information to remain on the record will substantially prejudice Petitioner.

Stanley

- The Department already addressed and rejected Petitioner's assertions that it should reject the alleged untimely factual information in the supplemental response at issue, and should continue to deny Petitioner's request that it do so.
- Petitioner's claim that the Department was improperly influenced by Stanley's ministerial error allegation is off-base, as is its assertion that the Department's decision prejudiced Petitioner.
- The Department should not allow Petitioner to benefit from calculation errors present in the *Preliminary Results*.

Department's Position: The Department already addressed this issue in its November 22, 2013, letter to Stanley and Petitioners, where it stated that information pertaining to the currency unit pertaining to the value-added tax ("VAT") in the file layout for the SAS dataset could remain on the record:

Regarding the allegation that Stanley submitted untimely new factual information relating to the currency of its reported VAT tax amount, we find that although the submission was untimely, the Department is provided with discretion, under 19 CFR 351.202(b), to extend time limits. We have good reason to extend the time

¹²⁵ See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

¹²⁶ See *Preliminary Results*, 78 FR 56863.

limit in this instance. The VAT amount in question is a percentage of the reported entered value. Stanley reported entered value clearly in U.S. dollars (“USD”), so therefore VAT would be expressed in USD as well. Although Petitioner has alleged that reporting the currency in the data layout as USD is new factual information, this “fact” can already be surmised from the record, given that it is calculated as a percentage of entered value, which is USD. We are thus permitting this information to remain on the record.

The Department’s stance for the final results remains unchanged. Stanley submitted comments on the Department’s preliminary margin calculations, alleging ministerial errors.¹²⁷ In response to these comments, the Department referred to its regulations regarding ministerial errors and stated:

19 CFR 351.224(c)(1) states that:

A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a *preliminary determination* may submit comments concerning a significant ministerial error in such calculations. A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a final determination or the final results of a review may submit comments concerning any ministerial error in such calculations. *Comments concerning ministerial errors made in the preliminary results of a review should be included in a party’s case brief.*

(Emphasis added.) The Department issues its preliminary review results and discloses its calculations in part so that any potential errors alleged by parties can be considered for the final results, and we will thus carefully consider the errors alleged by Stanley in its September 13, 2013, letter. We do not, however, issue amended preliminary results in the course of an administrative review.¹²⁸

The Department considered these comments timely pursuant to 19 CFR 351.301(c)(1) while at the same noting that this issue would be properly considered within the context of the final results. The Department also disagrees that Petitioner is somehow prejudiced with the Department’s consideration of the information at issue. As noted *supra*, the Department was aware of a potential error in the calculation soon after the *Preliminary Results*,¹²⁹ and would have scrutinized any record information regarding the VAT deduction. Stanley’s October 23, 2013, supplemental response provided clarity pertaining to information already on the record about its reporting of this deduction.¹³⁰ This enabled the Department to fulfill its objective to calculate antidumping margins as accurately as possible.¹³¹

¹²⁷ See Stanley’s September 13, 2013, letter to the Department.

¹²⁸ See the Department’s September 18, 2013 letter to Stanley.

¹²⁹ See Stanley’s September 13, 2013, letter to the Department.

¹³⁰ See Stanley’s January 18, 2013, section C response at 68-70 and Exhibit C-29.

¹³¹ See *Shakeproof Assembly Components, Div. of Ill. Toolworks, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001) (“*Shakeproof*”); see also *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed. Cir. 1990) (“*Rhone Poulenc*”).

Comment 10: Correction of Errors in Stanley's Margin Calculation

a. VAT Tax Deduction

Stanley

- The Department made a significant error in the calculation of the U.S. price adjustment for the portion of the VAT that is not refunded upon export.

Petitioner

- The Department's determination with regard to the VAT tax deduction in the *Preliminary Results* evidences affirmative intent and is thus not a ministerial error.

Department's Position: We agree with Stanley. As explained in Comment 6 above, the Department clarified the record with respect to how the VAT tax deduction should be determined in the margin calculation for Stanley. Moreover, absolutely none of the judicial precedent cited by Petitioners prevents the Department from using record information submitted subsequent to the *Preliminary Results* in order to make the deduction in the correct manner. Indeed, to do otherwise would be to ignore necessary information enabling us to calculate Stanley's antidumping margin as accurately as possible, and plainly at odds with *Shakeproof* and *Rhone Poulenc*.

b. Movement Expenses

Stanley

- The Department should correct errors in the conversion (from per box to per kilogram) of certain movement expenses that are deducted from the U.S. price.

Petitioner

- The Department's calculation of Stanley's movement expenses used the correct formula to render them on the appropriate per kilogram basis.

Department's Position: After reviewing the record and the bases on how Stanley reported its expenses, we agree with Stanley. The additional step of multiplying certain movement expenses by the ratio of gross-to-net weight is unnecessary. Stanley reported the variables in question on the basis of CONWGT2U (gross),¹³² so dividing by the reported amounts by CONWGT3U (net) accomplishes the necessary conversion. As the formulas in question involve BPI, please refer to the calculation materials for Stanley.¹³³

Comment 11: SV for Stanley's Plastic Beads

Stanley

- Do not use HTS 3921.90.90 as this is for plates/sheets/film/blocks with regular geometric shapes.
- Use HTS 3902.10.90 as this is for polypropylene in primary form, which Stanley used.

¹³² See Stanley's January 18, 2013, Section C Response at 43-48.

¹³³ See Stanley's Final Analysis Memorandum, dated concurrently with this notice ("Stanley Final Analysis Memo").

Petitioner

- Continue using HTS 3921.90.90, and do not use HTS 3902.10.90 as Stanley's beads are not in primary form as they contain material other than polypropylene and have regular geometric shapes.

Department's Position: For the *Preliminary Results*, the Department valued Stanley's plastic beads using the Thai GTA data classified under subheadings for HTS 3921.90.90 (*i.e.*, (2011) 3921.90.90.000 and (2012) 3921.90.90.090).¹³⁴ The 3921.90 HTS category covers "Plates, Sheets, Film Etc, Plastic Nesoi Ncel Nesoi" of plastic other. After further review, information on the record indicates that HTS categories under 3921 only apply to plates, sheets, film, foil, strips and to blocks of regular geometric shapes whether cut or uncut.¹³⁵ In addition, information on the record for another HTS (3902.1090) indicates that it is for polymers of polypropylene in "primary form" (*i.e.*, blocks of irregular shape, lumps, powders, granules, flakes, and similar bulk forms).¹³⁶ We find that Stanley's plastic beads more closely match the description under HTS 3902.10.90 as: 1) this HTS is more specific because it relates to polypropylene and not just "plastic;" 2) there is no indication that Stanley's plastic beads were purchased in a form other than bulk; and, 3) there is no indication that Stanley's plastic beads lend themselves to be cut into regular shapes, as HTS categories under 3921 imply. Thus, for the final results we will use HTS 3902.10.90 to value Stanley's plastic beads.

Comment 12: Whether to Include Certain of JISCO's Sales in the Margin Calculation

JISCO

- The Department should revise its final margin calculations for JISCO to include all U.S. sales that entered the U.S. market during the POR, including those that JISCO shipped prior to the POR and which the Department excluded from its preliminary margin calculations.

No other party commented on this issue.

Department's Position: The Department verified that JISCO correctly reported date of shipment as its date of sale.¹³⁷ In the *Preliminary Results*, the Department calculated JISCO's margin using the date of sale as the delimiter of which U.S. sales to include in the margin calculation.¹³⁸ On further reflection and consistent with section 751(a)(2)(A) of the Act, as well as our practice,¹³⁹ we agree with JISCO and we will include all of its POR entries in the margin calculation for these final results.

¹³⁴ See Prelim SV Memo at 6 and Attachment 2.

¹³⁵ See Stanley's October 31, 2013, submission at SV-43.

¹³⁶ *Id.*

¹³⁷ See JISCO Verification Report at VI.

¹³⁸ See JISCO's Prelim Analysis Memo at Attachment 1, lines 164-167.

¹³⁹ See *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 9668 (February 11, 2013), and accompanying Issues and Decision Memorandum at Comment 5.

Comment 13: Treatment of Entries Attributed to CPI That Entered under One of CPI's CBP Case Numbers

Petitioner

- The Department should apply the PRC-wide rate to all entries attributed to CPI, in accordance with the CIT's recent opinion pertaining to a similar situation in the first administrative review of this order, as well as with the Department's NME reseller policy statement.¹⁴⁰

CPI

- Petitioner is incorrect to state that the CIT decision supports its arguments that the entries in question should be liquidated at the PRC-wide rate.
- CPI correctly reported that it had no shipments during the POR. For one of the entries in question, record evidence indicates that as in all prior reviews, CPI was not the exporter, but only a reseller, and the entry instead pertains to the PRC company that produced and exported the merchandise.¹⁴¹
- For the remaining entries, CPI stated that it had no relationship to them, but that nonetheless the Department should not liquidate them at the PRC-wide rate NME reseller policy statement was not designed to punish importers for listing an incorrect CBP case number.

Department's Position: We agree with both Petitioner and CPI, in part. First, for the entry for which CPI states it acted as a third-country reseller, we agree that record evidence shows the entry in question pertains to the PRC producer/exporter because before the merchandise was invoiced and shipped, the company in question had actual knowledge that it was destined for the U.S. market,¹⁴² and should thus be liquidated at the rate applicable to that company in these final results, which is the margin for the separate rate companies who were not individually reviewed.

Second, for the remaining entries for which CPI disavows any knowledge, we agree with Petitioners and find that it is appropriate to liquidate them at the PRC-wide rate, in accordance with the policy expressed in the *NME Final Assessment of Antidumping Duties*. Although CPI argues that the Department should not follow the rationale of the *NME Final Assessment of Antidumping Duties* and instruct CBP to allow importers to correct alleged clerical errors, the Department disagrees. As an initial matter, CPI has not demonstrated conclusively that these importers made clerical errors in reporting case numbers to CBP. In any event, such concern is the purview of CBP and should be properly addressed through and by CBP, which has the authority to address such issues.¹⁴³ The Department will refer this matter to CBP and will provide CBP any relevant information, as appropriate, to assist that agency in fulfilling its statutory mission relating to AD and countervailing duty collection and enforcement.

¹⁴⁰ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) ("*NME Final Assessment of Antidumping Duties*").

¹⁴¹ See CPI's October 18, 2013, supplemental response at 6-7 and Exhibit 4.

¹⁴² *Id.*

¹⁴³ The Department notes that such concerns can be addressed through CBP's Post-Entry Amendment process.

Comment 14: Treatment of Mingguang Abundant as Part of the PRC-Wide Entity

Petitioner

- The Department should apply adverse facts available (“AFA”) to treat Mingguang Abundant as part of the PRC-wide entity

No other parties commented on this issue.

Department’s Position: We agree with Petitioner, in part. Although Mingguang Abundant reported it had no shipments during the POR, we received a response from CBP contrary to this claim.¹⁴⁴ In the *Preliminary Results*, because we had not yet examined this issue in further detail, we preliminarily considered Mingguang Abundant as a no shipments company, but stated that we would scrutinize the issue further. Subsequent to the *Preliminary Results*, on September 18, 2013, we issued a supplemental questionnaire to Mingguang Abundant, asking it to address evidence that it in fact had shipments of subject merchandise during the POR.¹⁴⁵ After receiving no response, we sent a follow-up letter to Mingguang Abundant,¹⁴⁶ and again received no response. Because Mingguang Abundant did not respond to our supplemental questionnaire to address evidence contrary to its no shipments claim (*i.e.*, that it in fact shipped subject merchandise to the United States during the POR), the uncontroverted evidence is that this company had shipments during the POR and, thus, this company is properly under review. Furthermore, Mingguang Abundant did not submit a separate rate application or certification to demonstrate that it was eligible to receive a separate rate. Thus, consistent with our practice in NME proceedings,¹⁴⁷ we are treating it as part of the PRC-wide entity for the final results of this review. In this regard, we note that our determination with respect to Mingguang Abundant is not the result of AFA.

Comment 15: Treatment of China Staple as a No Shipments Company Rather than a Separate Rate Company

China Staple

- China Staple argues that the Department listed it among the separate rate companies in the *Preliminary Results*, even though it should be considered a no shipments company.

No other parties commented on this issue.

Department’s Position: We agree with China Staple. We inadvertently included China Staple in the list of companies receiving a separate rate, when in fact it submitted a no shipments

¹⁴⁴ See The Department’s September 18, 2013, no shipments supplemental questionnaire at Attachment 1-7.

¹⁴⁵ See the Department’s September 18, 2013, no shipments supplemental questionnaire. We also sent the supplemental questionnaire to the company via e-mail on September 23, 2013.

¹⁴⁶ See the Department’s October 30, 2013, letter to Mingguang Abundant; *see also* the Memorandum to the File from Javier Barrientos, Senior Case Analyst, “Documentation of Non-Response to No Shipments Supplemental Questionnaire,” dated March 31, 2014, showing confirmation of delivery.

¹⁴⁷ See *Preliminary Results* and accompanying Preliminary Results Memorandum at 4 (explaining that companies must demonstrate that they are independent from government control or they are subject to the NME entity’s rate).

response,¹⁴⁸ and we found no evidence that it had shipments during the POR.¹⁴⁹ Therefore, for the final results of this review, we are considering China Staple as a no shipments company.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above 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
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

31 MARCH 2014
Date

¹⁴⁸ See China Staples no shipments response, dated November 15, 2012.

¹⁴⁹ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 3-4.

Appendix
Companies Included in the PRC-Wide Rate

3C Interglobal Ltd.
ABF Freight System, Inc.
Agritech Products Ltd.
Aihua Holding Group Co., Ltd.
Aironware (Shanghai) Co. Ltd.
Anping County Anning Wire Mesh Co.
Anping Fuhua Wire Mesh Making Co.
Anping Shuangmai Metal Products Co.
Apex Qingdao Shipping Co., Ltd.
APM Global Logistics O/B Hasbro Toy
ATE Logistics Co., Ltd.
Ba Shi YUuexin Logistics Development
Beijing Daruixing Global Trading Co., Ltd.
Beijing Daruixing Nail Products Co., Ltd.
Beijing Hong Sheng Metal Products Co., Ltd.
Beijing Hongsheng Metal Products Co., Ltd.
Beijing Jinheuang Co., Ltd.
Beijing Kang Jie Kong Cargo Agent
Beijing KJK Intl Cargo Agent Co., Ltd.
Beijing Long Time Rich Tech Develop
Beijing Tri-Metal Co., Ltd.
Beijing World Resource Time Int'l
Beijing Yonghongsheng Metal Products Co., Ltd.
Bellan International Limited
Besco Machinery Industry (Zhejiang) Co., Ltd.
Big China International Enterprise
Brighten International, Inc.
Brilliant Globe Logistics Inc.
Canada Find Parts and Supplies Inc.
Century Shenzhen Xiamen Branch
Certified Products International Inc.
Changzhou MC I/E Co., Ltd.
Changzhou Quyuan Machinery Co., Ltd.
Changzhou Refine Flag & Crafts Co., Ltd.
Chao Jinqiao Welding Material Co., Ltd.
Chaohu Bridge Nail Industry Co., Ltd.
Chaohu Jinqiao Welding Material Co.
Chewink Corp.
Chia Pao Metal Co., Ltd.
China Container Line (Shanghai) Ltd.
China Ningbo Cixi Imp. & Exp. Corp.
China Olsem Industrial and Internat
China Rainbow Int'l Industry Ltd.

China Silk Trading & Logistics Co., Ltd.
 Chongqing Hybest Nailery Co., Ltd.
 Chongqing Hybest Tools Group co., Ltd.
 Cintee Steel Products Co., Ltd.
 Cyber Express Corporation
 CYM (Nanjing) Nail Manufacture Co., Ltd.
 CYM (Nanjing) Ningquan Nail Manufacture Co., Ltd.
 Dagang Zhitong Metal Products Co., Ltd.
 Dalian Taihua North Trading Co., Ltd.
 Dalixi Co., Limited
 Damco Shenzhen
 Daxing Niantan Industrial
 De Well Container Shipping Inc.
 Delix International Co., Ltd.
 Deweiya Shoes Co., Ltd.
 Dingzhou Derunda Material and Trade Co., Ltd.
 Dingzhou Ruili Nail Production Co., Ltd.
 Dong'e Fugiang Metal Products Co., Ltd.
 Dongguan Five Stone Machinery Products Trading Co., Ltd.
 Dynamic Network Container Line Limited
 Elite International Logistics Co.
 Elite Master International Ltd.
 England Rich Group (China) Ltd.
 Entech Manufacturing (Shenzhen) Ltd.
 Expeditors China Tianjin Branch
 Expeditors Tianjin Branch as Agent
 Faithful Engineering Products Co. Ltd.
 Fedex International Freight Forward Agency Services (Shanghai) Co., Ltd.
 Feiyin Co., Ltd.
 Fension International Trade Co., Ltd.
 Foreign Economic Relations & Trade
 Fujiansmartness Imp. & Exp. Co., Ltd.
 Fuzhou Builddirect Ltd.
 Goal Well Stone Co., Ltd.
 Gold Union Group Ltd.
 Goldever International Logistics Co.
 Goldmax United Ltd.
 Grace News Inc.
 Guangdong Foreign Trade Import & Export Corporation
 Guangdong Xionglue Technology
 Guangzhou Qiwei Imports and Exports Co., Ltd.
 Guoxin Group Wang Shun I/E Co., Ltd.
 GWP Industries (Tianjin) Co., Ltd.
 GWP Manufacturing Corp.
 H.W.C.
 Haierc Industry Co., Ltd.

Haixing Hongda Hardware Production Co., Ltd.
Haixing Linhai Hardware Products Factory
Haiyan Fefine Import and Export Co.
Handuk Industrial Co., Ltd.
Hangzhou Esrom Imp. and Exp. Co.
Hangzhou Kelong Electrical Appliance & Tools Co. Ltd.
Hangzhou Light Industrial Products
Hangzhou New Line Co., Ltd.
Hangzhou Quanda Nails Co., Ltd.
Hangzhou Zhongding Imp. & Exp. Co., Ltd.
Hebei Brother International Trading
Hebei Development Metals Co., Ltd.
Hebei Five-Star Metal Products Co.
Hebei Jinsidun (JSD) Co., Ltd.
Hebei Machinery Import and Export Co., Ltd.
Hebei Minmetals Co., Ltd.
Hebei My Foreign Trade Co., Ltd.
Hebei Richylin Trading Co., Ltd.
Hebei Super Star Pneumatic Nails Co., Ltd.
Hecny Shipping Limited
Henan Pengu Hardware Manufacturing Co., Ltd.
Hengshui Mingyao Hardware & Mesh Products Co., Ltd.
Heretops (Hong Kong) International Ltd.
Heretops Import & Export Co., Ltd.
Hilti (China) Limited
HK Villatao Sourcing Co., Ltd.
Hong Kong Hailiang Metal Trading Ltd.
Hong Kong Yu Xi Co., Ltd.
Honour Lane Shipping Ltd. Qingdao
Huadu Jin Chuan Manufactory Co Ltd.
Huanghua Honly Industry Corp.
Huanghua Huarong Hardware Products Co., Ltd.
Huanghua Jinhai Import and Exports
Huanghua Jinhai Metal Products Co., Ltd.
Huanghua Juhong Hardware Products Co., Ltd.
Huanghua Shenghua Hardware Manufactory Factory
Huanghua Xinda Nail Production Co., Ltd.
Huanghua Yufutai Hardware Products Co., Ltd.
Hubei Boshilong Technology Co., Ltd.
Huiyuan Int'l Commerce Exhibition Co., Ltd.
Jiashan Superpower Tools Co., Ltd.
Jiaxing Yaoliang Import & Export Co., Ltd.
Jinheung Co., Ltd.
Jinhua Kaixin Imp & Exp Ltd.
Jining Huarong Hardware Products Co., Ltd.
Joto Enterprise Co., Ltd.

K.D.W. Co., Ltd.
 K.E. Kingstone
 Karuis Custom Metal Parts Mfg. Ltd.
 Kasy Logistics (Tianjin) Co., Ltd.
 Key Joy Industrial Ltd.
 Keyun Shipping Agency Co., Ltd.
 Kitty Royal (HK) International Industrial
 Koram Panagene Co., Ltd.
 Kuehne & Nagel Ltd.
 Kum Kang Trading Co., Ltd.
 Kyung Dong Corp.
 Le Group Industries Corp. Ltd.
 Leang Wey Int. Business Co., Ltd.
 Liang's Industrial Corp.
 Lijiang Liantai Trading Co., Ltd.
 Linhai Chicheng Arts & Crafts Co., Ltd.
 Lins Corp.
 Linyi Flying Arrow Imp & Exp. Co., Ltd.
 Maanshan Cintee Steel Products Co., Ltd.
 Maanshan Leader Metal Products Co. Ltd.
 Maanshan Longer Nail Product Co., Ltd.
 Manufacutersinchina (HK) Company Ltd.
 Marsh Trading Ltd.
 Master International Co., Ltd.
 Mingguang Abundant Hardware Products Co., Ltd.
 Montana (Taiwan) Int'l Co., Ltd.
 Motao International Ltd.
 Nanjing Dayu Pneumatic Gun Nails Co., Ltd.
 Nanjing Nuo Chun Hardware Co., Ltd.
 Nantong Corporation for Internation
 NEO GLS
 Ningbo Bolun Electric Co., Ltd.
 Ningbo Dollar King Industrial Co., Ltd.
 Ningbo Endless Energy Electronic Co., Ltd.
 Ningbo Fension International Trade Center
 Ningbo Fortune Garden Tools and Equipment Inc.
 Ningbo Haixin Railroad Material Co.
 Ningbo Huamao Imp & Exp. Co., Ltd.
 Ningbo Hyderon Hardware Co., Ltd.
 Ningbo JF Tools Industrial Co., Ltd.
 Ningbo KCN Electric Co., Ltd.
 Ningbo Meizhi Tools Co., Ltd.
 Ningbo Ordam Import & Export Co., Ltd.
 Ningbo Raffini Import & Export
 Ningbo Raffini Import & Export Co.
 NYK Logistics (China) Co., Ltd.

Ocean King Industries Limited
 Oceanblue Int'l Trading Co., Ltd.
 OEC Logistics (Qingdao) Co. Ltd.
 Olsen Industrial and International
 Omega Products International
 OOCL Logistics O B oF Winston Marketing Group Orisun Electronics HK Co., LTd.
 Oriental Cherry Hardware Group Co., Ltd.
 Oriental Logistics Group Ltd
 Pacole International Ltd.
 Panagene Inc.
 Patek Tool Co., Limited
 Pavilion Investmen Ltd.
 Perfect Seller Co., Ltd.
 Prominence Cargo Service, Inc.
 PT Enterprise Inc.
 Pudong Trans USA, Inc.
 Qianshan Huafeng Trading Co., Ltd.
 Qidong Liang Chyuan Metal Industry Co., Ltd.
 Qingao Aoxin Wood Industry Co., Ltd.
 Qingdao Apex Shipping Co., Ltd.
 Qingdao Bestworld Industry Trading
 Qingdao Cheshire Trading Co., Ltd.
 Qingdao D & L Supply Group Co., Ltd.
 Qingdao Denarius Manufacture Co. Limited
 Qingdao Glory Unit Trade Co., Ltd.
 Qingdao Golden Sunshine ELE–EAQ Co., Ltd.
 Qingdao Huarui Industrial Products
 Qingdao International Fastening Systems Inc.
 Qingdao Keyun Logistics Co., Ltd.
 Qingdao Koram Steel Co., Ltd.
 Qingdao Lutai Industrial Products Manufacturing Co., Ltd.
 Qingdao Meijia Metal Products Co.
 Qingdao Mingkai Metal Industrial Ltd.
 Qingdao Relly Industry & Commerce
 Qingdao Rohuida International Trading Co.,
 Qingdao Shantron Int'l Trade Co., Ltd.
 Qingdao Sino-Sun International Trading Company Limited
 Qingdao Super United Metals & Wood Prods. Co. Ltd.
 Qingdao Tiger Hardware Co., Ltd.
 Qingdao TISCO Co., Ltd.
 Qingdao Uni-Trend International Limited
 Qingfu Metal Craft Manufacturing Ltd.
 Qinghai Wutong (Group) Industry Co.
 Qingyuan County Hongyi Hardware Products Factory
 Qingyun Hongyi Hardware Factory
 Qinhuangdao Kaizheng Industry and Trade Co.

Q-Yield Outdoor Great Ltd.
 Region International Co., Ltd.
 Rich Shipping Company Limited
 Richard Hung Ent. Co. Ltd.
 River Display Ltd.
 Rizhao Changxing Nail-Making Co., Ltd.
 Rizhao Handuk Fasteners Co., Ltd.
 Rizhao Qingdong Electronic Appliance Co.,
 Romp (Tianjin) Hardware Co., Ltd.
 Saikelong Electric Appliances (Suzhou) Co.,
 Samsar Exports (HK) Company
 SDV PRC International Freight
 Se Jung (China) Shipping Co., Ltd.
 Seamaster Global Forwarding (China)
 Seamaster Logistics Inc.
 Seatrade International Incorporation
 Senco Products, Inc.
 Senco-Xingya Metal Products (Taicang) Co., Ltd.
 Shandex Co. Economic Developing
 Shandex Co., Ltd.
 Shandex Industrial Inc.
 Shandong Liaocheng Minghua Metal Products Co. Ltd.
 Shandong Minmetals Co., Ltd.
 Shandong Qingyun Hongyi Hardware Prods Co Ltd
 Shanghai C&D Co. Ltd.
 Shanghai Chengkai Hardware Product. Co., Ltd.
 Shanghai Colour Nail Co., Ltd.
 Shanghai Ding Ying Printing & Dyeing CLO
 Shanghai GBR Group International Co.
 Shanghai Goldenbridge International
 Shanghai Holiday Import & Export Co., Ltd.
 Shanghai Jade Shuttle Hardware Tools Co., Ltd.
 Shanghai Jian Jie International TRA
 Shanghai KJ Import & Export Co., Ltd.
 Shanghai March Import & Export Company Ltd.
 Shanghai Mizhu Imp & Exp Corporation
 Shanghai Nanhui Jinjun Hardware Factory
 Shanghai Pioneer Speakers Co., Ltd.
 Shanghai Pudong Int'l Transportation Booking Dep't
 Shanghai Seti Enterprise International Co., Ltd.
 Shanghai Shengxiang Hardware Co.
 Shanghai Suyu Railway Fastener Co.
 Shanghai Tengyu Hardware Products Co., Ltd.
 Shanghai Tengyu Hardware Tools Co., Ltd.
 Shanghai Topnotch International
 Shanghai Tymex International Trade Co., Ltd.

Shanghai Vantell Industry Development Co., Ltd.
 Shanxi Tianli Enterprise Co., Ltd.
 Shanxi Yuci Broad Wire Products Co., Ltd.
 Shanxi Yuci Wire Material Factory
 Shaoguang International Trade Co.
 Shaoxing Chengye Metal Producting Co., Ltd.
 Shenyang Yulin International
 Shenzhen Changxinghongye Imp.
 Shenzhen Erisson Technology Co., Ltd.
 Shenzhen Hengxinli Trading Co., Ltd.
 Shenzhen Meihuiyang Export Co., Ltd.
 Shenzhen Meiyuda Trade Co., Ltd.
 Shenzhen Pacific-Net Logistics Inc.
 Shenzhen Shangqi Imports-Exports TR
 Shenzhen Shunxingli Import Export
 Shenzhen Wang Le Tian Import and Export
 Shenzhen Yuanshun Xiang Trading Co.
 Shijiazhuang Anao Imp & Export Co. Ltd.
 Shijiazhuang Fangyu Import & Export Corp.
 Shijiazhuang Fitex Trading Co., Ltd.
 Shijiazhuang Glory Way Trading Co.
 Shijiazhuang Shuangjian Tools Co., Ltd.
 Shitong Int'l Holding Limited
 Shouguang Meiqing Nail Industry Co., Ltd.
 Shouguang Xinlong New Material Co., Ltd.
 Sinochem Tianjin Imp & Exp Shenzhen Corp.
 Sinosource Zhongding Int'l Ltd.
 Sirius Global Logistics Co., Ltd.
 STD Logistics Ltd.
 Summit Logistics International
 Sunfield Enterprise Corporation
 Sunlife Enterprises (Yangjiang) Ltd.
 Sunway Logistics USA Inc.
 Sunworld International Logistics
 Superior International Australia Pty Ltd.
 Suzhou Guoxin Group Wangshun I/E Co. Imp. Exp. Co., Ltd.
 Suzhou Yaotian Metal Products Co., Ltd.
 T.H.I. Group (Shanghai) Ltd.
 Taihe International Industries Co., Ltd.
 Tampin Sin Yong Wai Industry
 Team Builder Enterprise Ltd.
 Telex Hong Kong Industry Co., Ltd.
 The Everest Corp.
 Thermwell Products
 Tian Jin Sundry Co., Ltd. (a/k/a/Tianjin Sunny Co., Ltd.)

Tianjin Baisheng Metal Product Co., Ltd.
 Tianjin Bosai Hardware Tools Co., Ltd.
 Tianjin Chengyi International Trading Co., Ltd.
 Tianjin Chentai International Trading Co., Ltd.
 Tianjin City Dagang Area Jinding Metal Products Factory
 Tianjin City Daman Port Area Jinding Metal Products Factory
 Tianjin City Jinchi Metal Products Co., Ltd.
 Tianjin Dagang Dongfu Metallic Products Co., Ltd.
 Tianjin Dagang Hewang Nail Factory
 Tianjin Dagang Hewang Nails Manufacture Plant
 Tianjin Dagang Huasheng Nailery Co., Ltd.
 Tianjin Dagang Jingang Nail Factory
 Tianjin Dagang Jingang Nails Manufacture Plant
 Tianjin Dagang Linda Metallic Products Co., Ltd.
 Tianjin Dagang Longhua Metal Products Plant
 Tianjin Dagang Shenda Metal Products Co., Ltd.
 Tianjin Dagang Yate Nail Co., Ltd.
 Tianjin Dery Import and Export Co., Ltd.
 Tianjin Everwin Metal Products Co., Ltd.
 Tianjin Foreign Trade (Group) Textile & Garment Co., Ltd.
 Tianjin Hewang Nail Making Factory
 Tianjin Hongli Qiangsheng Import/Export Co. Ltd.
 Tianjin Huachang Metal Products Co., Ltd.
 Tianjin Huapeng Metal Company
 Tianjin Huasheng Nails Production Co., Ltd.
 Tianjin Jetcom Manufacturing Co., Ltd.
 Tianjin Jieli Hengyuan Metallic Products Co., Ltd.
 Tianjin Jietong Hardware Products Co., Ltd.
 Tianjin Jietong Metal Products Co., Ltd.
 Tianjin Jin Gang Metal Products Co., Ltd.
 Tianjin Jinjin Pharmaceutical Factory Co., Ltd.
 Tianjin Jishili Hardware Co., Ltd.
 Tianjin JLHY Metal Products Co., Ltd.
 Tianjin Jurun Metal Products Co., Ltd.
 Tianjin Juxiang Metal Products Co., Ltd.
 Tianjin Kunxin Hardware Co., Ltd.
 Tianjin Kunxin Metal Products Co., Ltd.
 Tianjin Linda Metal Company
 Tianjin Longxing (Group) Huanyu Imp. & Exp. Co., Ltd.
 Tianjin Master Fastener Co., Ltd. (a/k/a Master Fastener Co., Ltd.)
 Tianjin Mei Jia Hua Trade Co., Ltd.
 Tianjin Metals and Minerals
 Tianjin Port Free Trade Zone Xiangtong Intl. Industry & Trade Corp.
 Tianjin Pro Team Hardware Co., Ltd.
 Tianjin Products & Energy Resources Dev. Co., Ltd.
 Tianjin Qichuan Metal Co. Ltd.

Tianjin Qichuan Metal Products Co., Ltd.
 Tianjin Ruiji Metal Products Co., Ltd.
 Tianjin Senbohengtong International
 Tianjin Senbohengtong Metal Product
 Tianjin Senmiao Import and Export Co., Ltd.
 Tianjin Shenyuan Steel Producing Group Co., Ltd.
 Tianjin Shishun Metal Product Co., Ltd.
 Tianjin Shishun Metallic Products Co., Ltd.
 Tianjin Sunny Co., Ltd.
 Tianjin Tailai Import Export
 Tianjin Xiantong Fucheng Gun Nail Manufacture Co., Ltd.
 Tianjin Xiantong Juxiang Metal MFG Co., Ltd.
 Tianjin Xiantong Material & Trade Co., Ltd.
 Tianjin Xinyuansheng Metal Products Co., Ltd.
 Tianjin Yihao Metallic Products Co., Ltd.
 Tianjin Yongchang Metal Product Co., Ltd.
 Tianjin Yongxu Metal Products Co., Ltd.
 Tianjin Yongye Furniture
 Tianjin Yongyi Standard Parts Production Co., Ltd.
 Tianjin Zhong Jian Wanli Stone Co., Ltd.
 Tianjin Zhongsheng Garment Co., Ltd.
 Tianwoo Logistics Developing Co. Ltd.
 Toll Global Forwarding (Hong Kong)
 Top Shipping Logistics Co., Ltd.
 Topocean Consolidation Service (CHA) Ltd.
 Traser Mexicana, S.A. De C.V.
 Treasure Way International Dev. Ltd.
 True Value Company (HK) Ltd.
 U.S. Shipping, Inc.
 Unicatch Industrial Co. Ltd.
 Unigain Trading Co., Ltd.
 Union Enterprise (Kunshan) Co., Ltd. a.k.a. Union Enterprise Co., Ltd.
 Union Enterprise Co., Ltd.
 Vinin Industries Limited
 Wang Jing
 Wintime Import & Export Corporation Limited of Zhongshan
 Weifang Hecheng International Trade Co Ltd.
 Weifang Wenhe Pneumatic Tools Co., Ltd.
 Weifang Xiaotian Machine Co., Ltd.
 Wenzhou KLF Medical Plastics Co., Lt.
 Wenzhou Ouxin Foreign Trade Co., Ltd.
 Wenzhou Xinhe Import and Export Co.
 Wenzhou Yuwei Foreign Trade Co., Ltd.
 Whorthy Asia Ltd.
 Winner Power International Limited
 Winnsen Industry Co., Ltd.

Winsmart International Shipping Ltd. O/B Zhaoqing Harvest Nails Co., Ltd.
 Winston Marketing Group
 Worldwide Logistics Co., Ltd. (Tianjin Branch)
 Wuhan Xinxin Native Produce & Animal By-Products Mfg. Co. Ltd.
 Wuhu Sheng Zhi Industrial Co., Ltd.
 Wuhu Shijie Hardware Co., Ltd.
 Wuhu Xin Lan De Industrial Co., Ltd.
 Wuqiao County Huifeng Hardware Products Factory
 Wuqiao County Xinchuang Hardware Products Factory
 Wuqiao Huifeng Hardware Production Co., Ltd.
 Wuxi Baolin Nail Enterprises
 Wuxi Baolin Nail-Making Machinery Co., Ltd.
 Wuxi Chengye Metal Products Co., Ltd.
 Wuxi Colour Nail Co., Ltd.
 Wuxi Jinde Assets Management Co., Ltd.
 Wuxi Moresky Developing Co., Ltd.
 Wuxi Qiangye Metalwork Production Co., Ltd.
 Xiamen New Kunlun Trade Co., Ltd.
 Xi'an Metals & Minerals Import and Export Co.
 Xi'an Steel
 XIWU Plastic Products Factory
 XL Metal Works Co., Ltd.
 XM International, Inc.
 Xuzhou CIP International Group Co., Ltd.
 Yeswin Corporation
 Yitian Nanjing Hardware Co., Ltd.
 Yiwu Dongshun Toys Manufacture
 Yiwu Excellent Import & Export Co., Ltd.
 Yiwu Jiehang Import & Export Co., Ltd.
 Yiwu Qiaoli Import & Export Co., Ltd.
 Yiwu Richway Imp & Exp Co., Ltd.
 Yiwu Zhongai Toys Co., Ltd.
 YM Corporation Limited
 Yongcheng Foreign Trade Corp.
 Yu Chi Hardware Co., Ltd.
 Yue Sang Plastic Factory
 Yuhuan Yazheng Importing
 ZEN Continental (Tianjin) Enterprises Co., Ltd.
 Zhangjiagang Lianfeng Metals Products Co., ltd
 Zhangjiagang Longxiang Packing Materials Co.
 Zhaoqing Harvest Nails Co., Ltd.
 Zhejiang Chaoyue Hardware & Chemical Co., Ltd.
 Zhejiang Hungyan Xingzhou Industria
 Zhejiang Jinhua Nail Factory
 Zhejiang Minmetals Sanhe Imp & Exp Co.
 Zhejiang Qifeng Hardware Make Co., Ltd.

Zhejiang Taizhou Eagle Machinery Co.
Zhejiang Yiwu Huishun Import/Export Co., Ltd.
Zhongge International Trade Co., Ltd.
Zhongshan Junlong Nail Manufactures Co., Ltd.
ZJG Lianfeng Metals Product Ltd.