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Washington, D.C. 20230

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DATE: March 7, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

SUMMARY

The Department of Commerce ("Department") analyzed comments submitted by Qingdao D&L, *et al.*,[1] Nanjing Yuechang Hardware Co., Ltd. ("Nanjing Yuechang"), National Nail Corp. ("National Nail"), Mid Continent Steel & Wire, Inc. ("Petitioner"), Shandong Oriental Cherry Hardware Group Co., Ltd. ("Shandong Oriental Cherry"), The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively, "Stanley"), the Hillman Group, and Tianjin Jinchi Metal Products Co., Ltd. ("Tianjin Jinchi") in the sixth administrative review ("AR") of the antidumping duty order on steel nails from the People's Republic of China ("PRC").[2]

Following the *Preliminary Results*[3] and the analysis of the comments received, we made changes to the margin calculations for the final results. We continue to find that it is appropriate to apply our differential pricing analysis to the calculation of Stanley margin for the final results.[4] Additionally, we continue to find that Shandong Oriental Cherry withheld requested information, significantly impeded this AR, and did not cooperate to the best of its ability. Accordingly,

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[1] Qingdao D&L, *et al.* consists of: Qingdao D&L Group Ltd. ("Qingdao D&L"), SDC International Aust. PTY. Ltd. ("SDC International"), Tianjin Lianda Group Co., Ltd. ("Tianjin Lianda"), and Tianjin Universal Machinery Import & Exp. Corporation ("Tianjin Universal"). *See* Letter to the Secretary from Qingdao D&L, *et al.*, "Certain Steel Nails from the People's Republic of China: Case Brief" (October 30, 2015) ("Qingdao D&L, *et al.*'s Case Brief").
[2] *See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008) ("*PRC Nails Order*").
[3] *See Certain Steel Nails From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 53490 (September 4, 2015) ("*Preliminary Results*") and accompanying Preliminary Decision Memorandum.
[4] *See* Comments 1-2 for further discussion.

pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended ("the Act"), we continue to apply total adverse facts available ("AFA") to Shandong Oriental Cherry and find that it is not eligible for separate rate status, placing it in the PRC-wide entity.[5] Moreover, we continue to find, based on facts available ("FA"), that Shandong Oriental Cherry and five affiliated companies should be treated as a single entity (the "Shandong Oriental Cherry Entity"), based on the potential for circumvention of the *Order*.[6] We continue to use Stanley's calculated margin as the margin applied to those companies that qualify for a separate rate in the final results.[7]

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

BACKGROUND

The Department published in the *Federal Register* the *Preliminary Results* on September 4, 2015.[8] On December 21, 2015, the Department extended the deadline in this proceeding by 60 days.[9] As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results of this review is now March 7, 2016.[10]

In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. On October 30, 2015, Qingdao D&L, *et al*., Nanjing Yuechang, National Nail, Petitioner, Shandong Oriental Cherry, Tianjin Jinchi and Stanley submitted timely-filed case briefs, pursuant to our regulations.[11] Additionally, on November 6, 2015, Petitioner and Stanley submitted timely-filed rebuttal briefs.[12] Moreover, on November 20, 2015, Stanley submitted its

[5] *See* Comment 4 for further discussion.
[6] *See* Comment 5 for further discussion.
[7] *See* Comment 3 for further discussion.
[8] *See Preliminary Results*.
[9] *See* Memorandum to Gary Taverman, "Certain Steel Nails from the People's Republic of China: Extension of Deadline for Final Results of the Sixth Antidumping Duty Administrative Review," (December 21, 2015).
[10] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.
[11] *See* Qingdao D&L, *et al*.'s Case Brief; Letter to the Secretary from Nanjing Yuechang, "Certain Steel Nails from the People's Republic of China; Case Brief" (October 30, 2015) ("Nanjing Yuechang's Case Brief"); Letter to the Secretary from National Nail, "Certain Steel Nails from the People's Republic of China: Case Brief" (October 30, 2015); Letter to the Secretary from Petitioner, "Certain Steel Nails from the People's Republic of China: Case Brief" (October 30, 2015) ("Petitioner's Case Brief"); Letter to the Secretary from Shandong Oriental Cherry, "Certain Steel Nails from the People's Republic of China: Case Brief," (October 30, 2015) ("Shandong Oriental Cherry's Case Brief"); and Letter to the Secretary from Tianjin Jinchi, "Certain Steel Nails from the People's Republic of China: Case Brief," (October 30, 2015) ("Tianjin Jinchi's Case Brief"). On October 30, 2015, Stanley also submitted a case brief; however, as discussed immediately below and in Comment 6, we rejected Stanley's original brief and had it submit a revised version.
[12] *See* Letter to the Secretary from Petitioner, "Certain Steel Nails from China: Petitioner's Rebuttal Brief" (November 6, 2015) ("Petitioner's Rebuttal Brief"); and Letter to the Secretary from Stanley, "Certain Steel Nails from China: Stanley's Rebuttal Brief" (November 6, 2015) ("Stanley's Rebuttal Brief").

timely-filed revised case brief, pursuant to our regulations.[13] Finally, on January 12, 2016, the Department held a public hearing where counsel for National Nail, Petitioner, Shandong Oriental Cherry, and Stanley presented issues raised in their case and rebuttal briefs.

SCOPE OF THE ORDER

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (‘‘HTSUS’’) subheadings 7317.00.55, 7317.00.65, 7317.00.75, and 7907.00.6000.[14]

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

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[13] *See* Letter to the Secretary from Stanley, “Certain Steel Nails from China: Stanley’s Revised Case Brief” (November 20, 2015) (“Stanley’s Revised Case Brief”).

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

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

<u>General Issues</u>

Comment 1: Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-than-Fair-Value Investigations

Stanley's Arguments:

- The 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.[15]
- The differential pricing methodology contravenes the targeted dumping regulation, 19 CFR 351.414(f) (2007), 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 A-to-T method to those sales which are found to have met the criteria to be "targeted dumping."

Petitioner's Arguments:

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

[15] *See Gold East Paper (Jiangsu) Co. v. United States*, 918 F. Supp. 2d 1317, 1327 (CIT 2013) ("*Gold East Paper*"); *Mid Continent Nail Corp. v. United States*, 999 F. Supp. 2d 1307 (CIT 2014) ("*Mid Continent*"); *Timken Co. v. United States*, 968 F. Supp. 2d 1279, 1291(CIT 2014) ("*Timken*"); *Gold East Paper (Jiangsu) Co. Ltd.* v. *United States*, 61 F. Supp. 3d 1289 (CIT 2015) ("*Gold East II*"); *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 925 F. Supp. 2d 1332, 1340, n. 10 (CIT 2013) ("*Baroque Timber*").

Department's Position:
The Department disagrees with Stanley that the withdrawal of the targeted dumping regulation violated the APA such that Stanley is entitled to its application.

At the outset, the regulation at issue, 19 CFR 351.414(f) (2007), established criteria for making targeted dumping determinations in antidumping duty investigations, not in the context of an administrative review, as is the case here.[16] While Stanley relies on a number of cases to support its assertion that Commerce's withdrawal of the regulation did not meet the APA's notice and comment requirements, the majority of cases cited, including *Gold East Paper (Jiangsu) Co., Ltd. v. United States*, 918 F. Supp. 2d 1317 (CIT 2013) (*Gold East I*), *Gold East Paper (Jiangsu) Co., Ltd. v. United States*, 61 F. Supp. 3d 1289 (CIT 2015) (*Gold East II*), and *Mid Continent Nail Corp. v. United States*, 999 F. Supp. 2d 1307 (CIT 2014) involved challenges to investigations, not reviews. These cases thus provide little guidance in the context of our current administrative review.

Baroque Timber, also cited by Stanley, is inapposite because the CIT never had the occasion to consider the merits of the plaintiffs' regulatory withdrawal challenge. Although *Baroque Timber* noted in a footnote that the challenge was "similar" to that made in *Gold East Paper* and that "the Government's defense of the withdrawal does not appear strong,"[17] on remand the Department made several changes to surrogate values, after which the Department "determined that the average-to-average comparison method accounts for any pattern of prices that differ significantly for each company" and applied that method to both respondents in calculating their revised weighted-average dumping margins.[18] The CIT subsequently sustained the Department's findings on this point, noting that no party contested "Commerce's targeted dumping determinations."[19] Because *Baroque Timber* never decided whether the Department properly withdrew its regulation in the first place, this case is inapposite to the question of whether regulations governing targeted dumping were in effect for that review.

The targeted dumping regulations were 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 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 regulations 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.[20] As the notice explained, because the Department had 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

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[16] *See* 19 CFR 351.414(f)-(g) and 19 CFR 351.301(d)(5) (2007); *Withdrawal Notice*, 73 FR at 74930-31.
[17] *Baroque Timber*, 925 F. Supp. 2d at 1340 n.10.
[18] *See Baroque Timber Industries (Zhongshan) Company, Limited, et al. v. United States*, Consol. Court No. 12-00007, Slip Op. 13-96, Final Results of Redetermination Pursuant to Court Order, at 26-27 (November 14, 2013), available at: http://enforcement.trade.gov/remands/13-96.pdf.
[19] *See Baroque Timber Indus. (Zhongshan) Co. v. United States*, 971 F. Supp. 2d 1333, 1338 n.15 (CIT 2014).
[20] *See Targeted Dumping in Antidumping Investigations; Request for Comment*, 72 FR 60651 (October 25, 2007).

comments.[21] Various parties submitted comments in response to the Department's request.[22] Notably, none of the respondents in this review commented.

After considering those comments, the Department published a proposed new methodology in May 2008, and again requested public comment.[23] Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."[24] Several of the submissions[25] received from parties explained that the Department's proposed methodology was inconsistent with the statute and should not be adopted.[26] 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.[27] Again, none of the respondents in this review commented.

These comments suggested that the regulations were 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."[28] For this reason, the Department determined that the regulations had to be withdrawn.[29] Although this withdrawal was effective immediately, and the Department did not replace the regulatory provisions with new provisions, the Department again invited parties to submit comments, and gave them an additional 30 days to do so.[30] The comment period ended on January 9, 2009, with several parties submitting comments.[31] As in the first and second comment periods prior to the withdrawal, none of the respondents in this review submitted comments.

The course of the Department's decision-making demonstrates that it sought to actively engage the public. This type of public participation is fully consistent with the APA's notice-and-

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[21] *Id*.
[22] *See Public Comments Received December 10, 2007*, Department of Commerce, http://ia.ita.doc.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index.html (December 10, 2007) (listing the entities that commented).
[23] *See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations*, 73 FR 26371, 26372 (May 9, 2008).
[24] *Id*.
[25] 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.
[26] *See, e.g.*, Letter from Various Domestic Producers to the Department, titled "Comments on Targeted Dumping Methodology, Comments," dated June 23, 2008, ("Letter from Various Domestic Producers") at 2 (http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/kdw-td-cmt-20080623.pdf).
[27] *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 Various Domestic Producers at 29.
[28] *See Withdrawal Notice* at 74930-31.
[29] *Id*., at 74931.
[30] *Id*.
[31] *See Public Comments Received January 23, 2009*, Department of Commerce (January 23, 2009), available at: http://enforcement.trade.gov/download/targeted-dumping/comments-20090123/td-cmt-20090123-index.html.

comment requirement.[32] Moreover, various courts have rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.[33] 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 has, as a whole, acted in a way that is consistent with the statute's purpose.[34] Here, similar to the agency in *Mineta*, the Department provided the parties more than one opportunity to submit comments before withdrawing the regulation and developing a new methodology. 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 do 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 be identical to the rule that it proposed and upon which it solicited comments.[35] 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 regulations 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 regulations were insufficient to satisfy the APA's requirements, which they were not, 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."[36] The CAFC has recognized that this exception can relieve an agency from issuing notice and soliciting comments where doing so would delay the relief that Congress intended to provide. In *National Customs Brokers*, the CAFC rejected a plaintiff's argument that the U.S. Customs Service 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.[37] Moreover, although the U.S. Customs Service 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 those regulations.[38] The U.S. Customs Service explained that "good cause" existed to depart from compliance 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

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[32] *See, e.g.*, *Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1299–1300 (D.C. Cir. 2000) (holding that the EPA'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).
[33] *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).
[34] *Id*.
[35] *See, e.g.*, *First Am. Discount Corp. v. CFTC*, 222 F.3d 1008, 1015 (D.C. Cir. 2000).
[36] *See* 5 USC 553(b)(B).
[37] *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*).
[38] *Id*., at 1220–21.

regulations should "become effective as soon as possible" so that the public could benefit from "the relief that Congress intended."[39] 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."[40] For this reason, the Court affirmed the regulation against the plaintiff's challenge.[41]

Here, 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 regulations 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 regulations.

Even assuming that the Department did not comply with the APA notice and comment requirements, which it did, Stanley still would not have been harmed by such noncompliance. A lack of prior notice and comment is not sufficient to invalidate a regulation where the error is harmless.[42] Indeed, the Court recently held in an investigation that, under nearly identical facts, the plaintiff was not harmed by the withdrawal notice.[43]

Furthermore, any lack of prior notice was harmless because the withdrawal notice did not impose any new legal obligations on Stanley. Nor did Stanley have any settled expectations with regard to the Department's nascent practice regarding targeted dumping and, given the retrospective nature of antidumping laws, Stanley was not entitled to expect that the Department's methods would remain fixed or be able to predict future dumping calculations.[44] Even if the Department had first provided prior notice of intent to withdraw the regulation, and then delayed withdrawal by 30 days, the withdrawal still would have become effective long before the beginning of the period of review in this case.

Because 19 CFR 351.414(f) (2007) does not apply to reviews and, in any event, was properly withdrawn, Stanley cannot challenge whether differential pricing, and in particular the Cohen's *d* test, is an appropriate statistical technique in accordance with the withdrawn regulation.

As a final matter, the CIT's recent *Apex* decision further underscores the point that the Department's introduction and subsequent use of the differential pricing methodology was

[39] *Id*., at 1223.
[40] *Id*., at 1224 (emphasis added).
[41] *Id*.
[42] *See Intercargo Ins. Co. v. United States*, 83 F.3d 391, 394 (Fed. Cir. 1996).
[43] *See Beijing Tianhai Indus. Co., Ltd. v. United States*, 7 F. Supp. 3d 1318, 1333 (Ct. Int'l Trade 2014) (where plaintiff, like Stanley, did not (1) submit any comments before or after the withdrawal notice and (2) identify any arguments not already presented, Commerce's failure to invite notice and comment prior to issuing withdrawal notice constituted harmless error).
[44] S*ee Abitibi-Consol. Inc. v. United States*, 437 F. Supp. 2d 1352, 1361-62 (Ct. Int'l Trade 2006).

accomplished in a lawful manner.[45] There, the court held that: "The regulatory provisions that Plaintiffs argue Commerce failed to comply with do not apply to administrative reviews. The issue of whether the regulations were properly withdrawn is not before the court as the regulations by their terms only apply to investigations…Thus, there is no regulation that expressly requires Commerce to apply the limiting rule and the allegation requirement in a review."[46]

Comment 2: Differential Pricing Methodology

Stanley's Comments

- The Department's "differential pricing" approach is unreasonable and unlawful.[47]
- The *Preliminary Results* used the differential pricing approach to conclude incorrectly that Stanley had engaged in targeted dumping.[48]
- Differential pricing's rote application of a series of mathematical formulae to every CONNUM, purchaser, region, and time period regardless of the subject merchandise or the circumstances of its sale demonstrates that differential pricing has no focus.[49]
- The Cohen's *d* test ("CDT") is not reasonably used as the fundamental element of a targeted dumping evaluation.[50]
- The use of the "Cohen's *d*" test as an element of differential pricing conflicts with congressional intent as expressed in the statute's language and the Statement of Administrative Action ("SAA").[51]
- The CDT contravenes both congressional guidance as well as the Department's duty to calculate antidumping duty margins as accurately as possible.[52]
- The Cohen's d statistic measures the effect of an intervention, not the mere difference between two groups.[53]
- Both *Xanthan Final* at 24 and *5th AR Final Results* at 33 define "effect size" as "a simple way of quantifying the difference between two groups."[54]
- The Cohen's *d* statistic is not properly employed in the context of an antidumping analysis.[55]

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[45] *Apex Frozen Foods Private Ltd. v. United States*, 2016 Ct. Intl. Trade LEXIS 9 (Ct. Int'l Trade Feb. 2, 2016) ("*Apex*") at 14-22.
[46] *Id.* at 14.
[47] *See* Submission of Redacted Case Brief of The Stanley Works (Langfang) Fastening Systems Co., Ltd and Stanley Black & Decker, Inc. dated November 20, 2015 at 1.
[48] *Id*. at 4
[49] *Id*. at 8.
[50] *Id*. at 9.
[51] *Id*. at 1.
[52] *See Amanda Foods (Viet.) Ltd. v. United States*, 714 F. Supp. 2d 1282 (Ct. Int'l Trade 2010), and *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185 (Fed. Cir. 1990).
[53] *Id*. at 10.
[54] *Id*. at 10, citing *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum ("*Xanthan Final*"); and *Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Administrative Review; 2012-2013*, 80 FR 18816 (April 8, 2015) and accompanying Issues and Decision Memorandum ("*5th AR Final Results*").
[55] *Id*. at 1.

- The *Preliminary Results* mischaracterize the Cohen's d statistic as measuring a mere difference in the means of two groups, unreasonably failing to acknowledge what it actually measures.[56]
- The Cohen's *d* statistic is a meta-data analysis that was developed for the social sciences.[57]
- The Cohen's *d* statistic measures an "effect size."[58] The Cohen's *d* categorization of effect sizes as "small," "medium," and "large" is arbitrary, rendering the Department's reliance on that categorization unreasonable as well.[59]
- The Department has previously acknowledged that the Cohen's d statistic measures "effect size."[60]
- The *Preliminary Results* are based on the assertion that the Cohen's d statistic has "defined" three "fixed thresholds," of which the "large" threshold is equal to a Cohen's d coefficient of 0.8.[61]
- Contrary to the findings in the *Preliminary Results*, the "thresholds" identified by the Department are not "fixed," nor are they "defined" by Cohen's *d*, but are merely conventions.[62]
- The Department's defense of "small", "medium", and "large" thresholds of the Cohen's *d* test as "widely adopted" is misleading because these thresholds were adopted in specific contexts – none of which reasonably pertain to targeted dumping analyses.[63]
- The threshold element of differential pricing – the CDT – is inappropriate, arbitrary, and unreasonable basis on which to determine whether a pattern of significant price difference exists.[64]

  The Cohen's d statistic is not an appropriate statistical technique for making the determination that there is a pattern of prices that differ significantly."[65]
- The *Preliminary Results* declare that "the large threshold provides the strongest indication that there is a significant difference between means of the test and comparison groups." This says nothing about whether there is in fact a significant difference in prices.[66]
- It is not reasonable to use the Cohen's *d* statistic when, as in an administrative review, the entire data population is available.[67]
- The Cohen's *d* test does not measure whether price differences are "significant" within the meaning of the statute. It is an estimation tool, not a statistical "test."[68]
- The Cohen's *d* test does not test a statistical hypothesis.[69]
- The Department improperly employed the Cohen's *d* test without an accompanying "confidence interval."[70]

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[56] *Id*. at 11.
[57] *Id*. at 1.
[58] *Id*. at 1.
[59] *Id*. at 1.
[60] *Id*. at 10.
[61] *Id*. at 14.
[62] *Id*. at 14.
[63] *Id*. at 15.
[64] *Id*. at 5.
[65] *Id*. at 8.
[66] *Id*. at 15-16.
[67] *Id*. at 1-2.
[68] *Id*. at 2.
[69] *Id*. at 18.

- By disregarding statistical significance, the Department has ignored the extent to which random events erroneously suggest patterns of significant price differences.[71]
- The Department violated its obligation to calculate margins as accurately as possible and not to give an unfair advantage to competing domestic industries.[72]
- Nowhere in the *Preliminary Results* does the Department explain why its stratification of CDT pass rates is reasonable or how it defines a pattern with the meaning of the statute.[73]
- The use of pooled standard deviations in calculating the Cohen's *d* test assumes that the test group and comparison group are estimates of the same population value and that the calculated standard deviations of the two are essentially the same.[74] Such assumptions are not reflected in Stanley's data.[75]
- If the Department continues to use differential pricing in the final results, it should use a weighted average pooled standard deviation or a similar alternative.[76]
- It has been observed in other proceedings that "42 percent of observations would pass the Cohen's *d* test" by chance.[77]
- The Department contravened congressional intent that targeted dumping comprises selling to some customers or regions at dumped prices by counting sales as "targeted" that were not dumped and "passed" the CDT because they were made at prices higher than the comparison group mean. [78]
- Including sales that "pass" the CDT in the base groups for other test groups unreasonably causes sales to "pass" the CDT that otherwise would not.[79]
- It is unreasonably difficult for respondents to revise prices to avoid being "guilty" of targeting dumping.
- The Department uses CDT in a manner that is biased towards finding prices that differ significantly.[80] Neither the "ratio" element nor the "meaningful difference" element of the differential pricing approach explain why the Average-to Average ("A-to-A") price comparison method cannot account for any perceived pattern of significant price differences.[81]
- Differential pricing fails to explain why the Department cannot account for a perceived pattern of price differences using the A-to-A price comparison.[82]
- The stratification of CDT pass rates in the "ratio" element does not describe a pattern of price differences, as the statute requires, and the CIT has dismissed the "meaningful difference" element as failing to explain why the A-to-A method cannot account for perceived price differences.[83]

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[70] *Id*. at 2.
[71] *Id*. at 2.
[72] *Id*. at 2.
[73] *Id*. at 25.
[74] *Id*. at 2.
[75] *Id*. at 2.
[76] *Id*. at 2.
[77] *Id*. at 2.
[78] *Id*. at 2-3.
[79] *Id*. at 3.
[80] *Id*. at 29.
[81] *Id*. at 3.
[82] *Id*. at 25.
[83] *Id*. at 3.

Petitioner's Comments

- The Department should continue to use its current differential pricing methodology for the final results of this review.[84]
- Stanley has not presented any facts or argument for the Department to deviate from its recent differential pricing determinations.[85]

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.[86] 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}."[87] 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.[88]

Stanley presents several arguments regarding the Department's differential pricing analysis in the *Preliminary Results*. Stanley's arguments are premised on the idea that the Department's reliance on the differential pricing analysis, including the Cohen's *d* test, does not satisfy the statutory intent. There is nothing, however, in the statute that mandates *how* the Department measures 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, including the use of Cohen's *d* test, is reasonable and consistent with the congressional intent.

Stanley argues that the Cohen's *d* test was created for application in the behavioral sciences, for measuring the size of the effect of an intervention, and thus is completely disconnected from the problem of identifying targeted sales.[89] The Department 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. Rather, pricing behavior is a sub-component of economics, which falls within the purview of the behavioral sciences.[90] Therefore, the Department continues to find that the inclusion of the Cohen's *d* test in its analysis is appropriate. Stanley's additional argument that the Cohen's *d* coefficient was created to measure the effect of a clinical intervention on an

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[84] *See* Petitioner's Rebuttal Brief at 1.
[85] *Id*. at 9.
[86] *See Preliminary Results*, and accompanying Decision Memorandum at 32-34.
[87] *See* section 777A(d)(1)(B) of the Act (emphasis added).
[88] *See* 19 CFR 351.414(c)(1).
[89] *See* Stanley's Case Brief at 12-13.
[90] *See 5th AR Final Results* Final Decision Memorandum at 31.

experimental group (*i.e.*, an intangible unit)[91] is without merit; nothing indicates that it cannot be used in an analysis involving tangible units.

Likewise, Stanley's injection of additional meaning into the word "significantly" is also unsupported by either the statute or the SAA.[92] As discussed further below, Stanley conflates the term "significantly" with "statistically significant" as well as the purposes of a measure of effect size, such as the Cohen's *d* coefficient, and a measure of statistical significance. In the Cohen's *d* test used by the Department for Stanley, the Department has ensured that each of the differences in prices, as reported by Stanley, have significance to the extent provided by the widely accepted applications of the Cohen's *d* coefficient.

According to Stanley, it is insufficient for the Department to determine that a "significant difference" in prices exists, despite the fact that this is the precise direction under the pertinent statutory language. Stanley claims that the difference must also be shown to have "statistical significance" rather than simply being "large" before the Department may consider use of the alternative methodology. Stanley claims that the Department must employ the t-test to determine statistical significance in order for the Department's analysis to be lawful. 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.

The Department disagrees with Stanley's argument that "statistical significance" is equivalent to "significance." Stanley, as stated above, conflates and sows confusion with regards to the meaning of these two terms, just as with the meaning behind effect size and statistical significance, while providing references to a "reliable sample" and sample size. In statistics, there are a number of statistical measures which can be used to quantify a given set of data. Examples of such statistical measures are the mean and variance of a population. When statistical measures, such as the mean and variance, cannot be calculated for a population, then these values can be estimated by the selection of a random sample of data from that population. These estimations are not the same as the actual values if they could be measured from the population. Consequently, each of these estimations has an associated "statistical significance" which quantifies the reliability of the estimation (*i.e.*, how close is the estimation, within a specified confidence interval, of the actual value). One can then select another random sample (or multiple random samples) to calculate other estimation(s) of the statistical measures. These estimations (*e.g.*, of the mean) will each be different than each of the other estimation(s) and will each have an associated statistical significance as to the difference between each estimation and the actual value of the statistical measure (*e.g.*, the mean) of the population. Further, each of these estimations will vary randomly since they are based on a random sample of data from the population. This randomness is exemplary of the "noise" or sampling error that is inherent when an actual statistical measure of a population is estimated based on data in a random sample from that population.

In order to determine the "significance" of the difference in the pattern of prices among purchasers, regions, or time periods, the Department has relied upon a concept called the "effect size," and in particular a specific approach developed by Jacob Cohen called the "*d*" statistic or,

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[91] *See* Stanley's Case Brief at 13.
[92] *Id.* at 20-22.

as the Department has labeled it, the "Cohen's *d* coefficient." This "significance" denotes whether this difference is significant and has meaning, and it is distinct from the concept of "statistical significance" discussed above in relationship to the estimation of the actual values of statistical measures of a given population of data. In the final determination of *Xanthan Gum from the PRC*, the Department described "effect size" in response to a comment from Deosen, an examined respondent in that investigation:

> Nothing in Deosen's submitted articles undermines the Department's reliance on the Cohen's *d* test. Deosen's reliance on the article "It's the Effect Size, Stupid" does not undermine the validity of the Cohen's *d* test or the Department's reliance on it to satisfy the statutory language. Interestingly, the first sentence in the abstract of the article states: '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*.' 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.[93]

To the extent that Stanley argues that "significance" is often meant to imply "statistical significance," we find that if Congress had intended to require a particular result be obtained to ensure the "statistical significance" of price differences that mask dumping as a condition for applying an alternative comparison method, Congress presumably would have used language more precise than "differ significantly." The Department, tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, does not agree with Stanley that the term "significantly" in the statute can only mean "statistically significant." The law includes no such directive. The analysis employed by the Department, including the use of the Cohen's *d* test, fills the statutory gap as to how to determine whether a pattern of prices "differ significantly."[94] Further, the use of other statistical measures is to determine from a sample (*i.e.*, the data at hand) of a larger population an estimate of what the actual values (*e.g.*, the mean or variance) of the larger population may be with a "statistical significance" attached to that estimate. However, the Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by the respondent, and, therefore, there are no estimates involved in the results. Accordingly, "statistical significance" is not a relevant consideration.

Furthermore, in examining the requirement provided in section 777A(d)(1)(B)(i) of the Act, the Department has relied upon "effect size," and specifically the Cohen's *d* coefficient, to evaluate whether the difference in the pattern of prices for comparable merchandise among purchasers,

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[93] *See 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*") and the accompanying Issues and Decision Memorandum at Comment 3(emphasis in the original, internal citations omitted); quoting from Coe, "It's the Effect Size, Stupid: What effect size is and why it is important," Paper presented at the Annual Conference of British Educational Research Association (Sept. 2002), http://www.leeds.ac.uk/educol/documents/00002182.htm.
[94] *See Apex* at 27, footnote 19.

regions, or time periods is significant. However, unlike in the description above, the data upon which the statistical measure of effect size is based are not random samples, but rather the entire population of data (*i.e.*, the U.S. sales to each purchaser, region, and time period). Stanley has reported all of its sales of subject merchandise in the U.S. market during the period of review, and it is this data upon which the Department is basing its analysis consistent with the requirements of section 777A(d)(1)(B), just as it has when calculating Stanley's weighted-average dumping margin. Accordingly, the Department's calculation of the Cohen's *d* coefficient includes no noise or sampling error as the underlying means and variances used to calculate the Cohen's *d* coefficient are not estimates, but the actual values based on the complete U.S. sales data as reported by Stanley in this review. Therefore, Stanley's insistence that the Department first consider the statistical significance of its analysis is misplaced and would be inappropriate.

Several of Stanley's arguments embody a fundamental misinterpretation of the statute and the term "significant." For example, Stanley raises concerns with regard to accounting for random events and Type I error, and also expresses concerns about whether the Cohen's *d* test tests a statistical hypothesis, which is necessary when measuring statistical significance. As stated above, there are no random estimates of actual statistical measures because the Department's analysis relies on complete information to perform such calculations. Because the Department has the complete population of Stanley's United States sales, none of the resulting calculations evince random errors because of sampling. Moreover, because there is no sampling or randomness, all issues related to Type I error (*i.e.*, errors that occur because of sampling) are moot. And finally, because the Department is not required to measure statistical significance, all of Stanley's discussion of statistical hypothesis testing is irrelevant.

The Department disagrees with Stanley's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary.[95] Although these thresholds have qualitative labels, as described in the Preliminary Decision Memorandum, the Department stated that of these three thresholds, "the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists."[96] In other words, the significance required by the Department in its Cohen's *d* test affords the greatest meaning to the difference of the means of the prices among purchasers, regions, and time periods. Furthermore, as originally stated 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 Cohen's *d* is a "commonly

[95] *See* Stanley's Case Brief at 13-16.
[96] *See* Preliminary Decision Memorandum at 34.

used measure{}” to “consider the difference between means in standardized units.”[97]

The Department therefore chose these thresholds because they are generally accepted thresholds for the Cohen’s *d* test. Despite Stanley’s contention, the Department finds the Cohen’s *d* test is a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.[98]

Stanley states that “The Cohen’s *d* statistic is also a useful tool in meta-analysis as a methodology for assembling the statistical results of multiple research studies in the behavioral sciences and drawing general inferences from them collectively. In such circumstances, it is useful to consider the difference in the means of the studies’ results - that is, the effect of the intervention being studied - in standardized units.”[99] 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 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.

Stanley argues that the Cohen’s *d* test contravenes congressional intent as expressed in the SAA. 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.”[100] 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.[101] 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, due to finding of a pattern of prices that differ significantly, as provided in the statute.

For the Cohen’s *d* coefficient, this examination of the price differences between test and comparison groups is relative to “pooled standard deviation.” The use of a simple average in

[97] *See Xanthan Gum from the PRC* and the accompanying Issues and Decision Memorandum at Comment 3 (internal citations omitted); quoting from David Lane, *et al.*, Chapter 19 “Effect Size,” Section 2 “Difference Between Two Means.”
[98] *Id*.
[99] *See* Stanley’s Case Brief at 12-13.
[100] *See* SAA at 843.
[101] *See* 19 CFR 351.414(c)(1).

determining the pooled standard deviation equally weighs a respondent's pricing practices to each group and the magnitude of the sales to one group does not skew the outcome. This approach is reasonable and consistent with section 777A(d)(1)(B)(i) of the Act. 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.

The Department disagrees with Stanley that we did not provide an explanation of why the A-to-A methodology cannot account for pricing differences. As explained in the *Preliminary Results*, if the difference in the weighted-average dumping margins calculated using the A-to-A method and an appropriate alternative comparison method is meaningful, then this demonstrates that the A-to-A method cannot account for such differences and, therefore, an alternative method would be appropriate.[102] The Department determined that a difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method when both margins are above *de minimis*; or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.[103] Here, such a meaningful difference exists for Stanley because when comparing Stanley's weight-averaged dumping margin calculated pursuant to the A-to-A method and an alternative comparison method based on applying the A-to-T method only to those U.S. sales that passed the Cohen's *d* test, Stanley's weighted-average dumping margin moves across the *de minimis* threshold. This threshold is reasonable because comparing the weighted-average dumping margins calculated using the two comparison methods allows the Department to quantify the extent to which the A-to-A method cannot take into account different pricing behaviors exhibited by the exporter in the U.S. market.[104] Therefore, for these final results, the Department finds that the A-to-A method cannot take into account the observed differences.

Stanley further comments that the use of net prices rather than gross prices distorts the Department's analysis. Stanley argues that differences in prices may be found to exist simply because of differences in the circumstances of the sales.[105] The Department finds Stanley's argument to be misplaced. As discussed above, the purpose of the Department's analysis is to

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[102] *See* Preliminary Decision Memorandum at "Determination of Comparison Method."
[103] *Id*.
[104] *See Apex* at 41-45; in particular "In furtherance of that objective, it is reasonable for Commerce to presume that A-A cannot account for the price differences in instances where A-A is unable to uncover any dumping at all and A-T is able to do so. Therefore, Commerce's explanation that A-A could not account for the significant price differences here is reasonable." *Id.* at 43. Indeed, this is the precise fact patter in this review, where the A-to-A methodology applied to Stanley results in a *de minimis* margin, and the A-to-T methodology reveals a positive dumping margin.
[105] *See* Stanley's case brief at 41.

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 (stemming from 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. The use of net prices is consistent with the view that discounts, rebates and similar price adjustments are not expenses, but instead form part of the price itself. 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 prices are the basis used to calculate dumping margins and determine a respondent's amount of dumping.

On the one hand, Stanley is concerned with homogeneous pricing to a particular customer, whereas on the other, Stanley contends that the Department should be using gross U.S. prices rather than net U.S. prices in its analysis. The Department finds that these two arguments appear to be at odds with each other. If the Department used gross U.S. prices, 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, the use of net U.S. prices 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, thus alleviating Stanley's first concern.

Stanley alleges that the Department's use of the Cohen's *d* test is biased toward finding prices that differ significantly, leading the Department to overuse the average-to-transaction method. Stanley conflates passing the Cohen's *d* test, the application of the average-to-transaction comparison methodology (*i.e.*, resulting from a finding that a pattern of prices that differ significantly exists and that the average-to-average methodology cannot account for such differences), and a finding of dumping (*i.e.*, finding that a respondent is selling subject merchandise at below normal value). Each of these requires a separate analysis with distinct results that should not be confused with one another. Moreover, Stanley's citations to the Department's determinations wherein we found that respondents' sales passed the Cohen's *d* test illustrate nothing other than that the respondents' pricing behavior exhibited certain significant differences in prices.

Stanley attempts to validate its claim on the supposed bias of the Cohen's *d* test by pointing to the outcomes of 209 preliminary determinations for respondents in which a differential pricing analysis was employed.[106] Stanley argues that bias exists because "37 percent of the respondents in [these] preliminary decisions each targeted more than two-thirds of their sales – and…two respondents targeted *every* sale." Stanley concludes that "it makes no economic or financial sense for any one company to 'target' the majority of its sales" and that "{i}t is unreasonable to conclude that 37 percent of investigated companies do so." However, Stanley's reliance upon data and analysis fail to establish: (1) that a bias exists among those preliminary determinations, and (2) how any potential bias would be attributable to the Department's calculation of the pooled standard deviation based on a simple average of the variances of the test and comparison groups.

[106] *Id.* at 30-33 and Addendum B.

Stanley's data fail to demonstrate a bias in the Department's application of the Cohen's *d* test. The data show that 157 of the 209 cases cited involved a sufficient percentage of sales passing the Cohen's *d* test to consider the application of an alternative comparison methodology. Of these, the Department only applied the average-to-transaction method to either a portion or all of a respondent's sales in 70 of these 157 determinations. Accordingly, relying upon Stanley's own data, there does not exist a bias in the Department's application of the differential pricing analysis, including the Cohen's *d* test, based on the use of a simple average in determining the pooled standard deviation. Only one-third of the cases to which Stanley cites resulted in the application of an alternative comparison methodology, representing less than one-half of the cases in which there existed a pattern of prices that differ significantly pursuant to the Cohen's *d* and ratio tests.

Stanley states that the data show 77 respondents with CDT "pass" rates of over 66 percent, and two with "pass" rates of 100 percent. Stanley avers that this demonstrates the unreasonableness of differential pricing because it makes no economic sense for any one company to "target" the majority of its sales, and because if *all* sales are "targeted," then none can be.[107] This line of reasoning demonstrates a misunderstanding of how the Department determines the existence of a pattern of export prices that differs significantly among purchasers, regions, or time periods. Indeed, the focus is not on "targeting" and economic decision-making, but on the difference between export prices. For example, consider two purchasers, A and B. If the prices to purchaser A are found to differ significantly from the prices to purchaser B, then it follows that the prices to purchaser B differ significantly from the prices to purchaser A. Here, it is reasonable to conclude that *all* prices differ significantly. Similarly, if the prices to purchaser A do not differ significantly from the prices to purchaser B, then it follows that the prices to purchaser B do not differ significantly from the prices to purchaser A. Here, it is reasonable to conclude that *none* of the prices differ significantly. While Stanley pointed to two instances where all of the respondent's sales prices differed significantly, there are also 18 cases in the data where none of the sales prices differed significantly. This demonstrates that the Department's approach is reasonable and does not exhibit a bias; the phenomenon to which Stanley points as proof of bias is greatly outweighed by the opposite result, *i.e.* that no sales pass the Cohen's *d* test. Accordingly, Stanley's own data demonstrate that, if anything, there is a tendency against finding a pattern of prices that differ significantly across purchasers, regions, or time periods.

Stanley also fails to appreciate the difference between sales which have been found to be at significantly different prices as opposed to whether the Department has applied an alternative comparison methodology to address masked dumping. In its case brief, Stanley connects high rates of sales passing the Cohen's *d* test to dumping. However, a high passing rate does not mean that the average-to-average methodology cannot account for such differences. As explained above, both requirements of section 1677f-1(d)(1)(B) of the Act must be satisfied before the Department has the option of applying an alternative comparison method. Thus, even if a large proportion of a company's United States sales pass the Cohen's *d* test, the Department does not automatically apply the average-to-transaction methodology. The Department must also consider whether the average-to-average method can account for such differences, and if the standard comparison methodology can account for such differences, then the Department cannot apply an alternative methodology because both of the statutory requirements have not been met.

[107] *Id.* at 32-33.

In other words, a finding that there exists a pattern of prices that differ significantly means only that the Department will consider whether the standard comparison methodology can account for such differences. A company may sell subject merchandise in the United States market at significantly different prices, yet none of these sales are priced at less than normal value (*i.e.*, there is no dumping). In such a situation, the average-to-average method will be able to account for such differences and the average-to-average method will be used to calculate the weighted-average dumping margin. Likewise, a company can also make these same United States sales at significantly different prices among purchasers, regions, or time periods at prices which are all less than normal value (*i.e.*, all sales are dumped). In such a situation, the average-to-average method also will be able to account for such differences and thus, the average-to-average method will again be used. Thus, even if there is a high Cohen's *d* pass rate, this result is meaningless without consideration of whether the average-to-average method can account for such differences.

Stanley's argument that the "meaningful difference" element of the Cohen's *d* test has the perverse effect of allowing a respondent to avoid the average-to-transaction method with zeroing if *all* its sales are dumped, gaining a lower margin than if only some of its sales are dumped, lacks merit.[108] If all a respondent's sales are dumped, then zeroing is not implicated because there are no sales that are not dumped, and the weighted-average dumping margin calculated using the average-to-average and average-to-transaction method are identical. If only some of the respondent's sales are dumped, the calculated weighted-average dumping margin will be reduced, reflecting the fact that there is less dumping, regardless of whether or not zeroing is applied to the non-dumped sales. Accordingly, it is unclear how a respondent would gain a lower dumping margin if all of its sales were dumped. Stanley erroneously associates zeroing with always reducing the weighted-average dumping margin, and draws an unsupportable conclusion.

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."[109] Stanley then contends that statutory silence indicates that one should look to the SAA, which links dumping and targeting.[110]

Indeed, the statute does not require that the Department consider only lower priced sales when evaluating whether there 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*

[108] *Id.* at 34.
[109] *Id.*, at 37.
[110] *Id.* at 35-38.

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.[111] 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 consider 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.[112] 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 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.[113]

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 does not provide for consideration of normal value in section 777A(d)(1)(B)(i) of the Act, only "export prices (or constructed export prices)," meaning that a dumping determination in this context is not required. 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.

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. The Department is guided, first and foremost in its analysis, by the text of the statute. 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. The Department also applies this practice in administrative reviews. To suggest that section 777A(d)(1)(B) requires a finding that sales are targeted and dumped, rather than a finding of a pattern of prices that differ significantly, is to ignore the text of the statute.

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[111] *See* section 777A(d)(1)(B) of the Act (emphasis added).
[112] *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.
[113] *See Apex* at 36. "All sales are subject to the differential pricing analysis because its purpose is to determine to what extent a respondent's U.S. sales are differentially priced, not to identify dumped sales. (citation omitted) Commerce is not restricted in what type of sales it may consider in assessing the existence of such a pattern so long as its methodological choice enables Commerce to reasonably determine whether application of A-T is appropriate."

Stanley further 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.

The Department disagrees with Stanley's claim that the thresholds provided for in its differential pricing analysis regarding the results of the ratio test and the identification of an appropriate alternative comparison method, if any, are unlawful. Neither the statute nor the SAA provide any guidance in determining how to apply the A-to-T method once the requirements of section 777A(d)(1)(B)(i) and (ii) have been satisfied. Accordingly, the Department has reasonably created a framework to determine how the A-to-T method may be considered as an alternative to the standard A-to-A method based on the extent of the pattern of prices that differ significantly as identified with the Cohen's *d* test. As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is to evaluate ". . . all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists."[114] When 66 percent of more of the value of a respondent's U.S. sales are found to establish a pattern of prices that differ significantly, then the Department finds that the extent of these price differences throughout the pricing behavior of the respondent does not permit the segregation of this pricing behavior which constitute the identified pattern or prices that differ significantly from that which does not. Accordingly, the Department determines that considering the application of the A-to-T method to all U.S. sales to be reasonable. Further, when 33 percent or less of the value of a respondent's U.S. sales constitute the identified pattern of prices that differ significantly, then the Department considers this extent of the pattern to not be significant in considering whether the A-to-A method is appropriate, and has not considered the application of the A-to-T method as an alternative comparison method. When between 33 percent and 66 percent of the value of a respondent's U.S. sales constitute a pattern of prices that differ significantly, the Department considers the extent of this pattern to be meaningful to consider whether the A-to-A method is appropriate, but also finds that segregating this pricing behavior from the pricing behavior which does not contribute to the pattern to be reasonable, and has then only considered the application of the A-to-T method as an alternative comparison method to this limited portion of a respondent's U.S. sales. Lastly, as stated in the *Preliminary Results*, the Department invited interested parties to submit arguments and support with respect to the differential pricing analysis used in this administrative review with respect to modifying the default definitions used in the Department's approach.[115] Stanley has provided no such comments to alter the 33 percent and 66 percent thresholds, or any of the other thresholds or definitions, used by the Department in the *Preliminary Results*.

Stanley takes exception with the fact that the Department states that it will continue to develop its approach, yet contends that, in all of the proceedings in which the Department uses its differential pricing analysis, it applies it in a rigid, mechanical manner. The Department disagrees. First, 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

[114] *See* Preliminary Decision Memorandum at 33.
[115] *Id.* at 34.

Act. This is reflected in how the Department's practice evolved over the last 20 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:

> 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.[116]

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*.[117] Therefore, the Department considered no such changes.

Stanley also challenges the Department's continued use of sales that have been found to pass the test (*i.e.*, have a coefficient of 0.8 or above) in the base group of other comparisons. As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is "to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise."[118] Simply because certain sale prices are part of a test group in one instance and part of a comparison group in other instances does not constitute double counting. The Department's dumping analysis includes all information and data on the record of this administrative review, and the Department finds that selectively including or excluding certain sales is not supported by the statute.

The Department disagrees with Stanley's claims that the differential pricing analysis used in the *Preliminary Results* is not reasonable or that "including sales that 'pass' the Cohen's *d* test in base groups for other test groups unreasonably causes sales to 'pass' that otherwise would not." Stanley asserts that this is the result of the fact that the Department includes all U.S. sales in its analysis. To illustrate our position, consider a hypothetical situation similar to that provided by Stanley: there are two purchasers, A and B, which purchase the subject merchandise at average prices of 10 and 20, respectively. Based on the Cohen's *d* test, when testing purchaser A, the weighted-average price to purchaser B will be the comparison group, and the difference in the two prices between purchaser A and purchaser B, *i.e.*, 10, is found to pass the Cohen's *d* test. Then, when purchaser B is the test group, purchaser A will be the comparison group, and the sales to purchaser B will also be found to pass the Cohen's *d* test. The Department finds that this is a reasonable outcome for a simple scenario. If the weighted-average price to purchaser A differs significantly from the weighted-average price to purchaser B, then the weighted-average price to purchaser B also differs significantly from the weighted-average price to purchaser A. Stanley's suggestion, that once the Department finds that the weighted-average price to purchaser A differs significantly from the weighted-average price to purchaser B, then the sales

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[116] *Id.*

[117] *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; unchanged in *Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 38938 (June 28, 2013).

[118] *See* Preliminary Decision Memorandum at 34.

prices to purchaser A should be excluded henceforth from the analysis, is illogical. This would result in no comparison being made for the weighted-average price to purchaser B. Further, if purchaser B's sales were tested first, then purchaser A's sales would not be tested. Such an approach would lead to arbitrary and unpredictable results that would depend upon the order in which purchasers, regions or time periods were examined.

Accordingly, for all of the foregoing reasons, we find that the Department's differential pricing analysis is consistent with section 777A(d)(1)(B) of the Act. Furthermore, the differential pricing analysis represents a reasonable framework to determine whether the A-to-A method is appropriate, and if not, then how the A-to-T method may be considered as an alternative to the standard A-to-A method based on the extent of the pattern of prices that differ significantly, as identified by the Cohen's *d* test.

Comment 3: Calculation of Separate Rate Margin

Petitioner's Comments

- The Department should calculate a separate rate margin that reasonably reflects the economic reality and past experience of the separate rate companies.[119]
- If the Department were to continue to assign Shandong Oriental Cherry a margin based on total AFA, the separate rate margin should not be based on Stanley's margin alone, but should be based on the weighted-average of Stanley's and Shandong Oriental Cherry's margins.[120] This approach has been found to be lawful and reasonable by the Courts in ARs.[121]
- The separate rate margin of 12.51 percent calculated in the *Preliminary Results* is neither representative of the margins (ranging from 33.25 to 78.27 percent) calculated for the six separate rate exporters individually investigated in a prior segment, nor representative of the entire population of respondents individually examined other than Stanley.[122]

No other party commented on this issue.

Department's Position:

We disagree with Petitioner and observe that we addressed the same issue in the *AR1 Final Results*.[123] When calculating a separate rate for non-individually reviewed respondents, the Department will base this rate on the estimated weighted-average dumping margins established for the individually examined respondents, excluding zero and *de minimis* margins or margins based entirely on AFA.[124] The Department encountered a similar fact pattern in the fourth AR of

[119] *See* Petitioner's Rebuttal Brief at 14.
[120] *Id.*, at 15.
[121] *See Navneet Publications (India) Ltd v. United States*, 999 F. Supp. 2d 1354 (CIT 2014) ("*Navneet*"); *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013).
[122] *See* Petitioner's Rebuttal Brief at 17.
[123] *See Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011), and accompanying Issues and Decision Memorandum ("*AR1 Final Results*") at Comment 8.
[124] *See* section 735(c)(5)(A) of the Act.

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam.[125] In that case, the Department assigned the calculated margin of the single mandatory respondent (that was neither zero nor *de minimis* and not based entirely on AFA) to the separate-rate companies as the separate rate margin.

Petitioner has misinterpreted the CIT's decision in *Navneet*.[126] There, the CIT clearly acknowledged that the statute "instructs Commerce as a '[g]eneral rule' to calculate all-others rates using the weighted average of the weighted average dumping margins established for individually investigated respondents, excluding any zero or *de minimis* rates and rates based entirely on facts available" and that "if no rates remain after making these exclusions, the statute directs Commerce to use 'any reasonable method.'"[127] Additionally, the court in *Navneet* faced factual circumstances different to those now faced by the Department in this review; specifically, the fact that Riddhi and SAB – the mandatory respondents under review – both received zero margins, making "the general rule identified in {section} 1673d(c)(5)(A)…unavailable."[128] Following the legal framework established by the statute, and acknowledged in *Navneet*, the Department acted in accordance with law by excluding Shandong Oriental Cherry's margin – determined based on total AFA – from the separate rate margin calculation. Because Stanley's margin was not zero, *de minimis*, or based entirely on facts available, its margin is the appropriate basis for determining the separate rate margin.

In *Bestpak*, the CAFC similarly acknowledged that the Department "calculates an 'all others' rate, usually by taking the weighted average of all mandatory respondents' rates, excluding any zero or *de minimis* rates and rates based entirely on adverse facts available (AFA)" but that "when all dumping margins established are only either *de minimis* or AFA rates, the {'any reasonable method'} exception found in {section} 1673d(c)(5)(B) {applies}."[129]

Accordingly, the statute, case law, and the Department's practice are clear. We will continue to base the separate-rate margin on that of Stanley – the sole mandatory respondent whose margin is not zero, *de minimis*, or based entirely on facts available.

Company-Specific Issues

Comment 4: Application of Total Adverse Facts Available ("AFA") to Shandong Oriental Cherry

In the *Preliminary Results*, the Department found that Shandong Oriental Cherry significantly impeded this proceeding and failed to cooperate to the best of its ability in participating in the review, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Act.[130] Specifically, despite the Department's detailed and specific

[125] *See 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 6.
[126] *See* Petitioner's Rebuttal Brief at 15 (citing to *Navneet* at 1359-1363).
[127] *See Navneet* at 1358.
[128] *Id.*, at 1363.
[129] *See Bestpak* at 1373 (emphasis added).
[130] *See* Preliminary Decision Memorandum at 1.

questionnaires, Shandong Oriental Cherry failed to meet its obligation to reply accurately and completely to requests for information regarding its affiliates, and the production and sale of subject merchandise.[131] The Department found that Shandong Oriental Cherry failed to provide: 1) an accurate, reliable factors of production ("FOP") database that is reported on a control numbers ("CONNUM")-specific basis; 2) an accurate, reliable sales reconciliation regarding its reported sales of subject merchandise to the United States during the POR; and 3) sales data, FOP data, and full product specifications for the shooting nails of Shandong Oriental Cherry's affiliate, Jining Dragon Fasteners Ltd., Co. ("Jining Dragon Fasteners").[132] Moreover, the Department found that, because it did not possess complete information on the record with regard to Jining Dragon Fasteners' sales of shooting nails, it could not reasonably rely on the veracity and completeness of Shandong Oriental Cherry's original response regarding Jining Dragon Fasteners and its other affiliates.[133] This also called into question the reliability and completeness of the separate rate information submitted by Shandong Oriental Cherry, which incorporated information about its affiliates. As a result, the Department was unable to find that Shandong Oriental Cherry was entitled to a separate rate, and placed Shandong Oriental Cherry in the PRC-wide entity.[134]

National Nail/The Hillman Group/Shandong Oriental Cherry's Comments[135]

A. General Arguments

- The Courts have found that the antidumping statute was intended to be remedial, not punitive, and that the adverse facts available standard "does not require perfection and recognizes that mistakes sometimes occur."[136]
- While the deficiencies in Shandong Oriental Cherry's responses appear to be significantly deficient, a closer, more balanced review shows that these deficiencies do not warrant the application of total adverse facts available ("AFA"). More to the point, when the deficiencies in Shandong Oriental Cherry's responses are reconsidered in the broader context of the entire record, it is clear that these deficiencies are minor and that the overall integrity of Shandong Oriental Cherry's responses are intact and reliable.
- Record evidence demonstrates Shandong Oriental Cherry's: 1) FOP data calculated based on a single average is complete and accurate; 2) sales reconciliation is complete, accurate, and reliable; and 3) shooting nails are excluded from the *PRC Nails Order* and the Department rescinded its request for the submission of information on these shooting nails in Shandong Oriental Cherry's responses.

[131] *Id.*, at 27.
[132] *See* Preliminary Decision Memorandum at 12-28. We also note that Jining Dragon Fasteners uses the term shooting nails to refer to nails that it stated are used in "powder-actuated hand tools." *See* "Scope of Order" section in this memorandum for the specific language of the scope exclusion that Shandong Oriental Cherry relies on for its assertion that Jining Dragon Fasteners' shooting nails are excluded from the order.
[133] *Id*., at 26.
[134] *Id*., at 26-8.
[135] *See* National Nail's Case Brief; the Hillman Group's Case Brief; and Shandong Oriental Cherry's Case Brief for a full discussion of each interested party's comments, which are here summarized together.
[136] *See NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1207 (Fed. Cir.1995) ("*NTN Bearing Corp*."); *Fischer S.A. Comercio v. United States*, 700 F. Supp.2d 1364, 1375-77 (CIT 2010) (*"Fischer S.A. Comercio"); Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) ("*Nippon Steel*").

- The Department had an obligation to verify Shandong Oriental Cherry's responses if it believed that Shandong Oriental Cherry had not met its burden under the antidumping statute to submit complete, accurate, and reliable data. It is a well-established practice that if the Department does not attempt to verify certain issues that such information is deemed "verified."[137]

B. FOP Database

- Shandong Oriental Cherry complied with the Department's requests regarding its FOP methodology, and was fully responsive in terms of what FOP data it could provide, and explained why it could not provide certain information. Although the Department requested CONNUM-specific FOPs using actual quantities, Shandong Oriental Cherry noted that its accounting system did not permit it to report FOPs on a CONNUM-specific basis using actual quantities.[138] Specifically, in its Section D response, Shandong Oriental Cherry explained that while its wire drawing workshop could distinguish FOP consumption for low- and medium-carbon wire rod by CONNUM, it could only calculate FOPs for the other workshops on an average basis.[139]
- Contrary to the *Preliminary Results*, in its first supplemental questionnaire response, Shandong Oriental Cherry did not provide inconsistent statements, but clarified that it did not have product-specific production records, and only kept workshop-specific production records.[140] Additionally, in the same submission, Shandong Oriental Cherry detailed its efforts to report FOPs on a CONNUM-specific basis, how the estimated FOP consumption quantities were derived, and also demonstrated with supporting documentation why its' reported FOP methodology was accurate.[141]
- In its next response, Shandong Oriental Cherry explained that it could only report FOPs based on actual quantities of each workshop on an average basis and that it could not provide FOP data on a CONNUM-specific basis.[142] While the Department requested that Shandong Oriental Cherry explain how it derived an estimated FOP consumption, as requested in the original questionnaire,[143] this request was misguided because the original questionnaire did not suggest that respondents develop an alternative reporting methodology other than "actual" CONNUM-specific FOP data. Thus, after Shandong Oriental Cherry repeatedly informed the Department that it did not track CONNUM-specific data, this was the first time that the Department requested that Shandong Oriental Cherry develop a reasonable allocation methodology.[144]
- However, in an attempt to comply with the Department's instructions, Shandong Oriental Cherry developed a reasonable allocation methodology based on production weight for 13

[137] *See Chia Far Industrial Factory Co., Ltd. v. United States*, 343 F. Supp. 2d 1344 (CIT 2004).
[138] *See* Shandong Oriental Cherry's Section D Response, (January 15, 2015) at D-4.
[139] *Id*.
[140] *See* Shandong Oriental Cherry's Supplemental Section D Response, (May 11, 2015) at 2.
[141] *Id*., at 14-5.
[142] *See* Shandong Oriental Cherry's May 11, 2015, Second Supplemental Section D Response, (May 11, 2015) at 2.
[143] *See* the Department's May 13, 2015, Section Questionnaire to Shandong Oriental Cherry, (May 13, 2015) at 2.
[144] The Department acknowledged in the same questionnaire that it accepted single average FOP methodologies in prior reviews, but noted that it would not accept this reporting methodology for Shandong Oriental Cherry in this review. *See* the Department's May 13, 2015, Supplemental Section D Questionnaire to Shandong Oriental Cherry at 3.

production groups that reported certain FOPs on an estimated CONNUM-specific basis. Additionally, Shandong Oriental Cherry explained that for other FOPs, it could only report information on a production-group basis.

- Although the Department claims that Shandong Oriental Cherry's FOP methodology is inaccurate, the record establishes that the FOP data that was reported on a CONNUM-specific or production-group basis, by weight, comprises the majority of FOP consumption, while the other FOPs that were reported on a single average basis, such as chemicals, account for an insignificant amount of total FOP consumption by weight.[145]
- In the *Preliminary Results*, the Department found fault with Shandong Oriental Cherry's allocated FOP methodology without giving Shandong Oriental further notice regarding concerns over its data. This decision is inconsistent with the Department's supplemental questionnaires where it gave Shandong Oriental Cherry the option of reporting FOP data on a production-group or CONNUM-specific basis.[146]
- The record evidence does not support the Department's finding that Shandong Oriental Cherry's wire rod FOPs were not allocated on a CONNUM-specific or product-group basis.[147] The consumption of the wire rod FOPs is calculated by the inputs of drawn wire rod with different diameters divided by actual output of semi-finished nails with the same diameter. The Department never raised this issue in a supplemental questionnaire, and thus, Shandong Oriental Cherry was denied the opportunity to address the reasonableness of its wire rod FOP calculation.
- The Department's decision to force Shandong Oriental Cherry to report its FOPs on a CONNUM-specific basis even though it does not maintain this data is arbitrary and capricious because it fails to distinguish the circumstances between Shandong Oriental Cherry and Stanley, a mandatory respondent that has participated in all prior segments.[148]
- The Department did not adequately explain why it is no longer accepting a single average FOP allocation methodology when it accepted these reporting methodologies for other mandatory respondents in the two immediately preceding reviews of this case.
- In the 3rd and 5th administrative reviews, the Department accepted the FOP reporting methodologies for the respondents as accurate and reliable when the respondents notified the Department that they could only report their FOPs on a single average basis due to the accounting records that each maintained.
- The Department failed to explain whether Shandong Oriental Cherry willfully decided not to comply with its requests or whether Shandong Oriental Cherry's behavior fell below the standard for reasonable behavior.[149]

C. U.S. Sales Reconciliation and Database

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[145] Shandong Oriental Cherry chemical FOPs are also not direct materials and should be treated as factory overhead. *See, e.g., Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010) and accompanying Issues and Decision Memorandum at Comment 15.

[146] *See* the Department's May 13, 2015, Supplemental Section D Questionnaire to Shandong Oriental Cherry at 2.

[147] *See* Preliminary Decision Memo at 21.

[148] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 43 U.S. 29, 48-9 (S. Ct. 1983).

[149] *See Nippon Steel Corp. v. United States*, 118 F. Supp. 2d 1366, 1378-9 (CIT 2000) ("*Nippon Steel*").

- The final submitted U.S. sales reconciliation ties to its monthly general ledger and the monthly general ledger values tie to Shandong Oriental Cherry's audited annual financial statements for fiscal years ("FY") 2013 and 2014.[150]
- Any of the Department's identified minor errors regarding Shandong Oriental Cherry's sales reconciliations relates to a minimal number of monthly sales quantities that were fully corrected and explained.
- Although the original sales reconciliation was incomplete and missing sales data for two months, this was because that data was not yet available, and thus, the Department cannot penalize Shandong Oriental Cherry for providing an incomplete sales reconciliation.[151] Moreover, the corrected sales quantities for the two months of data in the revised sales reconciliation only represent a one percent change in the total data in the sales reconciliation.
- Shandong Oriental Cherry sufficiently explained and supported its revised sales reconciliation with record evidence, including the sales ledger and financial statements for FY 2013 and 2014. Until the *Preliminary Results*, the Department did not raise any further concerns, and since the revised sales reconciliation tied to the financial statements, there was no further need for the Department to issue supplemental questionnaires to Shandong Oriental Cherry on this issue.
- Under the Department's antidumping statute, it is required to request information at least twice from a respondent before resorting to "facts available," and may only apply an adverse inference when the data is woefully insufficient. The Department did not twice request an explanation as to why there were errors in Shandong Oriental Cherry's original and revised sales reconciliation. Shandong Oriental Cherry is only required to answer questions that are requested of it, and since the revised sales reconciliation ties to its financial statements, it is complete, reliable, and accurate. If there were concerns, the Department should have issued an additional questionnaire or verified the data.
- Shandong Oriental Cherry did not make unsolicited changes to its sales database and reconciliation. It is the responsibility of the respondent to provide a complete and accurate record, and when it identifies errors, it is obligated to make these corrections, with or without the specific request of the Department, nor has the Department identified any authority that disallows a respondent from correcting erroneous data unless at the specific request of the Department.
- The Department's practice recognizes that failure to submit an initial error-free response, or the correction of errors, should not result in the use of facts available when there is no basis to conclude that these errors affect the overall integrity of the response.[152]
- Contrary to the Department's argument that it was not required to issue multiple questionnaires requesting the same information, the antidumping statute requires the Department to promptly inform the respondent of deficiencies and provide an opportunity to remedy or explain the deficiency. Shandong Oriental Cherry demonstrated its willingness to cooperate by answering every supplemental questionnaire issued by the Department and would have been willing to answer more supplemental questionnaires if the Department still

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[150] *See* Shandong Oriental Cherry's July 20, 2015, Supplemental Section A &C Response, (July 20, 2015) at Exhibit 3SSSAC-23.
[151] *See* Shandong Oriental Cherry's Section C Response, (January 12, 2015) at Appendix 1.
[152] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 16758 (April 6, 1998) and accompanying Issues and Decision Memorandum at Comment 3 ("*Heavy Forged Hand Tools from the PRC 1998*").

had outstanding concerns or issues with its responses. Instead, the Department arbitrarily concluded that it no longer needed to issue any more supplemental questionnaires, even though many of the alleged deficiencies in Shandong Oriental Cherry's responses were never specifically brought to its attention.

- The administrative review process is interactive and a respondent must be granted the reasonable opportunity to meet its burden and satisfy concerns held by the Department.[153]

D. Jining Dragon Fastener's Sales and FOPs for Shooting Nails

- Shandong Oriental Cherry fully explained and substantiated with record evidence that its affiliate, Jining Dragon Fastener, sold shooting nails used in a powder-actuated hand tool to the United States. Such merchandise is considered outside the scope of the order.[154]
- The Department did not request clarification on this issue until June 2015 and, in its excusal letter, Shandong Oriental Cherry requested to be excused from reporting sales and FOP data for Jining Dragon Fastener's shooting nails sales.[155] In its response, Shandong Oriental Cherry noted that it would respond to all other requests from the Department, and submitted a technical definition of the shooting nails that stated these nails were used in a "powder-actuated hand tool."[156]
- Based on Shandong Oriental Cherry's response, and the accompanying technical characteristics provided, the Department excused Shandong Oriental Cherry from submitting sales and FOP data for Jining Dragon Fastener's shooting nails and acknowledged Shandong Oriental Cherry's position that these shooting nails were non-subject merchandise.[157]
- Given that the Department did not issue an additional request to Jining Dragon Fastener to submit sales and FOP data regarding its shooting nails, Shandong Oriental Cherry reasonably assumed that the Department had sufficient information to determine that these shooting nails were non-subject merchandise.
- Because the sales of the shooting nails accounts for only 0.001 percent of Shandong Oriental Cherry's total U.S. sales by volume, it would be arbitrary and capricious to apply total AFA to these shooting nails, since the record shows that they are properly considered non-subject merchandise.[158]
- Because Shandong Oriental Cherry explained these shooting nails are used in a powder actuated hand tool, and the Department did not request technical information regarding the hand tool a second time, Shandong Oriental Cherry could not know that the Department was dissatisfied with its responses as to whether these shooting nails met the scope exclusion.

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[153] *See Bowe-Passat*, 17 CIT 335 (CIT 1993) at 10-11.
[154] *See* Shandong Oriental Cherry's Case Brief at 44.
[155] *Id*.
[156] *See* Shandong Oriental Cherry's Excusal Letter, (July 1, 2015); Shandong Oriental Cherry's July 20, 2015, Supplemental Sections A and C Response at 7 and Exhibits 3rd SSAC-8 and SSAC-10.
[157] *See* Memorandum to the File from Julia Hancock, Senior Case Analyst, Subject: Sixth Administrative Review of Certain Steel Nails from the People's Republic of China: Shandong Oriental Cherry Hardware Group Co., Ltd. ("Shandong Oriental Cherry") Request for Excusal from Question 10 of the June 25, 2015, Supplemental Questionnaire, (July 2, 2015) ("Shandong Oriental Cherry's Request for Excusal Memo").
[158] *See* Shandong Oriental Cherry's Case Brief at 46-7; *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38756, 38770-1 (July 19, 1999) ("*Steel Products from Brazil Final*").

- Shandong Oriental Cherry does not produce the gunpowder-actuated hand tool and does not possess the technical descriptions of these hand tools. The Department cannot apply AFA to a respondent because it failed to provide data obtainable only from a non-related entity which is not a party to the proceeding.[159]
- The Department cannot apply AFA to Shandong Oriental Cherry on this issue because Shandong Oriental Cherry cannot credibly be considered inattentive, careless, or inadequate in its record keeping of information related to the shooting nail powder-actuated hand tool.[160] Additionally, Shandong Oriental Cherry did not significantly impede the proceeding when it did not report the sales and FOP data for Jining Dragon Fastener's shooting nails after the Department excused Jining Dragon Fastener from reporting this data and never issued another questionnaire requesting this data.

Petitioner did not comment on this issue.

Department's Position:
As explained in detail below, the Department continues to find that it is appropriate to apply total AFA to Shandong Oriental Cherry for these final results. In the discussion below, the Department will first address its conclusion to apply facts available on the basis of missing information related to Shandong Oriental Cherry's FOP database, sales reconciliation, and shooting nails. The Department will then address the application of facts available with adverse inferences, due to Shandong Oriental Cherry's failure to act to the best of its ability in providing responses to the Department.

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

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

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted

[159] *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1336 (Fed. Cir. 2002) ("*Ta Chen 2002*").
[160] *See Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (CAFC 2003) ("*Nippon Steel*").

within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

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

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act, and the addition of section 776(d) of the Act.[161] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[162]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of the proceeding when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

A. *Application of Facts Available*

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

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[161] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).
[162] *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl.

By way of background, throughout the course of this review, as discussed in the *Preliminary Results* and below, Shandong Oriental Cherry has been evasive in its responses and frequently provided incomplete information to the Department in response to requests for information. During the course of this review, the Department found that Shandong Oriental Cherry withheld key information that was requested by the Department for calculating an accurate margin for Shandong Oriental Cherry. Specifically, Shandong Oriental Cherry failed to provide, in the form and manner requested by the Department: 1) an accurate, reliable FOP database that is reported on a CONNUM-specific basis; 2) an accurate, reliable sales reconciliation regarding its reported sales of subject merchandise to the United States during the POR; and 3) sales data, FOP data, and full product specifications for the shooting nails of Shandong Oriental Cherry's affiliate, Jining Dragon Fasteners, that demonstrated it met the claimed scope exclusion.[163] Shandong Oriental Cherry disputes the many significant deficiencies the Department observed on the record in Shandong Oriental Cherry's responses and data. However, in light of the multiple supplemental questionnaires that the Department issued to obtain necessary information, the Department disagrees with Shandong Oriental Cherry that the application of AFA is not justified.

Where a request for information is clear and relates to some of the central issues in an AD proceeding, such as sales and FOP databases, the Court of International Trade ("CIT") has found that the respondent has "a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce."[164] Furthermore, the CIT has stated that the terms of sections 782(d) and (e) do not give rise to an obligation for the Department to permit a remedial response from the respondent where the respondent has not met all of the criteria of 782(e).[165]

In this segment of the proceeding, all the Department's requests for information were clear, and hence, Shandong Oriental Cherry cannot claim that it was unaware of its obligation to submit requested information, and that it required further notification by the Department. Record evidence clearly shows that Shandong Oriental Cherry was aware of its obligation to report complete, accurate, and reliable sales and FOP data for its total sales of subject merchandise to the United States during the POR.[166] Shandong Oriental Cherry had ample notification of the centrality of the issues, as well as ample opportunity to provide complete, accurate, and reliable sales and FOP databases. However, it chose not to do so. Accordingly, for the reasons explained below, the Department continues to find that Shandong Oriental Cherry's failure to provide complete and accurate information was so pervasive that it warrants use of facts otherwise available with adverse inferences with respect to Shandong Oriental Cherry, pursuant to section 776(a)-(b) of the Act.

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[163] *See* Preliminary Decision Memorandum at 12-27.

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

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

[166] *See* the Department's original questionnaire and multiple supplemental questionnaires issued between April 20, 2015 and July 2, 2015.

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

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

The Department disagrees that Shandong Oriental Cherry fully complied from the beginning of this administrative review and with our subsequent multiple requests regarding its FOP methodology. Contrary to Shandong Oriental Cherry's suggestion that the original questionnaire did not make clear that it could develop, as needed, an alternative reporting methodology other than "actual" CONNUM-specific FOP data,[167] Section D of the questionnaire specifically states that:

> If you are not reporting factors of production (FOPs) using actual quantities consumed to produce the merchandise under review on a CONNUM-specific basis, please provide a detailed explanation of all efforts undertaken to report the actual quantity of each FOP consumed to produce the merchandise under review on a CONNUM-specific basis. Additionally, please provide a detailed explanation of how you derived your estimated FOP consumption for merchandise under review on a CONNUM-specific basis and *explain why the methodology you selected is the best way to accurately demonstrate an accurate consumption amount*.[168]

Additionally, Section D of the questionnaire stated: "If you have any questions regarding how to compute the factors of the merchandise under consideration, please contact the official in charge *before* preparing your response to this section of the questionnaire."[169]

The Department finds that, contrary to Shandong Oriental Cherry's argument, the original questionnaire was explicitly clear that Shandong Oriental Cherry should report its FOP database using the "actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis."[170] Additionally, the original questionnaire clearly stated that, if the respondent was not reporting the FOPs using actual quantities on a CONNUM-specific basis, the respondent should explain all efforts it undertook to develop such a methodology and provide a detailed explanation of how the respondent "derived {its} estimated consumption for merchandise under review on a CONNUM-specific basis."[171] Accordingly, Shandong Oriental Cherry was on notice from the time it received the original questionnaire in November 2014, that the Department was requesting FOP information on a CONNUM-specific basis and that this information could be based on either *actual* <u>*or*</u> *estimated* consumption.[172]

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[167] *See* the Department's original questionnaire to Shandong Oriental Cherry, (November 20, 2014) ("Shandong Oriental Cherry Questionnaire").
[168] *Id.*, at D-2 (emphasis added).
[169] *Id.*, at D-1 (emphasis added).
[170] *Id.*, at D-2.
[171] *Id.*
[172] *Id.* (emphasis added).

The Department's reporting requirements in its original questionnaire are standard in its non-market economy ("NME") cases and have been available on our website[173] for many years, and thus, Shandong Oriental Cherry, as a separate rate respondent since the LTFV investigation, cannot claim that it was unaware of these reporting requirements.[174] Despite these clear instructions with which Shandong Oriental Cherry was already familiar based on its participation in past segments, Shandong Oriental Cherry decided, without informing the Department prior to submitting its original response of any difficulties in meeting the reporting requirements, to report its FOPs on an average basis.[175]

In its original Section D response, Shandong Oriental Cherry stated that in its wire drawing workshop, it could track consumption of low- and medium-carbon wire rod on a CONNUM-specific basis.[176] Shandong Oriental Cherry also explained that for all other FOPs, it could only calculate the FOPs for workshops where it manufactured both subject and non-subject merchandise on an average basis by dividing the total weight of the input by the total weight of the output for the workshop to calculate these FOPs.[177] However, the Department determines that, contrary to Shandong Oriental Cherry's contention in its case brief, all FOPs, including the low- and medium-carbon wire rod FOPs, were reported on an average basis in its original Section D database for its more than 100 CONNUMs.[178,179] Specifically, the calculation worksheets for the low- and medium-carbon wire rod FOPs showed that these FOPs were calculated for the wire drawing workshop by total input weight of wire rod divided by the total output weight of drawn wire for the workshop multiplied by the consumption of drawn wire rod per 1 kilogram of nail and then multiplied by the consumption of unfinished nails to produce one kilogram of finished nails.[180] This calculation resulted in a single average FOP for low- and medium-carbon wire rod that was reported for numerous CONNUMs with differing lengths and diameters.[181] Again, this was despite Shandong Oriental Cherry's own contention in its Section D response that it *could* track consumption of low- and medium-carbon wire rod according to the CONNUM of nail.[182]

Moreover, in its original Section D response, Shandong Oriental Cherry indicated that it was possible to report its FOPs on a more CONNUM-specific basis, rather than on an average

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[173] *See* http://enforcement.trade.gov/questionnaires/nme/20131101/q-rev-nme-20131101.pdf.
[174] *See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China*, 73 FR 44961, 44965 (August 1, 2008) ("*Nails Order*").
[175] *See* Shandong Oriental Cherry's Questionnaire at D-1; Preliminary Decision Memorandum at 18.
[176] *See* Shandong Oriental Cherry's Section D Questionnaire Response at D-4.
[177] *Id*.
[178] *Id*., at Exhibit D-2.
[179] Specifically, the calculation worksheets for the low- and medium-carbon wire rod FOPs showed that Shandong Oriental Cherry calculated these FOPs for the wire drawing workshop by dividing the total input weight of wire rod by the total output weight of drawn wire for the workshop. It then multiplied the result by the consumption of drawn wire rod per 1 kilogram of nail and then multiplied by the consumption of unfinished nails to produce one kilogram of finished nails. The Department concludes that this calculation resulted in a single average FOP for low- and medium-carbon wire rod that was reported for numerous CONNUMs with differing lengths and diameters. *Id*., at Exhibits D-2 and D-4.
[180] *Id*., at Exhibit D-4.
[181] *Id*., at Exhibits D-2 and D-4.
[182] *Id*., at D-4.

basis.[183] Shandong Oriental Cherry noted that it tracked consumption of its "inputs and outputs per product in each workshop by each production stage in its electronic accounting system."[184] Although Shandong Oriental Cherry claims that it did not make inconsistent statements regarding its tracking of input consumption on a CONNUM-specific basis, these statements caused the Department to twice request that Shandong Oriental Cherry, pursuant to the original reporting requirements, revise its FOP database to reflect actual or estimated consumption on a CONNUM-specific basis.[185] Specifically, the Department again informed Shandong Oriental Cherry of the original questionnaire's reporting requirements (*i.e.,* reporting FOPs using actual or estimated quantities on a CONNUM-specific basis), and stated that it was "*unacceptable to report a single average FOP usage ratio for all CONNUMs in {the}Section D database*."[186] This represented the Department's third attempt to acquire this information from Shandong Oriental Cherry.

Nonetheless, Shandong Oriental Cherry again failed to follow the Department's reporting requirements and continued to report FOPs on an average basis instead of on a CONNUM-specific basis using either actual quantities or an estimated allocation methodology.[187] Although the Department determines that Shandong Oriental Cherry stated that it could not report the FOPs on a CONNUM-specific basis when the Department requested it do so using actual quantities, the Department ascertains that Shandong Oriental Cherry ignored the Department's request to report FOPs using *estimated* quantities on a CONNUM-specific basis.[188] Instead of revising its FOP database and developing an allocation methodology using estimated quantities reported on a CONNUM-specific basis, Shandong Oriental Cherry articulated the same reasoning applicable to its stated inability to provide FOP data on a CONNUM-specific basis using actual quantities, *i.e.*, that it does not track inputs on a product-specific basis and that its FOPs are reported by workshop for numerous products that are produced in each workshop.[189]

While Shandong Oriental Cherry states that it fully responded and explained all efforts made to report its FOPs on a CONNUM-specific basis and provided record evidence showing how its FOP methodology based on an average basis is accurate in its original Section D response and first and second supplemental Section D responses, the Department disagrees based on the record evidence. For example, the Department finds that Shandong Oriental Cherry's calculation worksheets for low- and medium-carbon wire rod were based on average consumption for all products produced in each specific workshop, and the average FOP ratio was applied to more than 100 CONNUMs.[190] The Department recognizes that the record evidence demonstrates that Shandong Oriental Cherry did not track the consumption of each FOP, such as low- or medium-carbon wire rod, on a CONNUM-specific basis, but only tracked consumption of its inputs on a

[183] *Id*., at D-8 and D-9.
[184] *Id*.
[185] *See* the Department's Supplemental Sections A, C, and D Questionnaire to Shandong Oriental Cherry, (April 20, 2015) at Question 23 and 28; the Department's Second Supplemental Section D Questionnaire to Shandong Oriental Cherry, (April 27, 2015) at Question 1(a-e).
[186] *See* the Department's Second Supplemental Section D Questionnaire to Shandong Oriental Cherry at 2 (Question 1) (emphasis added).
[187] *See* Shandong Oriental Cherry's May 11, 2015, Supplemental Section D Response, (May 11, 2015) at 2-3.
[188] *Id*., at 2 (question 1b) and 3 (question 1c).
[189] *Id*.
[190] *See* Shandong Oriental Cherry's Section D Response at Exhibit D-2 and D-4.

workshop-specific basis.[191] However, the Department finds that the reporting of the FOPs, particularly the most significant inputs (*i.e.*, low- and medium-carbon wire rod), on a single average basis does not accurately capture the production cost of each CONNUM. And because Shandong Oriental Cherry's statements suggest otherwise,[192] this is exactly why the Department thrice requested FOP data on a CONNUM-specific basis.

As explained in the *Preliminary Results*, Shandong Oriental Cherry's FOP database includes over 100 different CONNUMs based on different diameters and lengths, which are the second and third most important characteristics in the CONNUM-hierarchy, respectively.[193] In other cases, the Department has found that allocating the consumption of materials over numerous products (*e.g.*,, all subject merchandise, all subject and non-subject merchandise, *etc*.) may result in a reporting methodology that is not accurate because there is no variation in the calculation of normal value, even though there are clear differences in the physical characteristics of the CONNUMs.[194] However, Shandong Oriental Cherry's original FOP database, which was reported based on a single average despite the Department's requests in three separate questionnaires that it be reported on a CONNUM-specific basis, did not report different costs for even the most significant inputs, wire rod and steel plate. The Department finds that the record evidence shows that there are differences in the amount of material consumed and scrap generated in the production of nails based on different forms, diameters, lengths, *etc*.[195] As a result, the difference in production costs for significant inputs across CONNUMs was not provided in an accurate manner.

While Shandong Oriental Cherry takes issue with the Department's decision in this questionnaire to require Shandong Oriental Cherry to report its FOPs on a CONNUM-specific basis when it accepted a single average FOP methodology in prior reviews, there is a clear rationale for this approach. In the *3rd AR Nails Final Results*, the Department did not require the mandatory respondent to report its FOPs on a CONNUM-specific basis. However, this was largely because the mandatory respondent did not maintain production and accounting records on a CONNUM-specific basis and (unlike Shandong Oriental Cherry) it did not make statements to the contrary.[196] In the *3rd AR Nails Final Results*, the Department placed this mandatory respondent *and all future respondents* on notice that it would require all "respondents {in future cases to} report all FOPs data on a CONNUM-specific basis using all product characteristics in subsequent reviews." [197] The Department concludes that it instituted this requirement for

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[191] *See* Shandong Oriental Cherry's Supplemental Sections A, C, and D Response at Exhibits SD-1 through SD-18; Shandong Oriental Cherry's May 11, 2015, Supplemental Section D Response at Exhibits SSD-1 through SSD-5.
[192] For example, on page D-4 of its original Section D Response, Shandong Oriental Cherry stated that "In this wire-drawing workshop, Oriental Cherry can distinguish the FOP consumption of low carbon and medium carbon wire rods according to the CONNUM of the nails."
[193] *See* Preliminary Decision Memorandum at 19-20.
[194] *See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) and accompanying Issues and Decision Memorandum at Comment 16.
[195] *See* Stanley's Final Analysis Memo at Attachment 1 (Stanley's Final Output).
[196] *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 5 ("*3rd AR Nails Final Results*") and accompanying Issues and Decision Memorandum at 38-39.
[197] *See 3rd AR Nails Final Results* at Comment 5.

subsequent reviews, including this review, because it was cognizant of the fact that requiring respondents to report all FOPs on an individual CONUM-specific basis would accurately reflect the different production costs required to produce the different types and sizes of nails.[198] Specifically, it is the Department's position that using a single average FOP usage ratio for wire rod, which is one of the significant inputs, fails to accurately capture the production cost of different CONNUMs of nails that use different sizes of wire rod and thus will generate different amounts of yield loss.

While the Department did allow a respondent in the 5th AR to report its FOPs on a single average basis, this is an exception to our reporting requirements outlined in our questionnaire, as explained above. Additionally, we find that the *3rd AR Nails Final Results* were published in mid-March 2013, which was at the mid-point of the period of review for the 5th AR, which covered August 2012 through July 2013.[199] Accordingly, we find that the respondents in the 5th AR did not have adequate notice to start tracking their monthly accounting and production records on a product-specific basis. However, we find that the Department's decision in this review to continue to require Shandong Oriental Cherry to follow the original questionnaire's requirements by reporting its FOPs on a CONNUM-specific basis using an estimated allocation methodology in the third supplemental Section D questionnaire is fully consistent with our approach originating in the *3rd AR Nails Final Results*.[200, 201] More importantly, we find that Shandong Oriental Cherry had notice prior to the start of the POR of this review to track its monthly accounting and production records on a product-specific basis. In any event, in this review, unlike the 5th AR, the Department put Shandong Oriental Cherry on notice, early in the proceeding, that it was not accepting an average FOP methodology, but, instead, requiring CONNUM-specific FOP data. There can be no question that CONNUM-specific FOP data provides a more accurate surrogate normal value in this proceeding and thereby improves the accuracy of the Department's dumping calculation in this proceeding. Thus, the Department's request for this CONNUM-specific information was reasonable.

Late in the proceeding, Shandong Oriental Cherry attempted, but ultimately failed, to provide a CONNUM-specific FOP database based on estimated quantities for each CONNUM by grouping the subject merchandise into thirteen production groups (*i.e.,* by export quantity for each production group to the United States), which formed the primary basis for its revised allocation.[202] Shandong Oriental Cherry stated that it was able to report the low- and medium-carbon wire rod FOPs and other FOPs from the wire rod and nail making workshops on a

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[198] *Id*.
[199] *Id*.; *Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Administrative Review; 2012-2013*, 80 FR 18816 (April 8, 2015) and accompanying Issues and Decision Memorandum ("*5th AR Final Results*"). (we find that the issue of the FOP reporting methodology for one of the mandatory respondents, Xi'an Metals & Minerals, was not raised as an issue in the final results).
[200] *See 3rd AR Nails Final Results* at Comment 5; *5th Nails AR Final Results*.
[201] Specifically, as explained above, the Department twice in supplemental questionnaires informed Shandong Oriental Cherry that it would not accept a single average FOP methodology and suggested alternative FOP reporting methodologies for Shandong Oriental Cherry to consider as a basis for reporting its FOPs on a CONNUM-specific basis.
[202] *See* Shandong Oriental Cherry's June 5, 2015, Supplemental Section D Questionnaire Response, (June 5, 2015) at 5 and Exhibit TSD-5 (the total production quantity for the thirteen production groups listed was the total quantity listed in the original U.S. sales reconciliation submitted in Shandong Oriental Cherry's Section C questionnaire response at Appendix V).

CONNUM-specific basis by allocating input and output weight of wire rod by diameter and also by different yield rates.[203] However, as explained in the *Preliminary Results*, contrary to Shandong Oriental Cherry's portrayal, the record evidence shows that the low- and medium-carbon wire and steel plate FOPs for numerous CONNUMs were not reported on a CONNUM-specific basis. Therefore, Shandong Oriental Cherry's third supplemental D response did not adhere to the reporting requirements found in the original questionnaire and in the first, second, and third supplemental D questionnaires.

Specifically, while Shandong Oriental Cherry reported that it calculated different yield ratios to be applied to the FOPs, such as low-carbon wire rod, for all nail products to calculate a CONNUM-specific FOP ratio, the Department finds that Shandong Oriental Cherry reported the same yield ratios for wire rods of different diameters, despite wire rod diameter being the second most important physical characteristic in the CONNUM-hierarchy.[204] Although Shandong Oriental Cherry attempts to explain that its wire rod FOPs are accurate and CONNUM-specific, the Department finds that it is not mathematically feasible for nails produced from different wire rod diameters to have the same production cost. The Department finds that Shandong Oriental Cherry's argument that nails produced from different diameters may have the same yield ratio by pure coincidence is not supported by fact; the record shows that nails produced from different wire rod diameters have different production costs and yield ratios (*e.g.*, resulting scrap offsets).[205] Additionally, the Department finds that Shandong Oriental Cherry's argument that nails could have the same yield ratio due to the conversion of the wire rod diameter from the British system to the metric system still does not explain how this conversion could result in the same yield ratio accurately capturing production cost across different types of nails.[206] As explained in the *3rd AR Nails Final Results* and in each questionnaire issued to Shandong Oriental Cherry regarding its FOP database, the Department required Shandong Oriental Cherry to report its FOPs on a CONNUM-specific basis using either actual or estimated quantities that accurately captured the production cost of each CONNUM. The Department finds that, as explained previously in other segments of this case, different types of nails, particularly ones that have different diameters, will have different production costs, and thus, different yield ratios. Therefore, the Department finds that it was correct to find that Shandong Oriental Cherry's low- and medium-carbon wire and steel plate FOPs, which account for the most significant FOPs in its database, were not accurately reported as CONNUM-specific FOPs, despite the Department's multiple requests.[207]

Although Shandong Oriental Cherry takes issue with the Department's finding that its wire rod and steel plate FOPs were not reported on a CONNUM-specific basis and argues that the Department should have alerted Shandong Oriental Cherry to its concerns in another supplemental questionnaire, these arguments are without merit. The Department finds that Shandong Oriental Cherry originally had the responsibility and subsequently was granted multiple opportunities to report its wire rod and steel plate FOPs on a CONNUM-specific basis

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[203] *Id.*, at 5-6 and Exhibits TSD-2, 3, and 4.
[204] *Id.*, at Exhibit TSD-1.
[205] *See* Stanley's Final Analysis Memo at Attachment 1 (Output).
[206] *See* Shandong Oriental Cherry's Case Brief at 39.
[207] *See* Shandong Oriental Cherry's June 5, 2015, Supplemental Response at Exhibit TSD-1; Preliminary Decision Memorandum at 21.

using either actual or estimated quantities, pursuant to the Department's regular reporting requirements. As explained above, the original questionnaire was issued on November 20, 2014, and contained a full narrative explanation of our reporting requirements for FOPs on a CONNUM-specific basis. After each of Shandong Oriental Cherry's submissions, we issued supplemental questionnaires identifying inadequate responses and providing additional instructions to facilitate the reporting of FOPs on a CONNUM-specific basis, using either actual or estimated quantities. The Department has not received this information despite giving Shandong Oriental Cherry three opportunities to remedy deficiencies regarding its main FOPs – wire rod and steel plate. The Department took extraordinary steps that greatly delayed its analysis, to allow Shandong Oriental Cherry multiple opportunities to provide the requested information and, in each of these supplemental questionnaires, the Department specifically identified the deficiencies of the prior submission.

With respect to Shandong Oriental Cherry's other FOPs, such as chemicals, labor, and energy, the Department finds that Shandong Oriental Cherry explained that it could not calculate CONNUM-specific FOPs for these inputs because they were used in different workshops and were allocated by production group.[208] The Department also notes that it suggested that Shandong Oriental Cherry consider allocation methodologies, such as weight-based CONNUM-specific methodologies used in other cases, and contact the Department if Shandong Oriental Cherry had any questions.[209] However, because Shandong Oriental Cherry still reported many numerous direct materials, such as chemicals, on a single average FOP basis, the Department took the extraordinary step of issuing an additional supplemental Section D questionnaire and requested that Shandong Oriental Cherry revise its reporting methodology based on a CONNUM-specific or production-group basis.[210] Shandong Oriental Cherry continued to state that all other FOPs, except for those used in the wire rod workshop, could only be reported on a production-group basis, resulting in different CONNUMs having the same FOP usage ratio because different production groups could go through the same workshop.[211] Specifically, Shandong Oriental Cherry stated that direct materials, such as chemicals, indirect labor, packing, and coal FOPs could only be allocated on a single average FOP basis.[212]

Although Shandong Oriental Cherry claims that it accurately explained in all of its responses that it could only report many of its FOPs, including 39 chemical FOPs, on a single average basis by production group, the Department continues to find this explanation to be inadequate and unsupported by record evidence. As explained above, the Department provided Shandong Oriental Cherry with multiple opportunities to develop an accurate, reasonable methodology to report its FOPs, including chemicals, either on a CONNUM-specific or production-group basis, which accurately reflects the different production costs of each CONNUM or each product group. Instead, Shandong Oriental Cherry chose to ignore the required reporting requirements

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[208] *See* Shandong Oriental Cherry's June 5, 2015, Supplemental Section D Response at 33-4.
[209] *See* the Department's May 13, 2015, Supplemental Section D Questionnaire at 5-6 (citing to *Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008) ("Washers"); *Steel Wire Garment Hangers from the People's Republic of China*, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 8a ("Hangers from the PRC").
[210] *See* Shandong Oriental Cherry's July 22, 2015, Supplemental Questionnaire Response, (July 22, 2015) at 32-34.
[211] *Id*.
[212] *Id*.

and continue to report a single average FOP usage ratio across all thirteen production groups. Importantly, the Department also informed Shandong Oriental Cherry in prior questionnaires and that if Shandong Oriental Cherry still had difficulty following the Department's reporting requirements, it should contact the Department prior to submitting its response.[213] However, Shandong Oriental Cherry did not avail itself of this opportunity, despite the Department's repeated notifications that it would not accept a single average FOP usage ratio to be reported for over 100 different CONNUMs.[214]

Additionally, the Department disagrees that we should find that the other direct materials, particularly chemicals, are reported accurately using a single average FOP methodology because these materials account for only an insignificant portion of each nail by weight. Specifically, the Department finds that it cannot quantify whether each of the 39 chemical FOPs is, in fact, insignificant because the cost of each chemical FOP is reported on a single average basis for all products, and thus, the reported cost of each chemical FOP is based on the cost for all products. To determine the cost of each chemical FOP and whether each chemical FOP was an "insignificant" cost, the Department would need to examine the cost on a CONNUM- or product-specific basis, and this information is absent from the record. Thus, the Department finds that the record is missing the necessary information to determine whether these 39 chemical FOPs are insignificant costs of each CONNUM and should be disregarded as insignificant adjustments, pursuant to section 777(a)(2) of the Act.

The Department also disagrees with Shandong Oriental Cherry that its 39 chemical FOPs should be treated as factory overhead.[215] Therefore, because Shandong Oriental Cherry has not provided record evidence demonstrating that these 39 chemical FOPs are not regularly consumed during the production process, the Department will include these chemical FOPs in its analysis of the accuracy and reliability of Shandong Oriental Cherry's FOP reporting methodology. Furthermore, in Shandong Oriental Cherry's last supplemental Section D response, which addressed purchases of wire rod made from an affiliate, Shandong Oriental Cherry made inadequately explained changes to its FOP allocation methodology.[216] In its last supplemental Section D response, Shandong Oriental Cherry submitted a revised chart of the total quantities for the thirteen production groups on which it based its FOP allocation methodology, which it explained was a result of checking its data.[217] The Department continues to find that this change to the total quantities of the thirteen production groups raises questions regarding the overall accuracy of Shandong Oriental Cherry's FOP database, particularly as Shandong Oriental Cherry provided no rationale as to why such inaccuracies were present in their data. Importantly, the unsolicited revised chart of the total quantities for the thirteen production groups decreased by a certain percentage, but in this response, Shandong Oriental Cherry did not submit a revised FOP database or explain why this change did not result in a change to its overall FOP reporting methodology.[218] In other words, because Shandong Oriental Cherry stated that its FOP reporting

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[213] *See* the Department's May 13, 2015, Supplemental Section D Questionnaire at 2-3.
[214] *Id*.
[215] Since the *LTFV Investigation Final Results*, the Department has treated chemicals as direct materials in the calculation of NV because chemicals, while not physically incorporated into the finished product of the nail, are regularly consumed in the production process.
[216] *See* Shandong Oriental Cherry's July 22, 2015, Supplemental Sections A and D Response, (July 22, 2015) at 8.
[217] *Id*.
[218] *Id*.

methodology relies upon the quantities produced by its thirteen production groups, any change to these quantities must result in changes to reported FOPs, yet Shandong Oriental Cherry reported no changes to its FOPs. Even more importantly, the primary basis for reporting the FOPs on a CONNUM-specific basis was using these production group quantities and the production group quantities changed, without submitting a revised FOP database. This fatally calls into question whether Shandong Oriental Cherry provided an accurate, reliable FOP methodology reported on a CONNUM-specific basis. For all these reasons, the Department continues to find that it cannot ascertain – based on the inadequately explained changes to the primary basis for Shandong Oriental Cherry's FOP allocation methodology –whether it has an accurate and reliable FOP database for the final results.[219]

Shandong Oriental Cherry argues that if the Department had continuing concerns regarding the accuracy of its FOP database due to these changes the Department should have issued another supplemental questionnaire, however, the Department disagrees. The Department works within statutory and regulatory deadlines for administrative reviews and is not obligated to continue to send out multiple supplement requests for information regarding the accuracy and reliability of Shandong Oriental Cherry's overall FOP allocation methodology, which was first requested in the original questionnaire. By the time the Department received Shandong Oriental Cherry's unsolicited change to its FOP allocation methodology, which came in a little over a month prior to the fully extended *Preliminary Results*, the Department had already issued multiple questionnaires, including the original questionnaire, to Shandong Oriental Cherry on this issue. Thus, the Department had gone far beyond its normal practice in granting Shandong Oriental Cherry multiple opportunities to remedy deficiencies regarding the accuracy and reliability of its overall FOP allocation methodology. Furthermore, the burden of establishing a reliable and accurate record lies with the respondent, not the Department. Clearly, after the numerous opportunities that the Department granted Shandong Oriental Cherry, this inadequately explained change in its FOP allocation methodology raises insurmountable questions as to whether Shandong Oriental Cherry's FOP database is accurate and reliable for calculating a margin for the final results.

While Shandong Oriental Cherry claims that because the Department chose to not verify this information, the Department by default must assume the FOP database is accurate, the Department disagrees. Although the Department assumes that the data is correct when it chooses not to verify that data, this is only true when the record shows that accurate and reliable data have been submitted to the Department to calculate a dumping margin.[220] While Shandong Oriental Cherry claims all of the Department's concerns regarding its reliability and accuracy of its FOP database could be resolved through verification, the Department disagrees. If after the Department's multiple requests Shandong Oriental Cherry could not comply with the Department's required reporting methodology, this could not have been resolved through verification. The purpose of verification is not to develop an accurate CONNUM-specific FOP reporting methodology but, instead, to test the accuracy of the information already submitted on the record.

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[219] *Id.*, at 8; Shandong Oriental Cherry's June 5, 2015, Supplemental Section D Response at 2-3.
[220] *See First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decision Memorandum at Comment 4.

Finally, the Department disagrees that Shandong Oriental Cherry should be able to submit a poorer quality of FOP data (*i.e.*, not-CONNUM-specific) than Stanley, the other respondent in this segment. Shandong Oriental Cherry claims that it should be held to a different standard because it is a first-time mandatory respondent, and has a less sophisticated accounting system than Stanley, which has participated as a mandatory respondent since the LTFV investigation. As indicated in the Department's original questionnaire, the Department is willing to work with respondents that are having difficulty responding to requests for information.[221] However, this requires a respondent to be forthright with the Department in identifying its difficulties and to provide clear and accurate descriptions of the data it is able to submit to the Department. As explained above, Shandong Oriental Cherry failed to do these things. Furthermore, as discussed above, it was reasonable for the Department to request CONNUM-specific FOP data and respondents in this case have been placed on notice about the importance of reporting FOPs on a CONNUM-specific basis since the *3rd AR Nails Final Results*.[222]

Accordingly, the Department finds that it cannot use any of the FOP data provided by Shandong Oriental Cherry and, as a result, this lack of useable FOP data means necessary information is missing from the record within the meaning of section 776(a) of the Act. Furthermore, as explained above, the Department continues to find that Shandong Oriental Cherry's failure from the outset to follow specific instructions in the Department's original questionnaire and its misrepresentation about its data along with its inadequately explained changes to this data resulted in this review being significantly impeded, as the Department had to issue multiple subsequent requests to seek correction and clarification of major deficiencies in Shandong Oriental Cherry's FOP reporting methodology. As a result, and as explained in further detail below, the Department also determines that this lack of usable FOP data supports a determination that Shandong Cherry Oriental has failed to cooperate to the best of its ability within the meaning of section 776(b) of the Act.

2. *Shandong Oriental Cherry's Sales Reconciliation*

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

The Department continues to find that Shandong Oriental Cherry's original sales reconciliation was incomplete because it did not include two months of sales data that covered FY 2014 and did not adhere to the instructions outlined in the Department's original questionnaire to provide a narrative explanation for how the sales reconciliation and supporting worksheets tied to Shandong Oriental Cherry's FY financial statements.

In Appendix V of the original questionnaire, the Department requested that Shandong Oriental Cherry submit the following items in regards to its sales reconciliation:

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[221] *See* the Department's original antidumping duty questionnaire at 3, G-1, and D-2.
[222] *See 3rd AR Nails Final Results* at Comment 5.

a. *A demonstration of how the POR financial statements' sales totals tie to the general ledger sales revenue accounts.*

b. *A worksheet demonstrating how the general ledgers' sales revenue accounts in step one, above, tie to the sales reported in the U.S. sales database. The worksheet should identify the total quantity and value of all sales in the fiscal years overlapped by the POR and identify the quantity and value of each category of non-subject merchandise sales that are excluded from your reported sales of subject merchandise (e.g., domestic sales, sales outside the POR, sales to foreign markets other than the United States, etc.).*

c. *A detailed narrative explaining how all worksheets and supporting documentation tie together.*

d. *An explanation of the means used to identify and exclude all these non-subject merchandise sales (e.g., internal country code, product description, etc.).*

e. *A product list, with product codes and descriptions, of all products excluded from the reported sales of subject merchandise.*[223]

In its original Section C response, the Department determines that Shandong Oriental Cherry submitted a sales reconciliation for its sales of subject merchandise to the United States during the POR that did not include sales for the last two months of 2014, which was one of the FYs that covered the POR.[224] Although Shandong Oriental Cherry noted in its Section A response that it was not submitting the full, audited FY 2014 financial statement because the financial statement would not be ready until later in the year, it failed to provide an explanation in its Section C response as to why it was not reporting the complete monthly sales data for each FY that covered the POR.[225] While Shandong Oriental Cherry did not contain any portion of the full, audited FY 2014 financial statement in its Section A response, it did state that it maintains monthly internal financial statements (*i.e.*, balance sheets and profit & loss statements), which list the business income net of profit, and submitted these monthly internal financial statements for each month of the POR (*i.e.*, excluding the two missing months mentioned above and other months outside the POR).[226] However, Shandong Oriental Cherry did not mention that it had included these monthly internal financial statements in its original Section C response, or explain why it was not reporting the business income or sales data for the last two months of FY 2014 utilizing these monthly internal financial statements that it indicated that it had for other months in its Section A response, as requested in Appendix V of the original questionnaire.[227] We determine that, as Shandong Oriental Cherry was preparing its Section C response between when it received the original questionnaire and when it was due, it should have been able to provide information on those last two months of FY 2014 based on the monthly internal financial

[223] *See* Shandong Oriental Cherry's Original Questionnaire at V-1 and Appendix V (emphasis added).
[224] *See* Shandong Oriental Cherry's Section C Response at Appendix 1 (Sales Reconciliation did not include monthly sales data for November and December 2014).
[225] *See* Shandong Oriental Cherry's Section A Response at 22; Shandong Oriental Cherry's Section C Response at Appendix 1.
[226] *See* Shandong Oriental Cherry's Section A Response at 22 and Exhibit SA-19.
[227] *See* Shandong Oriental Cherry's Section C Response at Appendix 1.

statements admittedly in its possession.[228] Thus, the Department finds that it was correct to state in the *Preliminary Results* that Shandong Oriental Cherry's original sales reconciliation was incomplete, since it was missing two months of sales data for one of the FYs that covered the POR and Shandong Oriental Cherry did not provide any explanation for why this sales data was not included for these two months when Shandong Oriental Cherry submitted monthly internal financial statements for other months that had reported sales data in its original sales reconciliation.[229]

Additionally, contrary to Shandong Oriental Cherry's argument, the Department finds that the original questionnaire requests that a respondent provide, when submitting its sales reconciliation, a "*detailed narrative explaining how all worksheets and supporting documentation tie together*" and "*{a}n explanation of the means used to identify and exclude all these non-subject merchandise sales (e.g., internal country code, product description, etc.).*"[230] In reviewing Shandong Oriental Cherry's original sales reconciliation, the Department continues to find that Shandong Oriental Cherry did not adhere to the Department's explicit instructions and submitted the sales reconciliation absent any narrative explanation for how the sales reconciliation and supporting worksheets tied to Shandong Oriental Cherry's FY financial statements.[231]

Accordingly, in response to the above noted deficiencies, the Department issued a supplemental questionnaire to Shandong Oriental Cherry requesting that Shandong Oriental Cherry submit a revised sales reconciliation explaining (a) why there was missing sales data for two months of FY 2014 and also (b) how the revised sales reconciliation tied to Shandong Oriental Cherry's financial statements and general ledger for the POR.[232, 233] This supplemental questionnaire also requested that Shandong Oriental Cherry explain why it made multiple changes without explanation to a revised sales database that it submitted along with its supplemental Section D questionnaire response.[234] Specifically, in one of Shandong Oriental Cherry's supplemental Section D questionnaires, Shandong Oriental Cherry submitted a revised U.S. sales database that made the following unexplained revisions: 1) three additional variables, including entered value in kilograms and total quantity in kilograms; and 2) 10 variables that had changes for at least one observation.[235]

[228] See Shandong Oriental Cherry's Original Questionnaire, which was issued in November 20, 2014; and Shandong Oriental Cherry's Section C Response, which was due on January 13, 2015.
[229] *See* Preliminary Decision Memorandum at 15; Shandong Oriental Cherry's Original Questionnaire at V-1 and Appendix V.
[230] *See* Shandong Oriental Cherry's Original Questionnaire at V-1 and Appendix V (emphasis added).
[231] *See* Shandong Oriental Cherry's Section C Response at Appendix 1.
[232] *Id;* Shandong Oriental Cherry's June 25, 2015, Supplemental Questionnaire at 13-4 (question 8 of "Section C").
[233] While the *Preliminary Results* did not articulate that this was the second supplemental questionnaire to Shandong Oriental Cherry on its U.S. sales database, the Department finds that the previous supplemental questionnaire was issued on other issues relating to the reporting of physical characteristics and the proper date of sale for the reported U.S. sales of subject merchandise during the POR. *See* Shandong Oriental Cherry's First Supplemental Sections A, C, and D Questionnaire at 8-9 ("Section C" questions).
[234] *See* the Department'sShandong Oriental Cherry's June 25, 2015, Supplemental Questionnaire to Shandong Oriental Cherry at 13-4 (question 9 of "Section C").
[235] *See* Shandong Oriental Cherry's June 5, 2015, Supplemental Section D Response at 6-7.

In its next supplemental questionnaire response, Shandong Oriental Cherry submitted a revised sales reconciliation that reported the missing sales data for two months of 2014 and explained that data for these two months were previously absent from its response because the data had not been prepared when the original sales reconciliation chart was submitted in mid-January 2015.[236] Additionally, Shandong Oriental Cherry provided an explanation for how its revised sales reconciliation tied to the monthly general ledger and values listed for each month in the general ledger tied to Shandong Oriental Cherry's audited annual financial statements for FY 2013 and 2014.[237] Finally, Shandong Oriental Cherry provided an explanation for the revisions to the revised U.S. sales database that it submitted in response to the Department's supplemental Section D questionnaire. Specifically, Shandong Oriental Cherry submitted an exhibit that detailed the comparisons by each variable of the changes between the two different U.S. sales databases.[238]

However, despite the above, there were significant deficiencies that still remained in Shandong Oriental Cherry's response and overall U.S. sales data. Specifically, the Department finds that Shandong Oriental Cherry failed to provide a complete, accurate, and reliable sales reconciliation and U.S. sales database. In reviewing Shandong Oriental Cherry's revised sales reconciliation and accompanying questionnaire response, the Department ascertains that Shandong Oriental Cherry, without explanation, decreased the monthly sales quantities for two months of the POR without any explanation, which decreased the total sales quantity of subject merchandise to the United States by one percent.[239] The Department finds that Shandong Oriental Cherry also revised, without explanation, the total sales quantity reported in the revised U.S. sales database based on the changes to monthly sales quantities for two months in the POR.[240] However, the Department finds that it became aware of these changes in the sales reconciliation and U.S. sales database only when Shandong Oriental Cherry submitted another supplemental Section D questionnaire two days later (*i.e.*, at the same time when Shandong Oriental Cherry submitted an unsolicited revised production group export quantities worksheet based on these changes).[241]

Additionally, Shandong Oriental Cherry made changes regarding its sales quantities in its revised sales reconciliation and revised U.S. sales database without a specific request to do so from the Department, and without providing any explanation as to why the changes were necessary.[242] This is in the same questionnaire response where the Department had requested that Shandong Oriental Cherry provide a detailed explanation for the multiple revisions that Shandong Oriental Cherry made to a previous U.S. sales database.[243] The Department determines that this was the second time that Shandong Oriental Cherry made changes to its U.S. sales database without

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[236] *See* Shandong Oriental Cherry's July 20, 2015, Supplemental Questionnaire Response, (July 20, 2015) at 28.
[237] *Id*., at 28-9 and Exhibits 3rd SSAC-24 and 25.
[238] *Id*., at Exhibit 3rd SSAC-36.
[239] *Id*., at Exhibit 3rd SSAC-24; Shandong Oriental Cherry's Section C Response at Appendix 1.
[240] *See* Shandong Oriental Cherry's July 20, 2015, Supplemental Questionnaire Response at Exhibit 3rd SSAC-13.
[241] *See* Shandong Oriental Cherry's July 22, 2015, Supplemental Response at 8.
[242] *See* Shandong Oriental Cherry's July 20, 2015, Supplemental Questionnaire Response, at Exhibits 3rd SSAC-13 and 24.
[243] *Id*., at 28-9.

explanation, which were submitted less than a month before the fully extended *Preliminary Results*.[244]

Although Shandong Oriental Cherry argues that a respondent may make corrections, with or without the specific request of the Department, the Department does not find this argument persuasive. As explained in *Definition of Factual Information and Time Limits for Submission of Factual Information*, a respondent may submit factual information in response to questionnaires/supplemental questionnaires issued by the Department, but may not make unsolicited changes or corrections that are not in response to specific requests in a questionnaire by the Department or in the form of a rebuttal, clarification, or correction of factual information submitted by an interested party.[245] In any event, a respondent must explain to the Department that it is making corrections to its data and why such changes are required. The Department must then determine whether to accept the corrections and whether, for example, the repeated need to correct data demonstrates that a respondent is not putting forth the maximum effort possible and thus the respondent is not cooperating within the meaning of section 776(b) of the Act.

Accordingly, based on the fact that Shandong Oriental Cherry, throughout this review, submitted incomplete information regarding its sales reconciliation, and then twice made unsolicited changes without any explanation for its sales reconciliation and/or U.S. sales database, the Department continues to find that Shandong Oriental Cherry failed to provide complete, accurate, and reliable sales data for the final results. While Shandong Oriental Cherry is correct that it is the responsibility of a respondent to provide a complete and accurate record, the Department finds that this responsibility does not automatically grant the respondent the right to make repeated unsolicited changes to its data without explanation.[246] The result of this would be a serious undermining of the Department's ability to rely on information submitted by parties at the time the information was received and undermining the Department's ability to evaluate whether a party is putting forth the maximum effort possible in responding to the Department's request for information.

Although Shandong Oriental Cherry claims that facts available should not be applied to its sales reconciliation and U.S. sales database, the Department finds that, contrary to Shandong Oriental Cherry's portrayal of its behavior, its sales reconciliation and U.S. sales database have been incomplete and inaccurate since the beginning of this review. The Department finds that Shandong Oriental Cherry's original Section C response only included a printout of its U.S. sales database and did not include an electronic file of its database, as requested in the Department's original questionnaire.[247] Shandong Oriental Cherry's failure to provide responsive information was also exhibited in Shandong Oriental Cherry's original sales reconciliation, which was incomplete and did not adhere to the Department's reporting requirements, and also, Shandong Oriental Cherry's failure in its Section C response to provide the U.S. destination of each sale

[244] *See* Preliminary Decision Memorandum at 16. The CIT has recognized that a respondent must submit explanations and documentation necessary for the Department to gain an understanding of its reporting methodology. *See Sidenor Indus. SL v. United States*, 664 F. Supp. 2d 1349, 1357 (CIT 2009).
[245] *See Definition of Factual Information and Time Limits for Submission of Factual Information* at 21255; 19 CFR 351.301(c)(v).
[246] *Id*.
[247] *See* Shandong Oriental Cherry's Original Questionnaire at Section C Filing Requirements.

and report the container/package count weight as an additional physical characteristic.[248] In its first supplemental questionnaire response, Shandong Oriental Cherry claimed to not have the pertinent information, and for the second time failed to provide the U.S. destination of each sale and report the container/package count weight as an additional physical characteristic.[249] This lack of responsiveness continued when Shandong Oriental Cherry, as explained above, submitted a revised U.S. sales database with multiple unsolicited and unexplained changes, in response to a supplemental Section D questionnaire.[250] Shandong Oriental Cherry then submitted a revised sales reconciliation that included unsolicited revisions to the total sales quantity of POR sales of subject merchandise.[251] Because of the general ambiguity and unresponsiveness of Shandong Oriental Cherry's reporting, and its decision to adjust its total sales database twice without explanation, the Department is not confident that Shandong Oriental Cherry's latest data represent a complete, accurate, and reliable sales reconciliation and sales database based.[252]

While Shandong Oriental Cherry claims that the Department should have issued an additional supplemental questionnaire to Shandong Oriental Cherry regarding its sales reconciliation and U.S. sales database, the Department finds no basis for this assertion. The Department determines that it issued the original questionnaire and two supplemental questionnaires which required that Shandong Oriental Cherry address questions regarding its U.S. sales database and/or sales reconciliation.[253] Shandong Oriental Cherry makes the point that the Department cannot apply facts available with adverse inferences until it "twice" requests clarification regarding respondent-produced errors. However, the Act is clear that: "if the administering authority…determines that a response to a request for information…does not comply with the request, the administering authority…shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency… If that person submits further information in response to such deficiency and… the administering authority…finds that such response is not satisfactory,…then the administering authority…may…disregard all or part of the original and subsequent responses."[254] The Department finds that it unquestionably met the obligations of this provision. After its original questionnaire (request for information) resulted in Shandong Oriental Cherry providing an incomplete sales reconciliation (deficient response), the Department notified Shandong Oriental Cherry of the fact that its sales reconciliation was

[248] *Id*.
[249] *See* Shandong Oriental Cherry's First Supplemental Sections A, C, and D Response at 5 and 9.
[250] *See* Shandong Oriental Cherry's June 5, 2015, Supplemental Response at 8.
[251] The CIT has recognized that a respondent must submit explanations and documentation necessary for the Department to gain an understanding of its reporting methodology. *See Sidenor Indus. Sl v. United States*, 664 F. Supp. 2d 1349, 1357 (CIT 2009).
[252] The Department determines that the original printout of the U.S. sales database, which was not filed pursuant to the Department's requirements for submitting an electronic file of the database, was only corrected when the Department notified it of this error a few months after its original submission. *See* Shandong Oriental Cherry's Refiling of the Sections C and D Databases, (April 29, 2015) at 1-2. Additionally, the Department finds that Shandong Oriental Cherry finally reported the U.S. sales destination, which is necessary for the Department to perform its differential pricing analysis, and the additional physical characteristic of the container/package count weight only after the Department twice requested that it report this information. *See* Shandong Oriental Cherry's Third Section A and Second Section C Supplemental Response, at 7-10.
[253] *See* Shandong Oriental Cherry's Original Questionnaire; the Department's First Supplemental Sections A, C, and D Questionnaire; and the Department's June 25, 2015, Supplemental Questionnaire.
[254] *See* section 782(d) of the Act.

incomplete (opportunity to remedy the deficiency), at which point the Department again received a questionnaire response that contained an incomplete sales reconciliation with unsolicited and unexplained changes to the sales quantities (further information in response to deficiency) . Therefore, the Department finds that it met its burden of granting Shandong Oriental Cherry a sufficient number of opportunities to submit a complete, reliable sales reconciliation and U.S. database, which Shandong Oriental Cherry ultimately failed to provide. In any event, given that the problems associated with Shandong Cherry's U.S. sales data continued over and over again until almost the deadline for the fully-extended preliminary results, the Department finds that further opportunities to remedy the deficiencies in Shandong Oriental Cherry's U.S. sales database were simply not practicable.

As explained above, the Department is constrained by statutory and regulatory deadlines for the timely completion administrative reviews, and is not obligated to repeatedly issue requests for information, especially when that information was already requested and a respondent is not forthcoming. While Shandong Oriental Cherry claims that the Department never brought to its attention concerns regarding its U.S. sales database and reconciliation, the Department finds that Shandong Oriental Cherry was aware, since the issuance of the original questionnaire, of the necessity to submit a complete, accurate, and reliable sales database and reconciliation. Additionally, after receiving Shandong Oriental Cherry's original response, the Department identified filing deficiencies in the original database and two supplemental questionnaire responses. We also notified Shandong Oriental Cherry of our concerns with the overall reliability and accuracy of its U.S. sales database and reconciliation, and our concerns with Shandong Oriental Cherry's penchant for providing unsolicited changes without any explanation to its U.S. sales database.[255]

Furthermore, the Department disagrees with Shandong Oriental Cherry that questions regarding its sales reconciliation and U.S. sales database could have been addressed through verification. Verification is not a forum for the Department to resolve issues that have not been resolved in questionnaire responses, especially when these issues pertain to the integrity and accuracy of the totality of the data.[256] More importantly, the Department verifies information that is already on the record, and verification does not present an opportunity to submit new information.[257]

For all these reasons, the Department continues to find that it cannot use any of Shandong Oriental Cherry's U.S. sales database and as a result, necessary information is missing from the record within the meaning of section 776(a) of the Act. Furthermore, as explained in more detail below, Shandong Oriental Cherry's repeated unexplained revisions to its U.S. sales database supports a determination that it did not put forth the maximum effort in responding to the Department's request for information and thus it did not cooperate within the meaning of Section 776(b) of the Act.

3. *Jining Dragon Fastener's Shooting Nails*

[255] *See* Shandong Oriental Cherry Original Questionnaire; the Department's First Supplemental Sections A, C, and D Questionnaire; Shandong Oriental Cherry's Refiling of Sections C and D Databases; and the Department's June 25, 2015, Supplemental Questionnaire.
[256] *See Steel Wire Garment Hangers from the PRC Final Results 2012-2013* at Comment 1.
[257] *Id*.

Pursuant to section 776(a)(2)(A), (B), and (C) of the Act, the Department continues to find that the application of facts available is warranted because Shandong Oriental Cherry's affiliate, Jining Dragon Fasteners, part of the Shandong Oriental Cherry Entity, as explained below in Comment 5, failed to provide information requested by the Department in the form and manner requested, and significantly impeded this review by failing to provide sales and FOP data for shooting nails sales to the United States that fall within scope of the order. Instead, Shandong Oriental Cherry claimed that Jining Dragon Fasteners' shooting nails sales were excluded from the scope of the order, without once substantiating this claim through submission of documentation.[258]

As explained in the *Preliminary Results*, in the Department's original questionnaire, we provided instructions for reporting information related to Shandong Oriental Cherry's eligibility for a separate rate, and corporate structure and affiliations to the Department.[259] The instructions from the questionnaire specifically requested Shandong Oriental Cherry to:

> Provide a list of all the manufacturing facilities, sales office locations, research and development facilities and administrative offices involved in the manufacture and sale of the merchandise under consideration operated by your company. Please give a full address for each facility, and briefly describe the purpose of each.[260]

While Shandong Oriental Cherry, its original Section A response, provided information on certain affiliates, including Jining Dragon Fasteners, with respect to ownership, management, and scope of business, it did not provide sufficient information showing that Jining Dragon Fasteners only produced and sold only non-subject merchandise to the United States during the POR.[261, 262] In its original Section A response, Shandong Oriental Cherry stated that its affiliate, Jining Dragon Fasteners, sold non-scope merchandise to the United States, *i.e.*, shooting nails used in a powder-actuated hand tool that it claimed were excluded from the scope of the *Order*.[263] However, besides Shandong Oriental Cherry's mere statement that Jining Dragon Fasteners'

[258] The relevant scope exclusion is as follows: {a}lso 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. For further discussion of the scope, see "Scope of the Order" section listed above in this memorandum.

[259] *See* Shandong Oriental Cherry's Original Questionnaire at A-2 through A-6; Preliminary Decision Memorandum at 22.

[260] *See* Shandong Oriental Cherry's Original Questionnaire at A-5 – A-6.

[261] *See* Shandong Oriental Cherry's Section A Questionnaire Response, (December 24, 2014) at 3-4.

[262] According to Shandong Oriental Cherry in its original response, its alleged affiliates' production and sales activities were as follows: (1) Shandong Oriental Cherry Hardware Import & Export Co., Ltd. ("Shandong Oriental Cherry I&E") exported in-scope merchandise to third-country markets but did not export subject merchandise to the United States during the POR; (2) Jining Huarong Hardware Products Co., Ltd. ("Jining Huarong Hardware") produced and sold steel strip nails in the domestic market during the POR; (3) Jining Oriental Cherry Hardware Group Heze Products Co., Ltd. ("Heze Products Co.") produced and sold brad nails in the domestic market; (4) Jining Dragon Fasteners produced and sold shooting nails used in a powder-actuated hand tool, which were excluded from the scope of the *Order*, to the United States during the POR; and (5) Jining Yonggu Metal Products, Ltd. ("Jining Yonggu") produced and sold steel strip nails in the domestic market.[262]

[263] *See* Shandong Oriental Cherry's Section A Response at 4.

sales of shooting nails were excluded from the scope of the *Order*, the Department did not receive any supporting documentation demonstrating that these nails met the scope exclusion. Because the record was not clear as to whether Jining Dragon Fasteners sold non-scope merchandise to the United States during the POR, the Department requested that Jining Dragon Fasteners respond to portions of Section A of Shandong Oriental Cherry's questionnaire.[264] This included providing information addressing separate rate eligibility, corporate structure/affiliation, accounting, and merchandise.[265] Most importantly, regarding the alleged non-scope merchandise, the Department requested that Jining Dragon Fasteners provide the following: (1) "product specifications or model diagrams for each type of product, a full description of the types of machinery used during the production process, and a full list of all material inputs used during the production process;" and (2) "supporting documentation showing how each product's physical characteristics/specifications are covered by the specific {scope} exclusion."[266]

Although Shandong Oriental Cherry claims that it demonstrated with supporting documentation that Jining Dragon Fastener's shooting nails did meet the physical characteristics/specifications of the scope exclusion, the Department finds no support for this assertion on the record. Specifically, Jining Dragon Fasteners did not provide evidence showing how its allegedly non-subject shooting nails were within the scope exclusions listed in the scope of the *Order*, as requested by the Department.[267] While Jining Dragon Fasteners did provide a chart detailing the dimensions (diameter, shank length, nail head, *etc*.) of the shooting nails, the Department concludes that the chart did not address pertinent information related to the scope exclusion, *i.e.*, whether the shooting nails were used in a "powder-actuated hand tool."[268]

Instead, Jining Dragon Fasteners stated that it produced and sold shooting nails to the United States during the POR classified under HTSUS 7319.40.5050, an HTSUS category not listed in the scope, and thus, excluded from the scope of the *Order*. The Department finds that the scope of the *Order* lists that the nails subject to the scope exclusion for "fasteners suitable for use in powder-actuated hand tools" are, in fact, not classified under HTSUS 7319.40.5050, but HTSUS 7317.00.20 and 7317.00.30.[269] Moreover, merely stating that the product is covered by a certain HTSUS category not listed in the scope of the order is not sufficient to find a product outside the scope of the *Order* because HTS categories listed within the scope of an order are not dispositive.[270] Accordingly, just because an interested party claims that a product is classified under a HTS category not listed under the scope of the order does not conclusively demonstrate that the product is excluded from the order.

As explained in the *Preliminary Results*, and contrary to Shandong Oriental Cherry's claim, because the record was still unclear as to whether it was necessary to obtain sales and FOP data

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[264] *See* the Department's Second Section A Supplemental Questionnaire to Shandong Oriental Cherry, (May 7, 2015).
[265] *Id*., at 4.
[266] *Id.*, at 9.
[267] *See* Shandong Oriental Cherry's Second Supplemental Section A Response, (June 4, 2015) at Exhibit IV.
[268] *Id*., at Exhibit IV at 18 and Exhibit 2SA-10.
[269] *Id*., at Exhibit IV at 18; for further detail, *see* "Scope of Order" section above.
[270] In accordance with 19 CFR 351.225(k)(1), when considering whether a particular product is included within the scope an order, the Department should take into account the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary and the International Trade Commission.

for Jining Dragon Fasteners' shooting nails, the Department requested that Jining Dragon Fasteners provide record evidence, such as product specifications, model diagrams, and sales documentation for each shooting nails product, and demonstrate how they met the exclusion for powder-actuated nails in the scope of the *Order* beyond the HTS classification for these shooting nails.[271] Additionally, the Department specifically requested that Jining Dragon Fasteners submit sales and FOP data for its shooting nails, since these products were sold to the United States during the POR.[272] The Department determines that this information was requested to determine whether Jining Dragon Fasteners' shooting nails, were, in fact, excluded from the scope of the *Order*.[273]

While Shandong Oriental Cherry submitted a letter requesting to be excused from reporting Jining Dragon Fasteners' sales and FOP data, the Department disagrees that the information in this letter established that the shooting nails met the scope exclusion for "fasteners suitable for use in powder-actuated hand tools."[274] Specifically, the letter references a claimed technical definition[275] of "shooting nails" that Shandong Oriental Cherry argues demonstrates that its shooting nails are used in a "powder-actuated hand tool." The claimed technical definition is a narrative description for shooting nails that purports these nails to be "made up of nail and gear ring, which is used to fix the nail in the gun-barrel… that are pushed by high pressure gas generated by burning of powder."[276] However, the narrative description does not include any authoritative source or accompanying record evidence to authenticate this claimed technical definition and is immediately followed on the same page by a narrative description of the physical dimensions of the nails sold in the United States along with attached pictures of the nails.[277]

While the Department withdrew its request that Shandong Oriental Cherry submit Jining Dragon Fasteners' sales and FOP data for the allegedly excluded shooting nails, the Department never stated that this was indication that the Department was satisfied as to the evidence on the record regarding whether these nails were subject to the *Order*.[278] In fact, because the Department did not find that the submitted claimed technical definition sufficiently addressed this question, the Department took the additional step of informing Shandong Oriental Cherry that it needed to

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[271] *See* the Department's June 25, 2015, Supplemental Questionnaire to Shandong Oriental Cherry at 6 (question 9) and 7 (question 10).
[272] *Id.*
[273] *Id.*, at 7 (question 10).
[274] *See* Shandong Oriental Cherry's Request for Rescission of Question 10 of the June 25, 2015 Questionnaire, (July 1, 2015).
[275] The Department concludes that it previously relied on technical definitions to define the scope of a case based on industry standards that offer more precise definitions of the manufacturing process and physical characteristics of the product; dictionary definitions when the definition was specific, precise and administrable; testimony from engineers in the industry, *etc*. *See Makita Corp. v. United States*, 974 F. Supp. 770 (CIT 1997); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 70163 (November 25, 2014) and accompanying Issues and Decision Memorandum at Comment 1 ("*Activated Carbon Final 2011-2012*"); *Cablesa S.A. de C.V. v. United States*, Slip Op. 2007-29 (CIT 2007).
[276] *See* Shandong Oriental Cherry's Request for Rescission of Question 10 of the June 25, 2015 Questionnaire at Exhibit (page 1).
[277] *Id.*
[278] *See* July 2, 2015, Request for Excusal Memorandum at 1. Indeed, this excusal from reporting sales and FOP data for the shooting nails was contingent on Shandong Oriental Cherry demonstrating to the Department's satisfaction that such nails were in fact excluded from the *Order*. As discussed herein, it failed to do so.

answer all other portions of the questionnaire regarding Jining Dragon Fasteners' alleged shooting nails, including parts on the specifications of these nails and any other information that would demonstrate that the products were, in fact, excluded from the scope of the *Order*.[279] Specifically, Shandong Oriental Cherry needed to demonstrate with specific record evidence, and not just self-proffered statements, that its nails were used in a "powder-actuated hand tool," as specified in the scope exclusion.[280]

Contrary to Shandong Oriental Cherry's contention, Shandong Oriental Cherry's next questionnaire response, which followed the Department's withdrawal memo and explanation that Shandong Oriental Cherry was stilled required to fully answer all questions and provide evidence regarding the shooting nails, did not establish that Jining Dragon Fasteners' shooting nails met the scope exclusion for "fasteners suitable for use in a powder-actuated hand tool."[281] In fact, the Department had cautioned Shandong Oriental Cherry that it required the following information in order to determine the status of its alleged shooting nails:

a. *For each type of shooting nail produced by Jining Dragon Fasteners during the POR, please provide a detailed explanation with supporting documentation, such as product specifications or model diagrams, of each product type's head style, point style, and shank style.*
b. *For two products that are shooting nails, please provide product specifications or model diagrams for these two products, as previously requested by the Department. Additionally, for these two product codes, please provide a complete sales package that should include all sales documentation, shipment documentation, and payment documentation.*
c. *For two products that are shooting nails, please provide a complete explanation of how each product is packaged and provide documentation of the packaging used for each product.*
d. *Please provide copies of any CBP rulings that Jining Dragon Fastener received regarding the classification of these shooting nails.*
e. *Please provide a detailed description beyond the HTS classification for these shooting nails regarding why Jining Dragon Fastener's shooting nails do not meet the definition of the scope of the subject merchandise, as outlined in Attachment III.*[282]

The Department finds that, in response, Shandong Oriental Cherry repeated its statements that Jining Dragon Fasteners' shooting nails were excluded from the scope of the *Order* because they were used in a "gunpowder-actuated gun" and re-submitted the same technical specifications, in addition to sales packages for these shooting nails. However, the technical specifications for the shooting nails produced by Jining Dragon Fasteners only discussed the physical dimensions of the nail, such as the nail head, shank, hardness of the nail body, the production process used for plating the nail, *etc*., but importantly did not provide any information regarding whether these nails were used in a "powder-actuated hand tool."[283] The Department also notes that the sales

[279] *Id*.
[280] *See* the Department's June 25, 2015, supplemental questionnaire at 8.
[281] *See* Shandong Oriental Cherry's July 20, 2015, Supplemental Response at 14-5 (question 10, emphasis added).
[282] *Id*., at 14-5 and Exhibits 3rd SSAC-8 and 9.
[283] *Id*., at Exhibit SSAC-8.

packages indicated that while these nails were sold as shooting nails, and included information regarding the physical dimensions, these documents provided no information to establish whether these nails were used in a "powder-actuated hand tool," and thus, met the scope exclusion.[284] Finally, the Department determines that while Shandong Oriental Cherry twice submitted a claimed technical definition for shooting nails, which had previously been submitted in its July 1, 2015 letter, as documentary support that Jining Dragon Fasteners' shooting nails met the scope exclusion.[285] However, this claimed technical definition did not establish that Jining Dragon Fasteners' shooting nails were, in fact, non-subject merchandise, pursuant to the claimed scope exclusion, because the technical definition was a self-proffered narrative explanation created by Shandong Oriental Cherry without any authoritative source or accompanying record evidence, such as an accompanying technical specification or industry standard, to authenticate it.[286] For all of these reasons, the Department continues to find that the evidence submitted in this response does not establish, as contended by Shandong Oriental Cherry, that Jining Dragon Fasteners' alleged shooting nails are non-subject merchandise.

Based on the fact that the record evidence was still incomplete, the Department took the extraordinary step of issuing a further supplemental questionnaire to Shandong Oriental on this issue. In this supplemental questionnaire, the Department specifically requested that Shandong Oriental Cherry: *"For two product codes of shooting nails…please provide product specifications or model diagrams, of each product type's head style, point style, shank style, and the hand tool with material used in the hand tool to shoot this nail, along with supporting documentation."*[287] However, Shandong Oriental Cherry did not follow the Department's instructions and provide product specifications, model diagrams, or other types of supporting documentation regarding the hand tool and the material used in the hand tool used to shoot each product code of shooting nail that was the subject of our inquiry. Instead, Shandong Oriental Cherry simply stated and again without any supporting evidence that the shooting nails were used in a "shooting gun" and that material used was "gunpowder."[288] While Shandong Oriental Cherry again provided the same product specifications and sales packages for Jining Dragon Fasteners' two types of shooting nails, these documents did not contain any information regarding the hand tool or material used in the hand tool, as specifically requested by the Department.[289]

Although Shandong Oriental Cherry claims that this was the first time that the Department requested evidence regarding the type of hand tool used for the shooting nails, this is patently incorrect. As evidenced above, the Department made repeated requests in the course of multiple questionnaires issued for Shandong Oriental Cherry to demonstrate with evidence how Jining Dragon Fasteners' shooting nails meet the scope exclusion that is specific to "fasteners suitable

[284] *Id.*, at Exhibits SSAC-9 and SSAC-10. *See also* "Scope of Order" section listed above; July 2, 2015, Request for Excusal Memorandum at 1.
[285] *See* Shandong Oriental Cherry's July 20, 2015, Supplemental Response at Exhibit SSAC-11.
[286] *Id.*; Shandong Oriental Cherry's July 20, 2015, Supplemental Response at 14-5 (question 10); Shandong Oriental Cherry's July 22, 2015, Supplemental Response at Exhibit IV (questions on "Merchandise" section).
[287] *See* Shandong Oriental Cherry's July 22, 2015, Supplemental Response at 5 (question 5).
[288] *Id.*
[289] *Id.*, at Exhibits 4th SSA-4 and SSA-5.

for use in powder-actuated hand tools."[290] However, over the course of this administrative review, Shandong Oriental Cherry ignored our requests for evidence showing how the alleged shooting nails meet the claimed scope exclusion and only provided evidence regarding the physical dimensions of the shooting nails and a narrative description of the claimed technical definition of the shooting nails without any authoritative source. More importantly, when we specifically requested evidence regarding the hand tool and material used in the hand tool, Shandong Oriental Cherry ignored our request and again provided unsupported statements.[291]

Shandong Oriental Cherry claims that it cannot be penalized for failing to provide information regarding the hand tool because it did not produce the hand tool, and thus, did not have information on the hand tool in its possession. However, the Department concludes that Shandong Oriental Cherry did not make this claim in response to any of the Department's request for the information but, instead, asserted it late in the proceeding, when it submitted its case brief. Moreover, the Department ascertains that Shandong Oriental Cherry never documented with any evidence the attempts it made to obtain information regarding the "powder-actuated hand tool" from the producer. It also failed to provide other types of evidence, such as manuals, advertisements, *etc*., to show that Jining Dragon Fasteners' shooting nails met the specifications of the scope exclusion, as we requested.[292] Therefore, the Department finds unconvincing Shandong Oriental Cherry's claim that it cannot provide the requested record evidence regarding the hand tool and material used in the hand tool for Jining Dragon Fasteners' shooting nails.

Due to Shandong Oriental Cherry's failure to provide the requested information to demonstrate that its alleged affiliate's shooting nails are non-scope merchandise, after multiple requests, the Department continues to find that it is missing the necessary information to make this determination within the meaning of section 776(a) of the Act. Accordingly, the Department is not in a position to be able to determine whether it needs to re-issue a request for Dragon Fasteners' sales and FOP information, which could be used to calculate Shandong Oriental Cherry's margin for the final results. When multiple companies are involved in such production and sale of in-scope merchandise to the United States, the Department requires the sales and FOP

[290] *See* Shandong Oriental Cherry's First Supplemental Sections A, C, and D Response; Shandong Oriental Cherry's Second Supplemental Section A Response; Shandong Oriental Cherry's July 20, 2015, Supplemental Response; and Shandong Oriental Cherry's July 22, 2015, Supplemental Response.
[291] *See* Shandong Oriental Cherry's July 22, 2015, Supplemental Response at 5.
[292] As the Court of Appeals for the Federal Circuit has held, respondents must "put forth its maximum efforts" in complying with the Department's requests. *See Nippon Steel*, 337 F.3d at 1382. The issue of cooperation from an unrelated producer regarding the powder-actuated hand tool was never raised by Shandong Oriental Cherry until its case brief and is especially troubling considering the technical specifications of Jining Dragon Fasteners' shooting nails and their use in a "powder-actuated hand tool" was dependent on this information. Shandong Oriental Cherry should have known, especially as either a separate rate company or mandatory respondent since the LTFV investigation, that its claims of being unable to obtain this information would require convincing evidence of either the supplier' inability or unwillingness to supply the requested information. *See CITIC Trading Co., Ltd et al v. U.S.*, No. 01-00901, Slip Op. 03-23 (CIT 2003) (finding that CITIC acted to the best of its ability when in it provided Commerce with documentation that had attempted to obtain information from an unrelated non-responding suppliers). In any event, waiting until its case brief to raise this issue denied the Department an opportunity to request and analyze evidence related to this asserted difficulty in securing information from the producer of the shooting nails.

information from all companies to derive, on a CONNUM-specific basis, a weighted-average FOP usage rate and sales database for the whole entity.[293]

While Shandong Oriental Cherry contends that the Department should have issued an additional supplemental questionnaire on this topic, the Department disagrees. The Department issued multiple questionnaires to Shandong Oriental Cherry requesting that it address questions, with supporting record evidence, as noted extensively above, however, Shandong Oriental Cherry ignored our requests. The Department finds that while it initially excused Shandong Oriental Cherry from reporting the sales and FOP data for Jining Dragon Fasteners' alleged shooting nails, this was contingent on Shandong Oriental Cherry cooperating to the best of its ability and fully demonstrating with evidence that these nails were non-subject merchandise.[294] Accordingly, the Department finds that it met its burden of identifying the deficiencies in Shandong Oriental Cherry's responses regarding the submission of evidence establishing that these nails were, in fact, non-subject merchandise. Further, as explained above, the Department is constrained by statutory and regulatory deadlines for the timely completion of administrative reviews, and is not obligated to repeatedly issue requests for information, especially when that information was already requested and a respondent is not forthcoming. In this regard, the Department finds that it was simply not practicable to issue further supplemental questionnaires to Shandong Oriental Cherry given the proximity of Shandong Oriental Cherry's last response to the deadline for the fully extended preliminary results.

Finally, the Department finds Shandong Oriental Cherry's argument that it cannot be penalized for failing to provide Jining Dragon Fasteners' sales and FOP data, because the sales quantities are miniscule, is without merit. Specifically, the Department concludes that the only record evidence regarding these sales is an Excel chart purporting to report the total sales volume of Jining Dragon Fasteners' shooting nails.[295] However, the Department determines that the record is missing a complete sales reconciliation of Jining Dragon Fasteners' total sales during the POR, including worksheets tying the total sales to its financial statement and general ledger. Thus, we cannot ascertain whether we have an accurate quantity for these nails sold in the United States during the POR.[296] Also, as explained above, the record does not contain the FOP information

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[293] *Id.*, at D-2.

[294] *See* July 2, 2015, Request for Excusal Memorandum at 1 ("Based on Shandong Oriental Cherry's letter, the Department, at this time, is hereby excusing Jining Dragon Fasteners from submitting a Section C and D database. However, the Department requires that Jining Dragon Fasteners answer the other portions of questions 10(a)-(g) regarding its production and sales of shooting nails, the specifications of these shooting nails, *etc*."); the Department's June 25, 2015, Supplemental Questionnaire at 3 ("*If you fail to provide accurately the information requested, <u>particularly information previously requested</u>, within the time provided, the Department may be required to base its findings on the facts available. Upon receipt of a response that is incomplete or deficient to the extent the Department considers it non-responsive; the Department will not issue additional supplemental questionnaires, but will use facts available. If you fail to cooperate with the Department by not acting to the best of your ability to comply with a request for information, the Department may use information that is adverse to your interest in conducting its analysis*." (emphasis added).

[295] *See* Shandong Oriental Cherry's July 20, 2015, Supplemental Response at Exhibit 3rd SSAC-24.

[296] *See* July 2, 2015, Request for Excusal Memorandum at 1. The Department determines that Shandong Oriental Cherry was excused from providing a full sales reconciliation for Jining Dragon Fasteners based on its claim that the shooting nails were non-subject merchandise. However, the Department finds that Shandong Oriental Cherry needed to establish with record evidence that these shooting nails met the claimed scope exclusion, which as discussed previously in this memorandum, Shandong Oriental Cherry failed to do.

regarding the production costs associated with production of Jining Dragon Fasteners' shooting nails, which is another necessary component in our dumping analysis. There is no FOP data regarding these shooting nails on the record and there is no necessary FOP reconciliation to demonstrate whether the production cost of these shooting nails is complete, reliable, and accurate to calculate a margin for the final results.

Accordingly, the Department continues to find that Shandong Oriental Cherry's failure to demonstrate that Jining Dragon Fastener is not a producer and exporter of in-scope merchandise not only affects the accurate reporting of Shandong Oriental Cherry's sales and FOPs, it also undermines the Department's ability to conduct a separate rate analysis for Shandong Oriental Cherry. In its original questionnaire response, Shandong Oriental Cherry reported that it is a privately-held limited liability company owned by Chinese individuals.[297] The Department requires information to examine whether *de jure* or *de facto* control by the government exists such that Shandong Oriental Cherry is entitled a separate rate from the PRC-wide entity. The Department's analysis includes Shandong Oriental Cherry, as well as its affiliates and subsidiaries. Importantly, the incompleteness, and unreliability of the Jining Dragon Fasteners' sales of shooting nails and the remaining question of whether these sales are subject merchandise also call into question the completeness of the separate rate information of Jining Dragon Fasteners, which includes our analysis of the sales process, such as negotiating of its sales for its subject merchandise to the United States and setting prices with other exporters during the POR.[298]The Department's incomplete information with regard to Jining Dragon Fasteners' sales of shooting nails indicates that Shandong Oriental Cherry's original response concerning its affiliates is not reliable or complete. Since Jining Dragon Fasteners stated that it did not export subject merchandise to the United States and claimed these separate rate questions were not applicable, the Department finds that it does not have complete information to conduct a separate rate analysis for Jining Dragon Fasteners since the record is not clear that its shooting nails are, in fact, not subject merchandise.[299] In particular, the incompleteness and unreliability of information concerning Jining Dragon Fasteners' sales of shooting nails calls into question the ability of the Department to rely on the separate rate information provided by Jining Dragon Fasteners, which includes pertinent information on its sales process, such as the negotiation of subject merchandise sales to the United States and the setting of prices with other exporters during the POR.[300] As such, what information we do have on the record calls into question the reliability and completeness of the separate rate information submitted for Shandong Oriental Cherry, as a whole. Therefore, the Department finds that Shandong Oriental Cherry failed to provide a full response in regards to its corporate structure and affiliations, and the Department does not have reliable and complete information to conduct a separate rate analysis for Shandong Oriental Cherry. Furthermore, and as discussed immediately below, the Department finds that Shandong Oriental Cherry's failure to respond to the Department's multiple requests for information regarding the shooting nails also supports a finding that Shandong Oriental failed to cooperate within the meaning of section 776(b) of the Act.

[297] *See* Shandong Oriental Cherry's Section A Questionnaire Response at 2.
[298] *See* Shandong Oriental Cherry's Second Supplemental Section A Response at Exhibit IV ("Separate Rate" section questions).
[299] *Id*.

B. Use of Adverse Inference

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information."[301] In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.[302] Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[303] The Court of Appeals for the Federal Circuit ("Federal Circuit"), in *Nippon Steel*, provided an explanation of the "failure to act to the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.[304] The Federal Circuit acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries "would suffice" as well.[305] Compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.[306] The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[307]

Pursuant to section 776(b) of the Act, the Department continues to find that Shandong Oriental Cherry failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information and that the application of AFA is warranted. In sum, and as discussed in detail above, despite the Department's detailed and specific requests for information through the issuance of multiple questionnaires , Shandong Oriental Cherry failed to meet its statutory duty to reply accurately and completely to requests for information regarding its affiliates, and the production and sales of subject merchandise. Specifically, Shandong Oriental Cherry failed to provide: 1) an accurate, reliable FOP database that is reported on a CONNUM-specific basis; 2) an accurate, reliable sales reconciliation regarding its reported sales of subject merchandise to the United States during the POR; and 3) sales data, FOP data, and full product specifications for the shooting nails of Shandong Oriental Cherry's affiliate, Jining Dragon Fasteners. In this regard, the Department finds, as discussed in detail above, that Shandong Oriental Cherry, from the outset, failed to follow specific instructions, repeatedly misrepresented the data it was submitting to the Department, and repeatedly failed to explain adequately why it needed to make revisions to data previously submitted to the Department.

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301 *See* section 776(b) of the Act.
302 *Id.; see also* SAA at 870.
303 *See* SAA at 870.
304 *See Nippon Steel*, 337 F.3d at 1382.
305 *Id.*, at 1380.
306 *Id.*, at 1382.
307 *Id*.

Accordingly, and based on the totality of the evidence discussed above, the Department continues to find that Shandong Oriental Cherry failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Therefore, we are applying AFA to Shandong Oriental Cherry for these final results. Moreover, Shandong Oriental Cherry is being placed in the PRC-wide entity because it is not entitled to a separate rate, as explained above. Accordingly, since Shandong Oriental Cherry is being placed in the PRC-wide entity, it is receiving the PRC-wide rate of 118.04 percent, which is the PRC-wide rate from the previous AR. This rate remains unchanged pursuant to our current policy, which states that there is no conditional review of the PRC-wide entity.[308]

Comment 5: Granting a Separate Rate to the Shandong Oriental Cherry Entity

In the *Preliminary Results,* the Department found that it was appropriate to find Shandong Oriental Cherry affiliated with its five reported PRC affiliates: (1) Shandong Oriental Cherry I&E; (2) Jining Huarong Hardware; (3) Heze Products Co; (4) Jining Dragon Fasteners; and (5) Jining Yonggu Metal.[309] Specifically, with respect to whether these companies were affiliated, the record contained the following information: (1) the PRC shareholders of Shandong Oriental Cherry were family members (Family B),[310] and thus represented a "family grouping" that may be in a position to "exercise restraint or control" over Shandong Oriental Cherry;[311, 312] (2) both Shandong Oriental Cherry and Shandong Oriental Cherry I&E are wholly owned by Family B;[313] (3) Jining Huarong Hardware is the wholly-owned subsidiary of Shandong Oriental Cherry;[314] and (4) Shandong Oriental Cherry is the largest shareholder of Heze Products Co., Jining Dragon

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[308] *See Conditional Review of the NME Entity*, 78 FR at 65963.
[309] *See* Shandong Oriental Cherry's Section A Response, at 3-4 and Exhibit A-3; Preliminary Decision Memorandum at 10-1.
[310] Because the identity of Family B is business proprietary information, please *see* Shandong Oriental Cherry's Section A Questionnaire Response at 2 and Exhibit A-18.
[311] In *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310 (CIT 1999) ("*Ferro-Union*"), the CIT stated that the definition of family, as defined in section 771(33)(A) of the Act, is not exclusive to nuclear family members and linear descendants. Specifically, the CIT noted that the "word 'including'... is an indication that Congress did not intend to limit the definition of 'family' to the members listed in this section." *Id*. at 1325. Finally, the CIT also found that the language of section 771(33)(F) of the Act, which defines "a person," "can be interpreted to encompass a 'family,' and by "interpreting 'family' as a control person, the Department was giving effect to this intent." *Id*., at 1326. The CIT held that because "the new definition of 'control' thus permits a finding that several persons or groups are in a position to exercise restraint or direction over a company... it would not violate the statute to find that the six families in a position to 'exercise restraint or control over {the respondent},' in fact control {the respondent}." *Id*. at 1324. Accordingly, the Department has found that a family group "exercised restraint or control" over affiliated companies, pursuant to section 771(33)(A) and (F) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Turkey*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decisions Memorandum at Comment 10 ("Pipe and Tube from Turkey").
[312] Shandong Oriental Cherry stated that the shareholders are family members, which is supported by the independent audited financial statements for the company. *See* Shandong Oriental Cherry's Section A Questionnaire Response, at 2 and Exhibit A-18 (audited FY 2013 financial statement of Shandong Oriental Cherry).
[313] *See* Shandong Oriental Cherry's Section A Questionnaire Response at 2-3 and Exhibit A-18; Shandong Oriental Cherry's Second Supplemental Section A Questionnaire Response at Exhibit 1 (Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Shandong Oriental Cherry I&E).
[314] *See* Shandong Oriental Cherry's Section A Questionnaire Response, at 2-3; Shandong Oriental Cherry's Second Supplemental Section A Questionnaire Response at Exhibit 2 (Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Jining Huarong Hardware).

Fasteners, and Jining Yonggu Metal.[315] While the Department found that Shandong Oriental Cherry's submissions were generally so incomplete and unreliable that we could not use them for other determinations in this review, *e.g.*, determining separate rate eligibility, the Department found that the record evidence on which it relied for the affiliation determination was comprised of independent, audited financial statements, which were not prepared for purposes of this administrative review. Because of these factors, which weigh in favor of accepting the veracity of this evidence, we were able to rely on the evidence in determining that Shandong Oriental Cherry is affiliated with its five reported PRC affiliates.[316]

The Department also found that it was appropriate to treat Shandong Oriental Cherry and its five reported PRC affiliates as a single entity for the *Preliminary Results*.[317] In this case, we found, based on FA, that Shandong Oriental Cherry and its five affiliates (Shandong Oriental Cherry I&E, Jining Huarong Hardware, Heze Products Co, Jining Dragon Fasteners, and Jining Yonggu Metal) should be collapsed and treated as a single entity (*i.e.*, "the Shandong Oriental Cherry Entity").[318]

The Hillman Group/National Nail/Shandong Oriental Cherry's Comments[319]

- It was inappropriate for the Department to reject Shandong Oriental Cherry's responses as inaccurate and unreliable as a basis for denying Shandong Oriental Cherry a separate rate but then rely on the corporate information to collapse Shandong Oriental Cherry with its affiliates, including Jining Dragon Fasteners, as a single entity.
- Given that the Department found Shandong Oriental Cherry's corporate information was accurate and reliable for collapsing Shandong Oriental Cherry with its affiliates in the *Preliminary Results*, the Department should find this same information reliable for granting Shandong Oriental Cherry a separate rate in the final results.[320]

Petitioner did not comment on this issue.

Department's Position:

The Department disagrees with Shandong Oriental Cherry that it was inappropriate for the Department to, on the one hand, reject certain of Shandong Oriental Cherry's responses as inaccurate and unreliable for purposes of its separate rate analysis, while on the other hand, accepting other information provided by Shandong Oriental Cherry for purposes of finding Shandong Oriental Cherry to be affiliated with five of its affiliates.

As explained above in the Department's Position in Comment 4, record evidence clearly shows

[315] *See* Shandong Oriental Cherry's Section A Questionnaire Response at 3-4; Shandong Oriental Cherry's Second Supplemental Section A Questionnaire Response at Exhibit 3 (Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Heze Products Co.), Exhibit 4 (Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Jining Dragon Fasteners), and Exhibit 5(Exhibits 2SA 8 and 9 that contain the audited FY 2013 and 2014 financial statements of Jining Yonggu Metal).
[316] *See* Preliminary Decision Memorandum at 11.
[317] *Id*.
[318] *Id*., at 11-12.
[319] *See* the Hillman Group's Case Brief; National Nail's Case Brief; and Shandong Oriental Cherry's Case Brief for a full discussion of each interested party's comments, which are here summarized together. In reference to the arguments for this issue and in Comment 5, the arguments for these interested parties will be referred together collectively as "Shandong Oriental Cherry" in the Department's position.
[320] *See* Preliminary Decision Memorandum at 10-12.

that Shandong Oriental Cherry was aware of its obligation to report complete, accurate, and reliable sales and FOP data for its total sales of subject merchandise to the United States during the POR.[321] Therefore, the Department finds that Shandong Oriental Cherry had ample notification of the centrality of the issues, as well as ample opportunity to provide a complete, accurate, and reliable response However, it chose to not do so, and thus, it is appropriate to apply facts available to Shandong Oriental Cherry for the final results, pursuant to section 776(a) of the Act.

Additionally, as explained above in the Department's Position in Comment 4, the Department continues to find that Shandong Oriental Cherry failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information and that the application of AFA is warranted. In sum, and as discussed in detail above, despite the Department's detailed and specific requests for information through the issuance of multiple questionnaires, Shandong Oriental Cherry failed to meet its statutory duty to reply accurately and completely to requests for information regarding its affiliates, and the production and sales of subject merchandise. Accordingly, the Department continues to find that Shandong Oriental Cherry failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act, and is placing Shandong Oriental Cherry in the PRC-wide entity because it has not demonstrated that it is entitled to a separate rate.[322] By doing so, we continue to ensure that Shandong Oriental Cherry will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review.

The Department also disagrees with Shandong Oriental Cherry that it cannot rely on the corporate information, comprised of independent, audited financial statements, that were not prepared for purposes of this administrative review, in determining that Shandong Oriental Cherry is affiliated with its five reported PRC affiliates. The Department finds that Shandong Oriental Cherry has not provided a scintilla of record evidence to call into question the integrity or accuracy of these independent, audited financial statements.[323] This stands in stark contrast to the information provided by Shandong Oriental Cherry in response to the Department's questionnaires in this review, for which there is ample evidence on the record to demonstrate rampant incompleteness and lack of responsiveness, undermining the veracity of these responses. Thus, the Department continues to find, as explained above in the *Preliminary Results*, that based on the record evidence, pursuant to section 771(33) of the Act, it is appropriate to find Shandong Oriental Cherry affiliated with its five reported PRC affiliates: (1) Shandong Oriental Cherry I&E; (2) Jining Huarong Hardware; (3) Heze Products Co; (4) Jining Dragon Fasteners; and (5) Jining Yonggu Metal.[324]

Additionally, the Department disagrees with Shandong Oriental Cherry that it is inappropriate to treat Shandong Oriental Cherry and its five reported PRC affiliates as a single entity for the final

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[321] *See* the Department's original questionnaire and multiple supplemental questionnaires.
[322] For further discussion of the Department's analysis and decision to apply total AFA to Shandong Oriental Cherry for the final results, please *see* Comment 4 in this memorandum.
[323] *See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003) and accompanying Issues and Decision Memorandum at Comment 1.
[324] *See* Shandong Oriental Cherry's Section A Response, at 3-4 and Exhibit A-3; *see also* Preliminary Decision Memorandum at 10-1, which provides a detailed analysis of the ownership information of Shandong Oriental Cherry and these five affiliates that has not been challenged based on contradictory record evidence.

results. 19 CFR 351.401(f), which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

> (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
>
> (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
>
> (i) The level of common ownership;
> (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
> (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[325]

To the extent that this provision does not conflict with the Department's calculation of separate rates or enforcement of the NME provision under section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment.[326] The factors listed in 19 CFR 351.401(f)(2) are not exhaustive and, in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.[327]

As explained above in the Department's Position in Comment 4, the Department continues to find that it is appropriate to apply total AFA to Shandong Oriental Cherry, pursuant to sections 776(a) and (b) of the Act. However, the Department finds that there is independent, record evidence that we can rely on to find Shandong Oriental Cherry affiliated with its five affiliates.[328]

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[325] *See* 19 CFR 351.401(f); *accord Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-75 (March 16, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51436 (October 1, 1997); *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 40948 (April 19, 2000), and accompanying Issues and Decision Memorandum at Comment 16.
[326] *See Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 40948 (April 19, 2000), and accompanying Issues and Decision Memorandum at Comment 16.
[327] *See Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1340-42 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).
[328] *See* Shandong Oriental Cherry's Section A Response, at 3-4 and Exhibit A-3; *see also* Preliminary Decision Memorandum at 10-1, which provides a detailed analysis of the ownership information of Shandong Oriental Cherry and these five affiliates that has not been challenged based on contradictory record evidence.

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

The Department concludes that Shandong Oriental Cherry did not provide any legal or court precedent as support for the proposition that we are precluded, based on FA, from collapsing Shandong Oriental Cherry with its five affiliates. Accordingly, the Department incorporates its collapsing analysis for Shandong Oriental Cherry with its five affiliates for the final results, which Shandong Oriental Cherry did not challenge with contradictory record evidence or legal or court precedent.[329] Therefore, because the Department is applying total AFA to Shandong Oriental Cherry, and placing it in the PRC-wide entity since it has found to not be entitled to a separate rate, it will be subject to the PRC-wide rate. In making this determination, the Department finds that a purpose of the collapsing regulatory provision is to ensure that affiliated parties which meet the regulatory factors for collapsing are not able to easily circumvent a dumping order by shifting sales between the affiliated parties.[330] Collapsing Shandong Oriental Cherry with its five affiliates and subjecting them to the same rate is consistent with this regulatory purpose.

Comment 6: Rejection of Stanley's Case Brief

Stanley's Comments

- The Department should reconsider its rejection of Stanley's original case brief and accept the case brief in the form in which it was originally submitted.[331]
- The material identified by the Department is not new factual information. The Department's rejection of what amounts to citations to relevant authorities contravenes the definition of new factual information, pursuant to 19 CFR 351.301(c)(5) and 19 CFR 351.102(b)(21).[332]
- Additionally, the Department's finding that these citation authorities comprise factual information conflicts with the Department's treatment of these citation authorities in prior cases where the Department cited to some of these same publications as support for its use of differential pricing.[333]
- Moreover, nine of the citations refer to publications, such as a dictionary definition, that the Department accepted as citation authorities in past reviews without requiring that the publication be on the record.[334]

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[329] *See* Preliminary Decision Memorandum at 11-12.
[330] *See* 19 CFR 351.401(f) (the collapsing regulation); *see also Queen Flowers de Colom. v. United States*, 21 CIT 968, 971-72 (CIT 1997) ("Commerce's authority to ignore the separate legal existence of some parties for purposes of calculating dumping margins arises out . . . the Department's responsibility to prevent circumvention of the antidumping law.") (citations omitted).
[331] *See* Stanley's Case Brief, (October 30, 2015).
[332] *Id*., at Addendum A; and Letter from Paul Walker, Program Manager, to Stanley: Rejection of Case Brief and Request to Refile, (November 18, 2015) ("Rejection of Stanley's Case Brief").
[333] *See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum; *Certain Steel Nails From the People's Republic of China: Final Results of Fourth Antidumping Administrative Review*, 79 FR 19316 (April 8, 2014) and accompanying Issues and Decision Memorandum ("*PRC Nails AR4 Final Results*").
[334] *See PRC Nails AR4 Final Results* at Comments 5 and 6; *5th AR Final Results* at Comments 7-9.

Petitioner did not comment on this issue.

Department's Position:
We disagree with Stanley and continue to find that we properly rejected untimely new factual information in the version of the case brief it originally filed with the Department. First, while in past segments, Stanley's submission of untimely new factual information in its case brief regarding the differential pricing methodology escaped the Department's notice that does not mean that it is proper for it to remain on the record of this review; the record of each segment is distinct.[335] Second, as a past mandatory respondent in this case, Stanley is well aware of the Department's differential pricing methodology and could have submitted the information it intended to use in support of its argument at the proper time in the proceeding.[336] Third, what Stanley submitted clearly constitutes factual information within the meaning of 19 CFR 351.102(b)(21) because it is plainly "evidence, including statements of fact, documents and data" that it used in support of the arguments in its now-rejected original case brief.[337]

Comment 7: Surrogate Value for Stanley's Steel Wire Rod Input

Petitioner's Comments

- The Department should eliminate various discrepancies in its wire rod surrogate value ("SV") calculations and calculate SVs for Stanley's wire rod inputs based on the most specific Harmonized Tariff Schedule ("HTS") categories for Thailand.
- The Department's preliminary SV calculations for the low- and medium-carbon wire rod factors of production ("FOP") are not specific to Stanley's actual inputs.
- In the *Preliminary Results*, the Department stated that it was calculating the SV for low-carbon wire rod using six HTS categories.[338, 339] However, in its calculation, the Department relied upon eight HTS categories for calculating the SV of low-carbon wire rod.[340]
- The Department included import data for Thai HTS 7213.91.90.013[341] in the low-carbon wire rod SV and included import data for HTS 7213.91.90.014[342] in both the low- and medium-carbon wire rod SV calculations.[343] However, in previous segments, the Department determined that these HTS categories were specific to medium-carbon wire rod.[344]

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[335] *See* 19 CFR 351.104.
[336] *See* the Department's November 18, 2015, letter rejecting Stanley's case brief; *see also Apex* at 49-56.
[337] *See Apex* at 49-56.
[338] These are: 7213.91.90.010; 7213.91.90.011; 7213.91.90.012; 7213.91.90.013; 7213.91.90.034; and 7213.91.90.035.
[339] *See* Memorandum to the File from Kenneth Hawkins, International Trade Analyst, Office V, through Paul Walker, Program Manager, Office V, Subject: Sixth Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Results, (August 28, 2015) at 4 ("Preliminary SV Memo").
[340] *Id*., at Attachment 4 (The HTS categories are: 7213.91.90.010; 7213.91.90.011; 7213.91.90.012; 7213.91.90.013; 7213.91.90.014; 7213.91.90.023; 7213.91.90.034; and 7213.91.90.035).
[341] Containing By Weight More Than 0.18% But Not More Than 0.40% Of Carbon And Containing By Weight Not More Than 0.2% Of Silicon And Containing By Weight Not More Than 0.02% Of Aluminum.
[342] Containing By Weight More Than 0.40% But Not More Than 0.45% Of Carbon And Containing By Weight Not More Than 0.60% Of Manganese.
[343] *See* Petitioner's Case Brief at 2.
[344] *Id*., at 2.

- Additionally, the Department included import data for HTS 7213.91.90.028[345] but did not include this import data in its calculation for the low-carbon or medium-carbon wire rod SVs. This HTS category is not specific to low-carbon or medium-carbon wire rod but high-carbon wire rod containing by weight more than 0.65 percent but not more than 0.70 percent.
- In the final results, following its practice from the *5th AR Final Results*,[346] the Department should value Stanley's low-carbon and medium-carbon wire rod FOPs using HTS categories that are specific to the carbon content of its reported FOPs. For low-carbon wire rod, the HTS categories are: 7213.91.90.012, 7213.91.034 and 7213.91.90.035. And, for medium-carbon wire rod, the HTS categories are: 7213.91.00.013, 7213.91.00.014 and 7213.91.00.023.[347]

Stanley's Comments

- Stanley's low-carbon wire rod FOP is based on Q235 grade steel that has a carbon content from 0.12 to 0.2 percent by weight. The proper HTS categories for valuing this FOP are: 7213.91.90.012, 7213.91.90.013, 7213.91.034 and 7213.91.90.035.
- The HTS category 7213.91.90.013 is specific to Stanley's low-carbon wire rod because it includes wire rod with a carbon content of "more than 0.18 percent but not more than 0.40 percent" by weight.[348]

Department's Position:

We agree with Petitioner and Stanley, in part, and we have refined the SV calculation for steel wire rod to be in line with the *5th AR Final Results*, as the facts regarding the steel wire rod and HTS categories are the same. In order to calculate a SV as specific as possible to Stanley's experience, for these final results, the Department calculated Stanley's low carbon wire rod SV using HTS categories 7213.91.90.012, 7213.91.90.034 and 7213.91.90.035, and will calculate Stanley's medium carbon wire rod SV using HTS categories 7213.91.00.013, 7213.91.00.014 and 7213.91.00.023.[349] We find that HTS category 7213.91.90.013 is more properly associated with the medium carbon wire rod SV because the preponderance of its specified carbon content range is above the Q235 grade used by Stanley for its low carbon wire rod input.[350]

Comment 8: Surrogate Value for Stanley's Plastic Granules

Stanley's Comments

- In the final results, Stanley's plastic granules should be valued using Thai import data reported under HTS 3902.10.90,[351] which follows the Department's practice on this same issue in the immediately preceding two segments.[352]

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[345] Containing By Weight More Than 0.65% But Not More Than 0.70% of Carbon And Containing By Weight More Than 0.60% But Less Than 0.90% Manganese.
[346] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 18816 (April 8, 2015) and accompanying Issues and Decision Memorandum ("*5th AR Final Results*) at Comment 3.
[347] *See* Petitioner's Case Brief at 5.
[348] *See* Stanley's Section D Questionnaire Response, (February 17, 2015) at 19 and Exhibit D-10.
[349] *See* Preliminary Surrogate Value Memo at Attachment 1.
[350] *See* Stanley's February 17, 2015 Section D Questionnaire Response at 19 and Exhibit D-10.
[351] This HTS category is for "Polypropylene in Primary Form, Other Than in Dispersion."
[352] *See* PRC Nails AR4 Final Results at Comment 11; and *5th AR Final Results* at Comment 12.

- As explained in Stanley's responses, the plastic granules that it used to make the subject merchandise are made of "polypropylene plastic" and are not made of liquids, pastes, including dispersions, or blocks of irregular shape.[353]
- Additionally, the notes of HTS Chapter 39 clearly demonstrate that Stanley's plastic granules should not be classified under HTS 3921.90.90.

Petitioner's Comments

- The Department should continue to value the SV for Stanley's plastic granules using import data from Thai HTS 3921.90.90.[354]
- Plastic granules constitute a finished product in bead form.[355]
- The Department should ignore Stanley's attempts to characterize its plastic granules as a type of raw, primary, polypropylene and continue to value Stanly's plastic granule FOP under Thai HTS Number 3921.90.90.[356]

Department's Position:

The Department agrees with Stanley. The Department inadvertently used Thai HTS 3921.90.90 in the *Preliminary Results*. We addressed this same issue in the *5th AR Final Results* at Comment 12.[357] There, we fully explained our rationale for using Thai HTS 3902.10.90, namely, that Stanley's plastic beads more closely match the description under this HTS category. This HTS category more specifically covers Stanley's plastic beads because it covers polypropylene and not just "plastic." Additionally, there is no indication that Stanley's plastic beads lend themselves to being cut into regular shapes, as per HTS 3921 categories.[358] We find that these same reasons are supported by the record in this administrative review.[359] Thus, for the final results, we will use Thai HTS 3902.10.90 to value Stanley's plastic beads.[360]

Comment 9: Treatment of Stanley's Rubber Bands

Stanley's Comments

- In the *Preliminary Results,* the Department treated Stanley's rubber bands FOP as a component of direct materials in the calculation of normal value in the margin program.[361] However, the Department also indicated that it was treating the rubber band SV as a packaging material in its calculation of the SVs.
- Because its responses show that the rubber bands were used in the packaging of its coiled nails products to prevent unwinding, the Department should treat Stanley's rubber band FOP as a component of packaging in the calculation of NV in the margin program for the final results.

Petitioner's Comments

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[353] *See* Stanley's Section D Questionnaire Response at 38-39.
[354] *See* Petitioner's Rebuttal Brief at 19.
[355] *Id*., at 19.
[356] *Id*.
[357] *See 5th AR Final Results* at Comment 12.
[358] *Id*.
[359] *See* Stanley's Supplemental Sections A, C, and D Response, (June 25, 2015) at 28-9 and Exhibit SD-3.
[360] *See* Final SV Memo.
[361] *See* Stanley's Preliminary Analysis Memo at Attachment 1.

- The Department properly included Stanley's rubber bands as a direct material because without rubber bands the other material used securing the nail in a nail gun would break.[362]
- It is the Department's practice to treat a packing material that is an integral part of the finished product as part of direct materials rather than as a packing material.[363]

Department's Position:
The Department agrees with Petitioner. We note that the record evidence in this case contrasts with that of a previous new shipper review in this proceeding involving a different respondent in which we found that rubber bands should be considered as a packing material.[364] In that segment, we stated that ". . .nothing on [the] record indicates that rubber bands, cartons, tape, and anti-moisture paper are used in the manufacture of the company's nails, or are inescapably purchased with Qingdao Denarius' nails."[365] Here, Stanley has stated that "rubber bands were used in the packaging of certain coiled nail products to prevent the nail coil from unwinding. These rubber bands were physically incorporated in the production of subject merchandise."[366] Thus, the rubber bands are inescapably purchased along with the collated coil nails and serve the function of preventing the finished product from unwinding. That the SV for rubber bands was listed as packing material in the Preliminary SV Memo was inadvertent. In fact, ever since Stanley first reported rubber bands as an FOP during the fourth administrative review, the Department has consistently classified its rubber bands as a direct material in the margin calculation due to how they are used in the production process, as described by Stanley.

Comment 10: Use of Customer Code or Common Customer Code in the Cohen's *d* Test to Identify the Purchaser in Stanley's Margin Program

Stanley's Comments
- In the final results, the Department should define Stanley's purchasers by individual customer codes (CUSCODU) rather than the consolidated customer codes (CCUSCODU) used in the *Preliminary Results*.
- In the *Preliminary Results*, the Department found that it was continuing to develop its approach regarding its differential pricing analysis and the fact that the Department used consolidated customer codes in past cases does not justify doing so here.[367]
- Additionally, the Department's practice is not consistent because in some past cases the Department found it was not appropriate to use consolidated customer codes.[368]
- It is appropriate to define "purchaser" in Stanley's margin program in the final results by individual customer codes because the CDT is performed on a net price level.

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362 *Id*., at 20.
363 *See Washington Red Raspberry Comm 'n v. United States*, 859 F.2d 898,905 (Fed. Cir. 1988) ("*Red Raspberry Commission*").
364 *See Certain Steel Nails from the People's Republic of China: Final Results of the First New Shipper Review*, 75 FR 34424 (June 17, 2010), and accompanying Issues and Decision Memorandum at Comment 3.
365 *Id*.
366 *See* Stanley's February 17, 2015, Section D Response at 5.
367 *See* Preliminary Decision Memorandum at 33-4.
368 *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review: 2012-2013*, 80 FR 8604 (February 18, 2015) and accompanying Issues and Decision Memorandum ("*Pasta from Italy Final*"); *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 Fed. Reg. 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum ("*Xanthum Gum Final Determination*").

- More importantly, Stanley's U.S. sales database shows that there are net price differences among individual customers that share a common consolidated customer code due to price adjustments, such as early payment discounts and credit expenses.

Petitioner's Comments

- The Department should continue to use Stanley's reported consolidated customer codes (CCUSCODU) to define purchaser for its differential pricing analysis.[369]
- It is the Department's standard practice to rely on consolidated or common customer codes, if available, to evaluate purchasers in its differential pricing analysis.[370]
- The Department specifically articulated its practice when it requested comment on this in 2014.[371]
- In the most recent segment of this case on this same issue, the Department articulated that it is our practice to use consolidated customer codes or common custom codes to evaluate purchasers.[372]
- The Department relies on individual customer codes only where substantial record evidence demonstrates that the individual customers constitute separate and distinct purchasers.[373]
- Unlike in *Pasta from Italy*, Stanley failed to provide specific record evidence demonstrating how specific price adjustments generate net price differences that define individual customers as distinct purchasing entities. Lacking such evidence, the Department has no basis to depart from its established practice of relying on consolidated customer codes.

Department's Position:

The Department agrees with Petitioner. As Petitioner noted, the Department addressed this same issue in the *5th AR Final Results*.[374] Here again, the available record evidence does not support a departure from our standard practice, as expressed in the Preliminary Decision Memorandum, to use CCUSCODU to define Stanley's purchasers. We acknowledge that recently in another case, the Department did opt to use CUSCODU to identify the purchaser in the differential pricing analysis,[375] but the facts in that case are distinct from those here. In *Pasta from Italy*, the respondent negotiated separate rebates with the individual entities that constituted a common customer. While Stanley references differences in early payment discounts and credit costs, nowhere does it detail or quantify those differences, or otherwise point to specific record evidence demonstrating how these price adjustments generate net price differences that define individual customers as distinct purchasing entities. As the Department has explained previously, the mere fact that there are net price differences among customers individually identified in the CUSCODU field but which share a common customer code does not, in and of itself, lead the Department to use CUSCODU to identify who the purchaser is for purposes of the

[369] *See* Petitioner's Rebuttal Brief at 10.
[370] *Id*., at 11.
[371] *See Differential Pricing Analysis; Request for Comments,* 79 FR 26720, 26722 (May 9, 2014) ("*Differential Pricing Analysis Request*").
[372] *See 5th AR Final Results* at Comment 15).
[373] *See* Petitioner's Rebuttal Brief at 13 (citing to *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 804 (February 18, 2015) and accompanying Issues and Decision Memorandum at Comment 4 ("*Pasta from Italy*").
[374] *See 5th AR Final Results* at Comment 15.
[375] *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 8604 (February 18, 2105), and accompanying Issues and Decision Memorandum at Comment 4 (*Pasta from Italy*).

Cohen's *d* Test.[376]

Comment 11: Granting of Separate Rates to Qingdao D&L, *et al.*

Qingdao D&L, Et Al.'s Comments

- In the *Preliminary Results*, the Department properly granted separate rates to the following exporters: 1) Qingdao D&L; 2) SDC International; 3) Tianjin Lianda; and 4) Tianjin Universal.
- However, in listing these companies that qualified for separate rates in the *Preliminary Results*, the Department's spelling of each company did not match the spelling and punctuation of each company's separate rate certification and business license.[377]
- Additionally, in Appendix II of the *Preliminary Results*, the Department listed variations of the proper names for Qingdao D&L, SDC International, Tianjin Lianda, and Tianjin Universal, which were initiated on, as not qualifying for separate rates.[378]
- Each of the variations for Qingdao D&L's, SDC International's, Tianjin Lianda's, and Tianjin Universal's proper names listed in their respective business licenses are due to minor differences in abbreviations or the addition/removal of punctuation.
- In each company's separate rate certification, they certified to the proper company name, that they did use other trade names, and no other entity conducted business under their name.
- For the final results, the Department should query U.S. Customs and Border Protection ("CBP") to confirm that the variations of each company's proper name did not enter subject merchandise to the United States during the POR.
- Once it is determined that the variations of each company's proper name did not have entries during the POR and do not exist, the Department should rescind this review for these companies, pursuant to 19 CFR 351.213(d)(3).

Petitioner did not comment on this issue.

Department's Position:

The Department acknowledges that the punctuation of each separate rate company's name that comprises Qingdao D&L, *et al.*, as appearing in the published PDF version of the *Federal Register* for the *Preliminary Results*, was incorrect, and did not reflect the appropriate punctuation of each company's separate rate certification and business license.[379] As noted by Qingdao D&L, *et al*. in its case brief, a period was not included at the end of "Ltd" for each company.[380] Specifically, in the PDF version of the *Preliminary Results* that was published in the *Federal Register*, the Department identified that Qingdao D&L, *et al.* qualified for a separate rate using the following spelling and punctuation: 1) Qingdao D&L Group Ltd; 2) SDC International Aust. PTY. Ltd; 3) Tianjin Lianda Group Co., Ltd; and 4) Tianjin Universal Machinery Imp. & Exp. Corporation.[381] It should be noted, however, that in the TXT version of

[376] *See 5th AR Final Results* at Comment 15.
[377] *See Preliminary Results*, 80 FR at 53492.
[378] *Id*.
[379] *Id*.
[380] *See* Qingdao D&L, *et. al*,'s Case Brief at 2.
[381] *See Preliminary Results*, 80 FR at 53492.

the *Preliminary Results* that was published in the *Federal Register*,[382] the signed, unpublished *Federal Register* notice, and the Preliminary Decision Memo for the *Preliminary Results*, the punctuation for Qingdao D&L, *et al.* for purposes of identifying qualification for a separate rate appeared correctly as: 1) Qingdao D&L Group Ltd.; 2) SDC International Aust. PTY. Ltd.; 3) Tianjin Lianda Group Co., Ltd.; and 4) Tianjin Universal Machinery Imp. & Exp. Corporation.[383] In the separate rate certifications for each company, we find that the business license listed the following identical name for each: 1) Qingdao D&L Group Ltd.; 2) SDC International Aust. PTY. Ltd.; 3) Tianjin Lianda Group Co., Ltd.; and 4) Tianjin Universal Machinery Imp. & Exp. Corporation.[384] We thus find that while the published PDF version of the *Federal Register* notice did not have the correct punctuation for the company names, the spelling and punctuation of each company listed in the margin chart of the signed, unpublished and TXT versions of the *Federal Register* notice for the *Preliminary Results* and the Preliminary Decision Memo contain the correct spelling and punctuation of each company, as per their business licenses and separate rate certifications.[385] The company names as listed in these latter three documents are the correct and controlling versions of their names, and we will ensure that they appear as such in all versions of the *Federal Register* notice for the Final Results.

Additionally, we disagree with Qingdao D&L, *et al.* that the separate rate for each company should also be granted to other variations of each company's name that are under review since the minor differences are only due to abbreviations or the addition/removal of punctuation. In its case brief, Qingdao D&L, *et al*. alleged that separate rates should be granted for the following name variations that are also under review: 1) Qingdao D&L Group Ltd.: Qingdao D&L Group, Ltd. and Qingdao D&L Group Co., Ltd.; 2) SDC International Aust. PTY. Ltd.: SDC International Australia Pty., Ltd. and SDC International Australia (Pty) Ltd.; 3) Tianjin Lianda Group Co., Ltd.: Tianjin Lianda Group Ltd.; and 4) Tianjin Universal Machinery Imp. & Exp. Corporation: Tianjin Universal Machinery Imp & Exp Corporation, Tianjin Universal Machinery Imp. & Exp. Corp. Ltd., and Tianjin Universal Machinery Import & Export Corp.[386]

In *Vietnam Shrimp 2013-2014 Final Results*, we elaborated on our separate rate practice, explaining that "if a company's trade name or dba is not included in the business registration and on commercial documents showing use of this name for trade purposes, we [will not] grant… separate rate status to that name, even if it had been granted separate rate status in an administrative review."[387] We note that in this review, each company certified: 1) that it was requesting a separate rate for the full name of the company that previously received a separate

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[382] *See* https://www.gpo.gov/fdsys/pkg/FR-2015-09-04/html/2015-22065.htm.
[383] *See* Preliminary Decision Memorandum at 6-7; *see also unpublished* Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014, (August 28, 2015) at 7-8. Thus, this minor difference in punctuation appears to be due simply to the different document file formats of the published version.
[384] *See* Qingdao D&L Group Ltd.'s Separate Rate Certification, (November 28, 2014) at 3 and Exhibits 1-2; SDC International Aust. PTY. Ltd.'s Separate Rate Certification, (November 26, 2014) at 3 and Exhibit 5; Tianjin Lianda Group Co., Ltd.'s Separate Rate Certification, (November 28, 2014) at 3 and Exhibits 1-2; and Tianjin Universal Machinery Imp. & Exp. Corporation's Separate Rate Certification, (November 28, 2014) at 3 and Exhibits 1-2.
[385] *Id*.
[386] *See* Qingdao D&L, *et. al.*'s Case Brief at 3-5.
[387] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 55328 (September 15, 2015) and accompanying Issues and Decision Memorandum at Comment 13B ("*Vietnam Shrimp 2013-2014 Final Results*").

rate (question 1 of the certification); 2) that it only conducted business under the same trade names as identified in the previous segment in which the firm was granted a separate rate (question 7 of the certification); 3) that it did not conduct business under new trade names or provide business licenses identifying these new trade names (question 7 of the certification); and 4) that it possessed a business license for the full name of the company that previously received a separate rate and did not provide a business license for new trade names (question 8 of the certification).[388] A review of the separate rate certifications filed by Qingdao D&L, *et al.* shows that each company requested separate rate status and operated business only under the following trade names: 1) Qingdao D&L Group Ltd.; 2) SDC International Aust. PTY. Ltd.; 3) Tianjin Lianda Group Co., Ltd.; and 4) Tianjin Universal Machinery Imp. & Exp. Corporation.[389] Consistent with the *Vietnam Shrimp 2013-2014 Final Results*, we are only granting separate rate status to the full business name requested in each separate rate certification that Qingdao D&L, *et al.* submitted and that was included in the accompanying business registration and commercial documents of each company's separate rate certification.[390] Therefore, for the final results, we are only granting separate rate status to the companies that comprise Qingdao D&L, *et al*. under the following business names: 1) Qingdao D&L Group Ltd.; 2) SDC International Aust. PTY. Ltd.; 3) Tianjin Lianda Group Co., Ltd.; and 4) Tianjin Universal Machinery Imp. & Exp. Corporation.

Finally, we disagree with Qingdao D&L, *et al.* that we should request a data download from CBP to identify all permutations of each company's name that comprise Qingdao D&L, *et al.* that may have had shipments during the POR. Specifically, we find that it is not administratively feasible for us to deconstruct every possible permutation of each company's name against the CBP data. It is not the Department's responsibility to ensure that importers properly enter exporter names when completing CBP entry documentation. The *Federal Register* notices are searchable public documents, such that any public person may immediately know what names are granted separate rate status. Furthermore, importers and customs brokers have access to the ACE system used by CBP and can readily identify which companies and trade names obtained separate rate status for the relevant POR. It is also not the Department's responsibility to correct importers' entry errors, whether typographical or translation-based. The Department is not required to grant separate rate status to trade names that are not eligible for it (*i.e.*, those without evidence of use in commercial documentation and inclusion in the business registration document). Simply requesting separate rate status for a trade name in a separate rate certification, or requesting that the separate rate status be granted to permutations based on abbreviations or minor errors, without the required evidence that: 1) the name is on a valid business registration document and 2) appears on commercial documentation during the POR, is insufficient for eligibility for separate rate status.[391] For these same reasons, rescission of the reviews for the permutations in name is also inappropriate.[392]

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[388] *Id*.
[389] *Id*.
[390] *See Vietnam Shrimp 2013-2014 Final Results* at Comment 13B.
[391] *Id*.
[392] *Id*.

Comment 12: Tianjin Jinchi's Status in This Review

Tianjin Jinchi's Comments

- The Department should rescind the administrative review for Tianjin Jinchi.[393]
- In the *Preliminary Results*, the Department assigned a separate rate to Tianjin Jinchi. However, the Department should have indicated that Tianjin Jinchi timely submitted documentation showing that it had no shipments of subject merchandise to the United States during the POR.
- There is record evidence noting shipment data from Tianjin Jinchi but that this may have been mistakenly used by an importer and Tianjin Jinchi requests that the Department release CBP entry packages for these entries.[394]
- Alternatively, since the record evidence does not demonstrate that Tianjin Jinchi had exports or sales of subject merchandise during the POR, the Department should rescind the administrative review for Tianjin Jinchi in the final results.

Petitioner did not comment on this issue.

Department's Position:

The Department disagrees with Tianjin Jinchi. We find that Tianjin Jinchi, itself, stated "after Tianjin Jinchi filed a no shipment letter on November 21, 2014, Tianjin Jinchi further checked its records and found out that it actually had sales/exports of subject merchandise to the United States during the POR. Therefore, Tianjin Jinchi is filing this SRC."[395] Additionally, there is record evidence that Tianjin Jinchi had shipments of subject merchandise during the POR and Tianjin Jinchi did not provide any contrary record evidence to contradict this fact until it made its unsupported allegations in its case brief. Thus, we continue to find that the record evidence supports finding that Tianjin Jinchi should be classified as a separate rate respondent for this review in the final results.

Comment 13: Yuechang's Status in This Review

Yuechang's Comments

- In the *Preliminary Results*, the Department identified Yuechang as one of the eleven companies that timely submitted no-shipment certifications indicating that they did not export subject merchandise to the United States during the POR.
- However, in Appendix 2 of the *Preliminary Results*, the Department also listed Yuechang as being part of the PRC-wide entity.[396]
- Given the Department's confirmation that Yuechang had timely filed its notice of no sales, and the absence of any contradictory evidence regarding Yuechang's certification, the Department should not have included Yuechang in its list of companies that comprise the PRC-wide entity.
- Accordingly, the Department should rescind Yuechang's administrative review for the final results.

Petitioner did not comment on this issue.

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[393] *See* Tianjin Jinchi's Case Brief at 2.
[394] *Id.*, at 2.
[395] *See* Tianjin Jinchi's November 26, 2014, Separate Rate Certification at 2.
[396] *See Preliminary Results,* 80 FR at 53494.

Department's Position:

The Department agrees with Yuechang that it was inadvertently listed in Appendix 2 as part of the PRC-wide entity and confirms that it should be properly considered as having no shipments during the POR. Accordingly, for the final results, we will treat Yuechang as a no shipments company for the final results of this administrative review.

RECOMMENDATION

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

Agree ✓ Disagree ___________

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

7 MARCH 2016
Date

Appendix I - Companies Subject to the Administrative Review that Are Part of the PRC-Wide Entity

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.
APM Global Logistics O/B Hasbro Toy
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 Yonghongsheng Metal Products Co., Ltd.
Brighten International, Inc.
Cana (Tianjin) Hardware Ind., Co., Ltd.
Cana (Tianjin) Hardware Industrial Co., Ltd.
Century Shenzhen Xiamen Branch
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.
Chiieh Yung Metal Industrial Corp.
Chiieh Yung Metal Industrial Corporation
China Container Line (Shanghai) Ltd.
China Silk Trading & Logistics Co., Ltd.
China Staple Enterprise (Tianjin) 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.
Damco Shenzhen
Daxing Niantan Industrial
Delix International 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.
ECO System Co., Ltd.
ECO System Corporation
Elite International Logistics Co.
Elite Master International Ltd.
England Rich Group (China) Ltd.
Entech Manufacturing (Shenzhen) Ltd.
Expeditors China Tianjin Branch
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
Guangzhou Qiwei Imports and Exports Co., Ltd.
Guoxin Group Wang Shun I/E Co., Ltd.
GWP Industries (Tianjin) Co., Ltd.
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 Kelong Electrical Appliance & Tools Co. Ltd.
Hangzhou New Line Co., Ltd.
Hangzhou Zhongding Imp. & Exp. Co., Ltd.
Hebei Development Metals Co., Ltd.
Hebei Jinsidun (JSD) Co., Ltd.
Hebei Machinery Import and Export Co., Ltd.
Hebei Minmetals Co., Ltd.
Hebei My Foreign Trade Co., Ltd.
Hebei Super Star Pneumatic Nails Co., Ltd.
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.
Huadu Jin Chuan Manufactory Co Ltd.
Huanghua Honly Industry Corp.
Huanghua Huarong Hardware Products Co., Ltd.
Huanghua Jinhai Metal Products Co., Ltd.
Huanghua Shenghua Hardware Manufactory Factory
Huanghua Xinda Nail Production Co., Ltd.
Huanghua Xiong Hua Hardware Product 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.
Jinhua Kaixin Imp & Exp Ltd.
Jining Huarong Hardware Products
Joto Enterprise Co., Ltd.
Karuis Custom Metal Parts Mfg. Ltd.
Kasy Logistics (Tianjin) Co., Ltd.
K.E. Kingstone
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.
Nanjing Dayu Pneumatic Gun Nails Co., Ltd.
Nantong Corporation for Internation
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.
OEC Logistics (Qingdao) Co. Ltd.
Omega Products International
OOCL Logistics O B of Winston Marketing Group
Orisun Electronics HK Co., LTd.
Pacole International Ltd.
Panagene Inc.
Pavilion Investmen Ltd.
Perfect Seller Co., Ltd.
Prominence Cargo Service, Inc.
Qianshan Huafeng Trading Co., Ltd.
Qidong Liang Chyuan Metal Industry Co., Ltd.
Qingdao Bestworld Industry Trading
Qingdao D&L Group, Ltd.
Qingdao D&L Group Co., Ltd.
Qingdao Denarius Manufacture Co. Limited
Qingdao Golden Sunshine ELE–EAQ Co., Ltd.
Qingdao International Fastening Systems Inc.
Qingdao Koram Steel Co., Ltd.
Qingdao Lutai Industrial Products Manufacturing Co., Ltd.
Qingdao Meijia Metal Products Co.
Qingdao Rohuida International Trading Co.,
Qingdao Sino-Sun International Trading Company Limited
Qingdao Super United Metals & Wood Prods. Co. Ltd.
Qingdao Tiger Hardware Co., Ltd.
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.
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.,
Se Jung (China) Shipping Co., Ltd.

SDC International Australia Pty., Ltd.
SDC International Australia (Pty) Ltd.
Senco Products, Inc.
Senco-Xingya Metal Products (Taicang) Co., Ltd.
Shandex Co., Ltd.
Shandex Industrial Inc.
Shandong Liaocheng Minghua Metal Products Co. Ltd.
Shandong Minmetals Co., Ltd.
Shandong Oriental Cherry Entity comprised of Shandong Oriental Cherry Hardware Group., Ltd., Shandong Oriental Cherry Hardware Import & Export Co., Ltd., Shandong Oriental Cherry Hardware Group Heze Products Co., Ltd., Jining Huarong Hardware Products Co., Ltd., Jining Dragon Fasteners Co., Ltd., and Jining Yonggu Metal Products 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 Holiday Import & Export Co., Ltd.
Shanghai Jian Jie International TRA
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 Tymex International Trade Co., Ltd.
Shanghai Yueda Fasteners Co., Ltd.
Shanxi Tianli Enterprise 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 Meiyuda Trade Co., Ltd.
Shenzhen Pacific-Net Logistics Inc.
Shenzhen Shangqi Imports-Exports TR
Shijiazhuang Anao Imp & Export Co. Ltd.
Shijiazhuang Fangyu Import & Export Corp.
Shijiazhuang Glory Way Trading Co.
Shijiazhuang Fitex Trading Co., Ltd.
Shijiazhuang Shuangjian Tools Co., Ltd.
Shitong Int’l Holding Limited
Shouguang Meiqing Nail Industry Co., Ltd.

Sinochem Tianjin Imp & Exp Shenzhen Corp.
Sirius Global Logistics Co., Ltd.
SMart (Tianjin) Technology Development Co., Ltd.
Sunfield Enterprise Corporation
Sunlife Enterprises (Yangjiang) Ltd.
Sunworld International Logistics
Superior International Australia Pty Ltd.
Suzhou Guoxin Group Wangshun I/E Co. Imp. Exp. Co., Ltd.
Suzhou Xingya Nail Co., Ltd.
Suzhou Yaotian Metal Products Co., Ltd.
Stanley Fastening Systems LP
Shandex Industrial
Telex Hong Kong Industry Co., Ltd.
The Everest Corp.
Thermwell Products
Tian Jin Sundy 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 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 Kunxin Hardware Co., Ltd.
Tianjin Kunxin Metal Products Co., Ltd.
Tianjin Lianda Group 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 Products & Energy Resources Dev. Co., Ltd.
Tianjin Qichuan Metal Products Co. Ltd.
Tianjin Ruiji Metal Products Co., Ltd.
Tianjin Senbohengtong International
Tianjin Senmiao Import and Export Co., Ltd.
Tianjin Shenyuan Steel Producting Group Co., Ltd.
Tianjin Shishun Metal Product Co., Ltd.
Tianjin Shishun Metallic Products Co., Ltd.
Tianjin Tailai Import Export
Tianjin Universal Machinery Imp & Exp Corporation
Tianjin Universal Machinery Imp. & Exp. Corp. Ltd.
Tianjin Universal Machinery Import & Export Corp.
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.
Topocean Consolidation Service (CHA) Ltd.
Traser Mexicana, S.A. De C.V.
Treasure Way International Dev. Ltd.
True Value Company (HK) Ltd.
Unicatch Industrial Co. Ltd.
Unigain Trading Co., Ltd.
Union Enterprise (Kunshan) Co., Ltd. a.k.a. Union Enterprise Co., Ltd.
Wintime Import & Export Corporation Limited of Zhongshan
Weifang Xiaotian Machine Co., Ltd.
Wenzhou KLF Medical Plastics Co., Lt.

Wenzhou Ouxin Foreign Trade Co., Ltd.
Wenzhou Yuwei Foreign Trade Co., Ltd.
Winsmart International Shipping Ltd. O/B Zhaoqing Harvest Nails Co., Ltd.
Wintime Import & Export Corporation Limited of Zhongshan
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 Qiangye Metalwork Production Co., Ltd.
Wuxi Jinde Assets Management Co., Ltd.
Wuxi Moresky Developing Co., Ltd.
Xiamen New Kunlun Trade Co., Ltd.
Xi'an Metals & Minerals Import and Export Co., Ltd.
Xi'an Steel
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.
Yongcheng Foreign Trade Corp.
Yu Chi Hardware Co., Ltd.
Yue Sang Plastic Factory
Yuhuan Yazheng Importing
Zhangjiagang Lianfeng Metals Products Co., Ltd.
Zhangjiagang Longxiang Packing Materials Co.
Zhaoqing Harvest Nails 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.

Zhongshan Junlong Nail Manufactures Co., Ltd.
ZJG Lianfeng Metals Product Ltd.