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DATE: March 13, 2017

MEMORANDUM TO: Ronald Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

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

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SUMMARY

The Department of Commerce (Department) analyzed comments submitted by Certified Products International Inc. (CPI), Mid Continent Steel & Wire, Inc. (Petitioner), Midwest Air Technologies, Inc. (MAT), Origin Point Brands, LLC (OPB), The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively, Stanley), and Tianjin Lianda Group Co., Ltd. (Tianjian Lianda) in the seventh administrative review (AR) of the antidumping duty order on steel nails from the People's Republic of China (PRC).[1]

Following the *Preliminary Results*[2] 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's margin for the final results.[3] Additionally, we continue to find that Tianjin Lianda did not demonstrate that it is entitled to a separate rate, and is thus part of the PRC-wide entity.[4] 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.[5]

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[1] *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*).
[2] *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; 2014-2015*, 81 FR 62710 (September 12, 2016) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.
[3] *See* Comment 1 for further discussion.
[4] *See* Comment 5 for further discussion.
[5] *See* Comment 2 for further discussion.

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 12, 2016.[6] On December 21, 2015, the Department extended the deadline for the final results in this proceeding by 60 days.[7]

In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. On October 31, 2016, CPI, MAT, OPB, Petitioner, Stanley, and Tianjin Lianda submitted timely filed case briefs pursuant to our regulations.[8] Additionally, on November 9, 2016, Petitioner, Stanley, and Tianjin Lianda submitted timely-filed rebuttal briefs.[9]

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.

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[6] *See Preliminary Results*.

[7] *See* Memorandum to Christian Marsh, "Certain Steel Nails from the People's Republic of China: Extension of Deadline for Final Results of the Seventh Antidumping Duty Administrative Review," (December 1, 2015).

[8] *See* Letter to the Secretary, from CPI, regarding "Case Brief: Seventh Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China," dated October 31, 2016 (CPI Case Brief); Letter to the Secretary, from MAT, regarding "Certain Steel Nails from the People's Republic of China – Case Brief," dated October 31, 2016 (MAT Case Brief); Letter to the Secretary, from OPB, regarding "Certain Steel Nails from the People's Republic of China: Case Brief on Behalf of Origin Points Brand LLC," dated October 31, 2016 (OPB Case Brief); Letter to the Secretary, from Petitioner, regarding "Certain Steel Nails from the People's Republic of China: Petitioner's Case Brief and Request for Hearing," dated October 31, 2016 (Petitioner Case Brief); Letter to the Secretary, from Stanley, regarding "Certain Steel Nails from the People's Republic of China; Seventh Administrative Review; Case Brief of The Stanley Works (Langfang) Fastening Systems Co., Ltd And Stanley Black & Decker, Inc.," dated October 31, 2016 (Stanley Case Brief); and Letter to the Secretary, from Tianjin Lianda, regarding "Certain Steel Nails from the People's Republic of China, 7th Review: Administrative Case Brief of Tianjin Lianda Group Co., Ltd.," dated October 31, 2016 (Tianjin Lianda Case Brief), respectively.

[9] *See* Letter to the Secretary, from Petitioner, regarding "Certain Steel Nails from the People's Republic of China: Petitioner's Rebuttal Brief," dated November 9, 2016 (Petitioner Rebuttal Brief); Letter to the Secretary, from Stanley, regarding "Certain Steel Nails from the People's Republic of China; Seventh Administrative Review; Rebuttal Brief of The Stanley Works (Langfang) Fastening Systems Co., Ltd and Stanley Black & Decker, Inc.," dated November 9, 2016 (Stanley Rebuttal Brief); and Letter to the Secretary, from Tianjin Lianda, regarding "Certain Steel Nails from the People's Republic of China, 7th Review: Tianjin Lianda Group Co., Ltd.'s Rebuttal Comments to Petitioner's Administrative Case Brief," dated November 9, 2016 (Tianjin Lianda Rebuttal Brief), respectively.

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, 7907.00.6000,[10] 7318.29.0000, and 8206.00.0000.[11]

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

Also excluded from the scope of this order are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this order are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.0020 and 7317.0030. Also excluded from the scope of this order are thumb tacks, which are currently classified under HTSUS 7317.00.1000.

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

[10] The Department added HTSUS 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.

[11] The Department added the HTS categories 7318.29.000 and 8206.00.0000 per a request by U.S. Customs and Border Protection on February 24, 2017.

are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

DISCUSSION OF THE ISSUES

General Issues

Comment 1: Differential Pricing Methodology

Stanley's Comments

- The Department's differential pricing approach is unreasonable and unlawful.[12]
- While the Department withdrew its targeted dumping regulation (*i.e.*, 19 CFR 351.414(f) (2007)) in December 2008, this regulation remains in effect according to the Court of International Trade (CIT).[13]
- The *Preliminary Results* violate 19 CFR 351.414(f)(3) (1997) because the Department initiated a differential pricing analysis without any allegation that Stanley was engaged in targeted dumping.[14]
- 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.[15]
- The *Preliminary Results* violates the Department's regulations by applying the Average-to-Transaction (A-to-T) price comparison methodology to all of Stanley's sales.[16]
- The Cohen's *d* test (CDT) is not an appropriate statistical technique for determining whether there is a pattern of prices that differ significantly.[17]
- The CDT contravenes the congressional intent as articulated in the Statement of Administrative Action (SAA) and the Department's duty to calculate antidumping duty margins as accurately as possible.[18]
- The CDT measures the effect of an intervention and not the difference between two groups.[19]
- In *Xanthan Final* and *Nails AR5 Final Results*, the Department recognized "effect size" as "a simple way of quantifying the difference between two groups."[20]
- The Cohen's *d* statistic is not a tool used in business, finance, or other contexts in which a variable can be qualified in easily understood units, such as dollars.[21]

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[12] *See* Stanley Case Brief at 3.
[13] *Id.* at 11-15.
[14] *Id.* at 15-16.
[15] *Id.* at 16.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 17-18.
[19] *Id.* at 18-21.
[20] *Id.* at 18 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 (*Nails AR5 Final Results*).
[21] *Id.* at 20.

- The use of the Cohen's *d* statistic to evaluate the object results of statutory price adjustments is inappropriate and unreasonable.[22]
- The Department's classification of effect sizes as small, medium, and large is arbitrary.[23]
- The correct use of the Cohen's *d* statistic's is in analyzing sample data, not complete data populations like the entire population of a respondent's U.S. sales.[24]
- The Cohen's *d* statistic does not measure significance in a manner consistent with the purpose of the statute because the CDT does not measure statistical significance or provide assurance that a respondent's sales are not passing the CDT because of random occurrence.[25]
- The *Preliminary Results* incorrectly calculates the Cohen's d statistic in a manner that is biased toward finding "prices that differ significantly."[26]
- The Department erred in in the *Preliminary Results* by giving equal weight in its pooled standard deviations to the standard deviations of the test groups.[27]
- Neither the ratio test nor the meaningful difference test manifest reasonable interpretations of the statute's purpose. Moreover, there exists a bias toward high CDT pass rates, which lead to the unreasonably frequent use of the ratio and meaningful difference tests.[28]
- Because of smaller pooled standard deviations of the test and comparison groups, it is unreasonably difficult for a respondent to raise its pricing to avoid a high CDT pass rate.[29]
- The *Preliminary Results* do not explain how the stratification of "pass" rates in differential pricing identify a pattern within the meaning of the statute. Additionally, the results do not explain why the stratification of CDT results is reasonable or how it defines a pattern within the meaning of the statue.[30]
- Differential pricing fails to explain why the Department cannot account for any perceived pattern of significant price differences when using the average-to-average (A-to-A) method.[31]
- The meaningful difference test is flawed methodologically because it does not explain why the A-to-A method cannot account for a pattern of price differences since the meaningful difference test measures the effect of the A-to-T method with zeroing.[32]
- For the bulk of Stanley's sales, a comparison of dumping margins for individual Stanley products calculated using the A-to-A and A-to-T methods yields no meaningful difference. The Department did not meet its statutory burden to explain why it could not account for patterns of significant price differences using the A-to-A method.[33]
- In the *Preliminary Results*, the Department failed to limit its targeting analysis to sales that pass the CDT with low prices, which conflicts with the SAA's statement that "targeted dumping" comprises prices that are both dumped and below prices "to other customers."[34]

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[22] *Id.* at 21.
[23] *Id.* at 21-23.
[24] *Id.* at 23-24.
[25] *Id.* at 24-26.
[26] *Id.* at 26.
[27] *Id.* at 27-28.
[28] *Id.* at 29-31.
[29] *Id.* at 31-32.
[30] *Id.* at 32-33.
[31] *Id.* at 35.
[32] *Id.* at 37-38.
[33] *Id.* at 39.
[34] *Id.* at 41.

- The Department's exercise in pattern identification separate from dumping fails to address targeted dumping and is a device to returning to the zeroing methodology.[35]
- Including sales that pass the CDT in base groups for other test groups unreasonably causes sales to pass that otherwise would not.[36]
- The CDT's bias towards high pass rates is exacerbated by the Department's refusal to consideration other circumstances of sale that cause net prices to vary.[37]
- The Department's use of differential pricing in the *Preliminary Results* violates the Antidumping Agreement.[38]

MAT's Comments

- If the Department calculates and antidumping duty margin for Tianjin Lianda, it should not employ the alternative methodology.[39]

Petitioner's Comments

- The CIT held that the targeted dumping regulation in 2008 applies only to investigations and not to administrative reviews. As a result, there is no regulation that requires the Department to apply the limiting rule and the allegation requirement in a review.[40]
- The Department properly exercises its gap-filling authority by using the A-to-T (as a result of differential pricing analysis) to calculating dumping margins in ARs.[41]
- Contrary to Stanley's claims that the CDT measures the effect of an intervention which is not present in a respondent's U.S. sales data, the use of the CDT to identify price differences has been repeatedly affirmed by the CIT because it considers the difference between means in standardized units and is a reasonable tool in analyzing whether a pattern of prices differs significantly.[42]
- The 0.8 Cohen's *d* coefficient threshold employed by the Department indicates that relative to the distribution of prices within the test group and in the comparison group, the difference in the weighted-average prices between the test group and the comparison group is significant.[43]
- Stanley's claim that the CDT is unreasonable because the entire U.S. sales data population is available is illogical because it provides no basis to undermine the application of the CDT to a complete dataset.[44]
- Congress does not require that the price difference found in the CDT test need not be statistically significant, but only that is be significant.[45]

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[35] *Id.* at 43.
[36] *Id.* at 45-46.
[37] *Id.* at 46-47.
[38] *Id.* at 47-49.
[39] *See* MAT Case Brief at 2-5.
[40] *See* Petitioner Rebuttal Brief at 6.
[41] *Id.* at 6-7.
[42] *Id.* at 8-9.
[43] *Id.* at 11.
[44] *Id.* at 12.
[45] *Id.* at 13.

- The Department correctly calculated the pooled standard deviation because, as found by CIT, as there is nothing in the statute mandating how the Department measures whether there is a pattern of prices that differ significantly, and that the use of the CDT was reasonable for this purpose.[46]
- Stanley's observed experience concerning overall pass rates is not a flaw in the CDT, but a function of the data that is being analyzed.[47]
- The complaint that it is difficult for respondents to revise their prices to avoid a high CDT pass rate highlights the fact that the CDT does not allow changes in absolute values to distort the analysis of relative price differences.[48]
- The Court previously found that the ratio test is reasonable since neither the statute nor the regulations specify how the Department is to apply the A-to-T method.[49]
- The meaningful difference test explains why the A-to-A method cannot account for a pattern of significant price differences.[50]
- The Department's differential pricing analysis properly considers both high-priced and lower-priced sales without regard to whether they are dumped.[51]
- The Department should not exclude those sales that pass the CDT because doing so would distort the overall dataset and render the CDT less accurate and reliable.[52]
- The Department should not consider circumstances of sale in the differential pricing analysis since the statute requires that U.S. sales prices are adjusted to ensure apples-to-apples comparisons between net prices. Additionally, the differential pricing analysis identifies if a pattern of export prices differ significantly.[53]
- The WTO decision on *Large Residential Washers from Korea* is not binding until Congress and the Administration implement the decision.[54]

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.[55] 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}."[56] With the statutory language in mind, the Department relied on the

[46] *Id.* at 14.
[47] *Id.* at 15.
[48] *Id.* at 17.
[49] *Id.* at 18-19.
[50] *Id.* at 19-21.
[51] *Id.* at 22-23.
[52] *Id.* at 24.
[53] *Id.*
[54] *Id.* at 25-26 *citing Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62715 (September 12, 2016).
[55] *See Preliminary Results*, and accompanying Decision Memorandum at 19-21.
[56] *See* section 777A(d)(1)(B) of the Act (emphasis added).

differential pricing analysis to determine whether these criteria are satisfied such that application of an alternative methodology may be appropriate.[57]

Carrying out the purpose of the statute, here, is a gap filling exercise properly conducted by the Department.[58] The Department finds that the purpose of section 777A(d)(1)(B) is to evaluate whether the A-to-A method is the appropriate measure whether, and if so to what extent, a given respondent is dumping the merchandise at issue in the U.S. market.[59] While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute, these terms impose no additional requirements beyond those specified in the statute for the Department to otherwise determine that the A-to-A method is not appropriate based upon a finding that the two statutory requirements have been satisfied.[60]

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.[61] 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.[62] 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 experimental group (*i.e.*, an intangible unit)[63] is without merit; nothing indicates that it cannot be used in an analysis involving tangible units.

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[57] *See* 19 CFR 351.414(c)(1).

[58] *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984).

[59] *See* 19 CFR 351.414(c)(1).

[60] *See, e.g., Samsung v. United States*, Slip Op. 15-58, p.5 ("Commerce may apply the A-to-T methodology 'if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (ii) the administering authority explains why such differences cannot be taken into account using the A-to-A or T-to-T methodologies. Id. § 1677f-1(d)(1)(B). Pricing that meets both conditions is known as 'targeted dumping.'").

[61] *See* Stanley's Case Brief at 18-21.

[62] *See Nails AR5 Final Results* and accompanying Issues and Decision Memorandum at 31.

[63] *See* Stanley's Case Brief at 13.

Likewise, Stanley's injection of additional meaning into the word "significantly" is also unsupported by either the statute or the SAA.[64] 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'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 regard to the meanings 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.[65] 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, 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

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[64] *Id.* at 17-18; *see* 19 CFR 351.414(f)(i) and H.R. Rpt. 103-316, Vol. I, 103rd Cong., 2nd Sess. at 842-843 (1994) (SAA).
[65] *See* Stanley Case Brief at 24-26.

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.[66]

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."[67] 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, 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

[66] *See Xanthan Final* and the accompanying Issues and Decision Memorandum at Comment 3 (emphasis in the original, internal citations omitted).
[67] *See Apex Frozen Foods Private Ltd. v. United States*, 2016 CIT. LEXIS (CIT Feb 2, 2016) ("*Apex*") at 27, footnote 19.

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.

The Department also disagrees with Stanley's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary.[68] 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."[69] 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 used measure{}" to "consider the difference between means in standardized units."[70]

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.[71]

Stanley states that "the Cohen's *d* statistic not a tool used in business, finance, or other contexts in which a variable can be qualified in easily understood units, such as dollars.[72] The Department disagrees 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,

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[68] *See* Stanley's Case Brief at 21-23.
[69] *See* Preliminary Decision Memorandum at 20.
[70] *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."
[71] *Id*.
[72] *See* Stanley's Case Brief at 20.

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.[73] 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."[74] 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.[75] 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.[76] 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 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.[77] 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

[73] *See* Stanley's Case Brief at 40-44.
[74] *See* SAA at 843.
[75] *Id.*
[76] *See* 19 CFR 351.414(c)(1).
[77] *See* Stanley's Case Brief at 35-39.

that the A-to-A method cannot account for such differences and, therefore, an alternative method would be appropriate.[78] 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.[79] 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.[80] 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.[81] Stanley argues that differences in prices may be found to exist simply because of differences in the circumstances of the sales.[82] The Department finds Stanley's argument to be misplaced. As discussed above, the purpose of the Department's analysis is to determine whether the A-to-A method is appropriate to measure the amount of dumping for a respondent. To calculate a weighted-average dumping margin (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

[78] *See* Preliminary Decision Memorandum at "Determination of Comparison Method."
[79] *Id*.
[80] *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.
[81] *See* Stanley's Case Brief at 46-47.
[82] *Id.*

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.[83] 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 276 preliminary determinations for respondents in which a differential pricing analysis was employed.[84] Stanley argues that bias exists because "over one-third of the respondents in {these} preliminary decisions each targeted more than two-thirds of their sales – and that three respondents targeted *every* sale." Stanley concludes that "{i}t makes no economic or financial sense for any one company to 'target' more than two-thirds of its sales" and that "{i}t is unreasonable to conclude that over one-third of investigated companies do so while selling a wide variety of products having their own market dynamics."[85] 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.

Stanley's data fail to demonstrate a bias in the Department's application of the Cohen's *d* test. The data show that 207 of the 276 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 85 of these 207 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. Around 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.

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[83] *See* Stanley's Case Brief at 26.
[84] *Id.* at 29-31 and Addendum C.
[85] *See* Stanley's Case Brief at 29-30.

Stanley states that the data show 95 respondents with CDT "pass" rates of over 66 percent, and three with "pass" rates of 100 percent.[86] 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.[87] 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 three instances where all of the respondent's sales prices differed significantly, there are also 25 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 A-to-A 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. 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

[86] *Id.* at 29.
[87] *Id.* at 29-30.

without consideration of whether the average-to-average method can account for such differences.

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."[88] Stanley then contends that statutory silence indicates that one should look to the SAA, which links dumping and targeting.[89]

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* 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.[90] 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.[91] 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.[92]

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[88] *Id.* at 40.
[89] *Id.* at 40-45.
[90] *See* section 777A(d)(1)(B) of the Act (emphasis added).
[91] *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.
[92] *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)

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.[93] 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.

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.[94] 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."[95] 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

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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.").

[93] *See* Stanley Brief at 11.

[94] *Id.* at 10.

[95] *See* Preliminary Decision Memorandum at 19.

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.[96] Stanley has provided no such comments to alter the 33 percent and 66 percent thresholds.

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.[97] 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."[98] 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

[96] *Id.* at 34.
[97] *See* Stanley Case Brief at 21.
[98] *See* Preliminary Decision Memorandum at 20.

purchaser A differs significantly from the weighted-average price to purchaser B, then the sales 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.

With respect to Stanley's arguments regarding zeroing in conjunction with the A-to-T method,[99] we disagree. As we stated in *Wood Flooring*,[100] the decision by the Court of Appeals for the Federal Circuit (CAFC) in *Union Steel* resolved the question of whether the Department's statutory interpretation is reasonable. The CAFC affirmed the Department's explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales with respect to the A-to-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-to-A comparison method in investigations.[101] The CAFC also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews.[102] Indeed, the CAFC noted that although the Department modified its practice "to allow for offsets when making A-to-A comparisons in administrative reviews … {t}his modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns."[103]

Likewise, in *U.S. Steel Corp.*, the CAFC sustained the Department's decision to no longer apply zeroing when employing the A-to-A comparison method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances. Specifically, the CAFC recognized that the Department may use zeroing when applying the A-T comparison method where patterns of significant price differences are found.[104] Accordingly, the Department has not altered its approach in combining the comparison results between the A-to-A method and the A-to-T method.[105]

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[99] *See* Stanley Case Brief at 37-40.
[100] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 14, 2015) (*Wood Flooring*) and accompanying Issues and Decision Memorandum at Comment 1.B.
[101] *See Union Steel v. United States*, 713 F. 3d 1101, 1106 (Fed. Cir. 2013) (*Union Steel*).
[102] *Id.*
[103] *Id.*
[104] *See U.S. Steel Corp. v. United States,* 621 F. 3d 1351, 1363 (Fed. Cir. 2010) (*U.S. Steel Corp.*).
[105] *Id.*

With respect to Stanley's reliance on *Korea – Washers*, that employing differential pricing violates the Antidumping Agreement, we disagree. As a general matter, the CAFC has held that WTO findings are without effect under U.S. law "unless and until such {a report} has been adopted pursuant to the specified statutory scheme."[106] The WTO's findings in *Korea – Washers* have not been implemented under U.S. law. Indeed, the SAA noted that "WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."[107] The Department has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to the URAA's implementation procedure.

Regarding MAT's arguments that the Department should not apply zeroing if it finds that the sales prices for more than 33 percent of U.S. sales transactions meets the differential pricing criteria, we did not calculate an antidumping duty margin for Tianjin Lianda, as discussed in Comment 4 below. As a result, this argument is moot and we have not addressed it.

Comment 2: Calculation of Separate Rate Margin

Petitioner's Comments

- Prior to the implementation of the Uruguay Round Agreements Act (URAA) in 1995, the Department included margins determined entirely on the basis of facts available when calculating the all-others rate or the separate rate.[108]
- Section 735(c)(5)(A) of the Act was changed to exclude zero, *de minimis*, or total facts available margins in investigations, in the calculation of the all-other rate or separate rate, and only as a general rule.[109]
- Because there is no discussion regarding administrative reviews, it is reasonable to infer that Congress intended Commerce's practice in reviews to remain unchanged.[110]
- The SAA provides that if all individually examined respondents receive zero, *de minimis*, or total AFA, the Department may use other reasonable methods to calculate the all-others rate.[111]
- Due to the absence of a statutory directive, the Department is not required to apply the original investigation methodology in administrative reviews.[112]
- In this review, the rates determined for non-cooperating mandatory respondents distorts the margin established for the Separate Rate Companies (SRCs).[113]

[106] *See, e.g.*, *Corus Staal BV v. United States*, 395 F.3d 1343 (Fed. Cir. 2005).

[107] *See* SAA at 659.

[108] *See* Petitioner's Case Brief at 10.

[109] *Id.* at 11.

[110] *Id.*

[111] *Id.* at 12 *citing* SAA at 103-316.

[112] *See* Petitioner's Case Brief at 13.

[113] *Id.* at 14.

- Judicial precedent confirms the Department's authority to include rates based on facts available when calculating the separate rate margin and its obligation to ensure that the separate rate margin reflects actual dumping margins.[114]
- Stanley's pricing behaviors and dumping experiences are different from those of the SRCs.[115]
- The Department should calculate a separate rate margin that reasonably reflects the economic reality and past experience of the separate rate companies.[116]
- The separate rate margin of 5.90% calculated in the *Preliminary Results* is not representative of the margins (ranging from 33.25 to 78.27 percent) calculated for individually examined respondents other than Stanley.[117]
- The Department should use its statutory authority to establish a separate rate margin that reflects the SRCs' previous dumping by including Suzhou Xingya's and Tianjin Lianda's margins, or rely on the average of Stanley's rates and the rates calculated for other respondents in prior segments.[118]

No other party commented on this issue.

Department's Position:
We disagree with Petitioner and observe that we addressed the same issue in the *Nails AR1 Final Results*[119] and *Nails AR6 Final Results*.[120] 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.[121] The Department encountered a similar fact pattern in the fourth AR of *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*.[122] 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. The Department has not deviated from this practice.

As an initial matter, we recognize Petitioner's argument that the statute does not directly prescribe the methodology to calculate the separate rate margin in administrative reviews. However, the Department has interpreted the methodology described in section 735 of the Act as

[114] *Id.* at 15.
[115] *Id.* at 16-19.
[116] *Id.* at 23.
[117] *Id.*at 17-18.
[118] *Id.* at 22-26.
[119] *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 (*Nails AR1 Final Results*) at Comment 8.
[120] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016) and accompanying Issues and Decision Memorandum at Comment 3 unchanged at *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 19136 (April 4, 2016) (*Nails AR6 Final Results*).
[121] *See* section 735(c)(5)(A) of the Act.
[122] *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.

relevant in administrative. The Federal Circuit has also reasoned that the statutory provision for calculating non-selected rates is relevant in administrative reviews.[123]

Petitioner has misinterpreted the CIT's decision in *Navneet*.[124] 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.'"[125] 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."[126] Following the legal framework established by the statute, and acknowledged in *Navneet*, the Department acted in accordance with law by excluding Tianjin Lianda's margin 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.

Regarding the calculation of the margin assigned to companies eligible for separate rate status, we believe the points raised by the domestic industry in this administrative review are worthy of further consideration. Methodologies pertaining to the determination of AD margins in cases involving non-market economy countries are complex, and the periodic re-revaluation of those methodologies is appropriate. The particular facts of this case underscore those concerns. However, given that petitioner's proposed change in methodology potentially affects a broad range of cases, while we are not modifying our methodology in this segment of the proceedings, we intend to revisit this issue in subsequent administrative review of this order where the Department will have more time to consider the full effect such a change in methodology would have for its practice.

Comment 3: Clarification of the Scope of the Order

Petitioner's Comments:

- Tianjin Lianda's second supplemental section A questionnaire response makes it clear that it is crucial that the Department clarify the scope of the antidumping order.[127]
- Tianjin Lianda claims that seven of its nail models fall within one of four exclusions introduced through a changed circumstances(CCR) review conducted in 2011. All of these

[123] *Albemarle Corp. v. United States*, 821 F.3d 1345, 1352-53 ("But the statutory framework contemplates that Commerce will employ the same methods for calculating a separate rate in periodic reviews as it does in initial investigations.").

[124] *See* Petitioner's Rebuttal Brief at 15 (citing to *Navneet Publications (India) Ltd. v. United States*, 999 F. Supp. 2d 1354 (CIT 2014) (*Navneet)* at 1359-1363).

[125] *See Navneet* at 1358.

[126] *Id.* at 1363.

[127] *See* Petitioner's Case Brief at 26.

nails are properly considered subject merchandise, and all should be included in the universe of sales reported by all respondents in this proceeding. [128]

- Tianjin Lianda's supplemental response makes it clear that the company has interpreted these exclusions in a wholly unintended manner. None of the seven types of nails identified by Tianjin Lianda has anything to do with roofing applications. To the contrary, they are all standard types of construction nails that have always been subject to the order in this proceeding.[129]
- The Department has the inherent authority to clarify the scope of its orders to reflect the intent of a petition, or in this case, the intent of a request for a changed circumstance review.[130]

Tianjin Lianda's Comments:

- Tianjin Lianda excluded from its response seven types of steel nails that were specifically excluded from scope of the antidumping duty order.[131]
- Petitioner is incorrect in their assertion that all of the seven types of nails are properly considered subject merchandise. Rather than relying on the precise language adopted by the Department that defines the current scope of the antidumping order, Petitioner's assertions rest entirely upon its own proposed scope language set forth in its 2011 request for CCR.[132]
- While the Department certainly has the authority to clarify the scope of existing antidumping duty orders, the Department's regulations plainly contemplate that the Department address scope determination in separate scope proceedings, outside this administrative review.[133]

Department's Position:

Petitioner and Tianjin Lianda dispute whether the seven nail models excluded by Tianjin Lianda from its sales database should have been excluded. The arguments employed by both Petitioner and Tianjin Lianda rest on the interpretation of four scope exclusions that the Department decided in a CCR conducted in 2011.[134] Because both arguments rely on the interpretation of these exclusions, the Department agrees with Petitioner that a scope clarification may be necessary to determine whether Tianjin Lianda's seven nail models are covered by the exclusions decided in the 2011 CCR determination. However, the Department also agrees with Tianjin Lianda that although the Department does have authority to clarify the scope of the order in certain administrative reviews, we have determined that this administrative review is not the best venue for addressing a scope clarification.[135]

As Petitioner is requesting a clarification and a potential change in the language of a 2011 CCR determination, a more appropriate forum for such scope clarification would be in a CCR review

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[128] *Id.* at 27.
[129] *Id.* at 30.
[130] *Id.* at 31.
[131] *See* Tianjin Lianda's Rebuttal Brief at 2.
[132] *Id.* at 3.
[133] *Id.* at 4.
[134] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 76 FR 30101 (May 24, 2011).
[135] *See* 19 CFR 351.225(b).

in accordance with 19 CFR 351.216. Further, although the Department may address a scope clarification in an administrative review, neither Tianjin Lianda nor Petitioner requested an inquiry on the seven nail models Tianjin Lianda excluded from its response in this proceeding.[136] The Department also does not have enough record information in this proceeding to initiate a scope inquiry on Tianjin Lianda's seven nail types, pursuant to 19 CFR 351.225(b), because the Department did not grant Tianjin Lianda separate rate status and, therefore, did not investigate Tianjin Lianda. As a result, the information on the record of this proceeding is insufficient as to make a scope determination pursuant to 19 CFR 351.225(k).

Comment 4: Rescission for Certain Companies

Petitioner's Comments:

- On October 6, 2015, the Department initiated reviews on Certified Products International Inc., Chiieh Yung Metal Industrial Corporation, Mingguang Abundant Hardware Products Co., Ltd., and Shandong Oriental Cherry Hardware Group, among 27 other companies for which reviews were requested.[137] On January 4, 2016, Petitioner timely withdrew its request of reviews on these four companies, among others.[138] However, the Department included these four companies in the *Preliminary Results*, and assigned them separate rate status.[139]

CPI Comments:

- The Department incorrectly listed CPI as one of the separate rate companies in the *Preliminary Results*. However, the Department correctly stated that CPI filed a no shipment letter, and the Department preliminarily determined that CPI did not have and reviewable transactions during the POR.[140]

No other parties submitted comments.

Department's Position

In the *Preliminary Results*, the Department inadvertently included four companies, CPI; Chiieh Yung Metal Industrial Corporation; Mingguang Abundant Hardware Products Co., Ltd.; and Shandong Oriental Cherry Hardware Group ("Shandong Oriental"), in the list of companies receiving a separate rate. As Petitioner noted, it made a timely request to rescind the review on these four companies,[141] and the Department incorrectly included these companies in the separate rate category. Additionally, Petitioner withdrew its request for review with respect to Xi'an Metals and Minerals Import & Export Co., Ltd. ("Xi'an Metals").[142] However, in the *Preliminary Results*, the Department inadvertently included Xi'an Metals well as CPI and

[136] 19 CFR 351.225(f)(6)

[137] *See* Letter from Petitioner to the Secretary of Commerce, "Certain Steel Nails from the People's Republic of China: Withdrawal of Requests for Administrative Review and Request to Select Replacement Mandatory Respondent" (January 4, 2016) at Exhibit 1.

[138] *Id.* at Exhibit 1.

[139] *See* Petitioner's Case Brief at 4-5.

[140] *See* CPI's Case Brief at 1.

[141] *See* Letter from the Bristol Group PLLC to the Secretary of Commerce, "Certain Steel Nails from the People's Republic of China: Withdrawal of Request for Administrative Review and Request to Select Replacement Mandatory Respondent (January 4, 2016) at Attachment 1.

[142] *Id.* at Attachment 1.

Shandong Oriental in the list of companies which had no reviewable entries during the POR. As a result, the Department is correcting these inadvertent errors in the *Preliminary Results*, and rescinding the reviews on CPI, Chiieh Yung Metal Industrial Corporation, Mingguang Abundant Hardware Products Co., Ltd., Shandong Oriental, and Xi'an Metals.

<u>Company-Specific Issues</u>

Comment 5: Tianjin Lianda's Separate Rate Status

Tianjin Lianda's Comments

- The Department's determination that Tianjin Lianda did not provide information regarding Tianjin Dagang Oilfield Lianda Industry Enterprise's (Dagang) management is factually incorrect.[143]
- Given the abundance of documentation supporting Dagang's 100% ownership of Tianjin Lianda in the administrative record, the Department's determination that Tianjin Lianda did not provide documentary evidence supporting such ownership is factually incorrect and is directly contrary to record evidence.[144]
- Because Tianjin Lianda provided the Department a separate list of the 805 workers and employees of Dagang who comprised the Dagang collective entity, the Department cannot claim that Tianjin Lianda withheld information from the Department.[145]
- Tianjin Lianda provided a list of its Board of Directors and its senior management, setting forth the name of the person, their position, the date the person acquired their position, confirming that none of the persons had a position with another company for three years, confirming that each person did not, and has not, worked in the government, and confirming that each person did not, and does not, hold any position in the government.[146]
- Based upon record evidence, the Department should determine that there is an absence of both *de jure* and *de facto* Chinese government control over Tianjin Lianda's export operations.[147]
- The administrative record further establishes that the company had complete autonomy from the government regarding the selection of management and that no person from senior management or any board member worked for any level of government or any government entity. Tianjin Lianda further established that none of its board members nor any of its senior management (which is shared with its owner, Dagang), have ever worked for the government or have held any government positions. Finally, the administrative record established that Tianjin Lianda retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[148]
- Tianjin Lianda cannot be faulted for "withholding" information from the Department and found to be "not acting to the best of its ability to comply with a request for information"

[143] *See* Tianjin Lianda Case Brief at 10.
[144] *Id.* at 8.
[145] *Id.* at 9.
[146] *Id.* at 10.
[147] *Id.* at 18.
[148] *Id.* at 17-18.

from the Department, if the Department had not specifically requested the Tianjin Lianda provide such information to the Department.[149]

- For the purposes of the final results, the Department should more carefully examine the administrative record and determine under its normal criteria that Tianjin Lianda is eligible for a separate rate in this proceeding segment. The final results should calculate Tianjin Lianda's separate dumping margin.[150]

OPB's Comments

- The record clearly shows that Tianjin Lianda is 100 percent owned by Dagang.[151]
- By stating that Dagang is a collectively owned enterprise, providing a list of all 805 individuals that comprise Dagang, and by providing the Articles of Association of the company, and several articles of which established that the company is worker owned, Tianjin Lianda also fully demonstrated Dagang's corporate structure.[152]
- The corporate structure chart and then accompanying list of companies provided in Tianjin Lianda's second supplemental response were provided to show the manner in which Dagang owned its various companies, and to respond to the Department's request for information about each of those companies' business activities.[153]
- Tianjin Lianda explained that, as a collectively owned enterprise, Dagang does not have a board of directors, and that Tianjin Lianda and Dagang share the same management.[154]
- Upon review of the questionnaires issued by the Department, it does not appear that the Department requested the titles or positions for the 800 workers Tianjin Lianda claims to be part of Dagang.[155]
- Denial of separate status results in the imposition of a facts available country-wide rate, which in this case is 118 percent.

Petitioner's Comments

- Continuing to take the approach used in the *Preliminary Results* would confer an improper benefit to a group of companies – the Separate Rate Companies – that are simply manipulating the Department's standard practices in administrative review in order to obtain a separate rate margin largely, or entirely, based on Stanley's low rate.[156]
- In the event the Department determines to revise its preliminary results concerning Tianjin Lianda's eligibility for a separate rate, and calculates a margin for Tianjin Lianda, the Department should resort to partial adverse facts available with respect to the nails Tianjin Lianda failed to report.[157]

Department's Position:

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[149] *Id.* at 12.
[150] *Id.* at 18-19.
[151] *See* OPB's Case Brief at 2.
[152] *Id.* at 3.
[153] *Id.* at 3-4
[154] *Id.* at 4.
[155] *Id.* at 5
[156] *See* Petitioner's Case Brief at 19.
[157] *See* Petitioner's Rebuttal Case Brief at 28.

We disagree with Tianjin Lianda and OPB. For these final results we continue to find that Tianjin Lianda's response to Section A of the Department's antidumping duty questionnaire was incomplete and needed additional information to determine Tianjin Lianda's eligibility for a separate rate. The Department requires information to examine whether *de jure* or *de facto* information shows that Tianjin Lianda has rebutted the presumption of government control and is therefore entitled to a separate rate from the PRC-wide entity.[158] The Department's analysis includes Tianjin Lianda, as well as Dagang, which wholly owns Tianjin Lianda.[159] Though Tianjin Lianda claims to have provided an abundance of information on Dagang, the collectively owned parent company of Tianjin Lianda, record evidence provided by Tianjin Lianda did not fully explain the ownership details for Dagang, including necessary information about the individuals that owned Dagang. Specifically, the record does not contain full ownership details for Dagang, including the number of shares the individual members own; the positions of employees and statuses in the company; a complete legal structure chart; an organization chart; management information, including the board of directors; and corporate information for at least one company, for which Dagang is a shareholder.

On May 13, 2016, the Department issued a supplemental questionnaire to Tianjin Lianda, which requested Tianjin Lianda to provide full details, with supporting documentation, of its corporate structure.[160] Specifically, the Department, in its second supplemental Section A questionnaire, asked Tianjin Lianda to "provide the full ownership details for Tianjin Dagang Oilfield Lianda Enterprise" and to "provide the names and address of the individuals and companies" that make up Dagang.[161] In response, Tianjin Lianda stated that "Dagang is comprised of a group of workers and staff members who work in the enterprise. Currently, there are over 800 people working in the enterprise."[162] Tianjin Lianda also provided a list of names of the "individuals members (workers and staff)" that make up Dagang in Exhibit S6-1 of their supplemental response.[163] Tianjin Lianda claims that this list provides support for the fact that it provided details of Dagang's ownership structure. The list in Exhibit S6-1 contained Dagang's employees and their respective names. Absent from the list in Exhibit S6-1, however, were the addresses of the individuals, which was specifically requested by the Department. Without these addresses the Department is unable to determine who these individuals are and if they have any affiliation with the PRC government. Further, merely providing a list of names of the employees of Dagang does not describe the full ownership of Dagang. Dagang did not provide information describing the corporate structures of the companies it owns or information describing the ownership

[158] *See Final Determination on Sparklers from the People'sRepublic of China*, 56 FR 20588 (May 6, 1991); *Final Determination on Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994).

[159] *See* Tianjin Lianda's Letter to the Secretary of Commerce, "Certain Steel Nails from China, 7th Review: Section A Response of Tianjin Lianda Group Co., Ltd." (March 29, 2016) at A-2.

[160] *See* Letter to Tianjin Lianda from Paul Walker, Program Manager, Office V, "Supplemental Questionnaire for Section A," dated May 13, 2016 (Tianjin Lianda's First Supplemental Section A Questionnaire) at 8.

[161] *See* Letter to Tianjin Lianda from Julia Hancock, Acting Program Manager, Office V, "Second Supplemental Questionnaire for Section A," dated June 23, 2016 (Tianjin Lianda's Second Supplemental Section A Questionnaire) at 5.

[162] *See* Tianjin Lianda's Second Supplemental Section A Response, dated July 8, 2016 (Tianjin Lianda's Second Supplemental Section A Response) at 3 and Exhibit S6-1.

[163] *See* Tianjin Lianda's Second Supplemental Section A Response, dated July 8, 2016 (Tianjin Lianda's Second Supplemental Section A Response) at 3 and Exhibit S6-1.

maintained by the employees and workers, which is critical to determine how the shares are distributed among the employees, which could have permitted a closer analysis of potential control. In this regard, Dagang could have provided the requested organizational details describing ownership, similar to those already submitted by Tianjin Lianda.[164] The Department thus finds that the information provided by Tianjin Lianda does not sufficiently describe Dagang's ownership.

In regards to Tianjin Lianda's and OPB's comments that Dagang shared senior management with Tianjin Lianda, this argument lacks evidentiary support. Though Tianjin Lianda provided a list of Tianjin Lianda's Board of Directors,[165] they did not provide one for Dagang. Tianjin Lianda additionally claims that though Dagang does not have a Board of Directors, the company shares the same senior management as Tianjin Lianda.[166] However, Tianjin Lianda neglected to provide evidentiary support for this claim. In fact, when Tianjin Lianda provided an organization structure chart for Dagang, Tiajin Lianda only provided a chart that detailed the companies owned by Dagang.[167] Tianjin Lianda never provided further information on the management structure of Dagang as it did for Tianjin Lianda in its original section A response.[168] Merely stating that Tianjin Lianda and Dagang share the same senior management does not constitute evidentiary support for the claim that Tianjin Lianda and Dagang share the same senior management. Although Tianjin Lianda had ample opportunity to provide support for this claim, it failed to do so.

Additionally, though Tianjin Lianda states it has complete autonomy from all levels of government control, local, provincial, and national, based on record evidence, it did not substantiate this claim, preventing the Department from being able to make a substantial evidence-based finding that Tianjin Lianda in fact has autonomy from all levels of the PRC government. Tianjin Lianda argues that the information it provided on its management structure should suffice in determining Tianjin Lianda's autonomy from *de facto* and *de jure* government control. However, because Tianjin Lianda is owned by the collective entity Dagang, further information on Dagang's corporate and management structure is needed to determine that Tianjin Lianda is, in fact, completely autonomous from all levels of the PRC government. Again, although Tianjin Lianda had multiple opportunities to provide this information to the Department, it failed to provide such information.

Tianjin Lianda also argues that the Department was incorrect when it faulted Tianjin Lianda for withholding information. The Department, however, maintains its position that Tianjin Lianda withheld information, that was expressly requested from Tianjin Lianda about Dagang. The Department requested information on Tianjin Lianda's corporate structure in the original Section

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164 *See* Tianjin Lianda's Letter to the Secretary of Commerce, "Certain Steel Nails from China, 7th Review: Section A Response of Tianjin Lianda Group Co., Ltd." (March 29, 2016) at Exhibit 4 and Exhibit 5.

165 *Id.* at Exhibit 4.

166 *Id.* at A-3.

167 *See* Tianjin Lianda's Second Supplemental Section A Response Exhibit S6-4.

168 *See* Tianjin Lianda's Letter to the Secretary of Commerce, "Certain Steel Nails from China, 7th Review: Section A Response of Tianjin Lianda Group Co., Ltd." (March 29, 2016) at Exhibit 2, "Information on members of the board of directors, managers, and members of board of supervisors of Tianjin Lianda Group., Ltd."

A questionnaire, and with supplemental Section A questionnaires, demonstrating that the Department repeatedly requested corporate structure information pertaining to both Tianjin Lianda and Dagang.[169] Despite the Department's repeated inquiries, Tianjin Lianda did not provide further information on the corporate structure and make up of Dagang, consistently stating that Dagang was a "collectively owned enterprise."[170] Although requested, the record is missing information requested to determine Dagang's affiliations with other producers, entities, organizations, and groups. Such information is necessary for a complete analysis as to whether government control was, or had the potential to be, exercised with respect to Dagang and subsequently Tianjin Lianda.[171] Therefore, the Department continues to hold that Tianjin Lianda withheld information as it pertains its parent company, Dagang.

With respect to Petitioner's request to calculate a margin for Tianjin Lianda, the Department cannot forgo the deficiencies as they pertain to Tianjin Lianda's separate rate status. Petitioner claims that continuing to deny Tianjin Lianda a separate rate would confer a benefit to the separate rate companies in this review. However, the Department must find a company to be separate from the PRC-Wide entity in order to calculate an individual margin, and here the record lacks the necessary information for the Department to conduct a separate rate analysis. Therefore, according to Department practice,[172] the Department will continue to deny Tianjin Lianda a separate rate because it failed to provide evidence that it is autonomous from all levels of the PRC government, and will continue to not calculate a margin for Tianjin Lianda.

Comment 6: Treatment of Stanley's Scrap

Stanley's Comments:

- While the Department accounted for revenue generated by sales of scrap metal produced in Stanley's production of nails, the *Preliminary Results* did not account for revenue generated by Stanley's wire drawing subcontractor from its sales of scrap metal produced during the steel wire drawing process.[173]
- In reporting its sale of wire scrap, Stanley provided the weigh ticket receipts for its scrap sales from January through July 2015. It then allocated the seven months of scrap sales over the twelve-month POR.[174]
- Stanley's documentation of its toller's wire drawing scrap meets the burden described in *Nails AR5*.[175]

[169] *See* Original Section A Questionnaire (February 29, 2016) at A5-A6; *see also* Tianjin Lianda's First Supplemental Section A Questionnaire at 4-6; and *see* Tianjin Lianda's Second Supplemental Section A Questionnaire at 4.

[170] *See* Tianjin Lianda's Letter to the Secretary of Commerce, "Certain Steel Nails from China, 7th Review: Section A Response of Tianjin Lianda Group Co., Ltd." (March 29, 2016) at A-2; *see also* Tianjin Lianda's First Supplemental Section A Questionnaire at 7-9; and *see* Tianjin Lianda's Second Supplemental Section A Questionnaire at 1-3.

[171] *See e.g.* Tianjin Lianda's Second Supplemental Section A Questionnaire.

[172] *See e.g., Wood Bedroom Furniture from the People's Republic of China: Final Results and Final Determination of No Shipments, In Part: 2014 Administrative Review,* 81 FR 21319 (April 11, 2016).

[173] *See* Stanley's Case Brief at 7.

[174] *Id.* at 8.

[175] *Id.* at 9.

- Stanley's calculation of its wire scrap is conservative in that it understates the wire drawing scrap claim relative to the amount of actual scrap which was produced because it only accounts for the seven months for which Stanley's toller maintained documentation for sales of scrap wire.[176]

Petitioner's Comments:

- The Department requires evidence that the amount of the offset is limited to the total production quantity of the by-product.[177]
- Because Stanley did not provide any production related information to support its offset, Stanley failed to meet the burden of establishing the amount and nature of the claimed adjustment.[178]
- There is no basis by which the Department should grant Stanley's wire drawing scrap offset.

Department's Position:

The Department's practice is to grant an offset for by-products generated during the production of the merchandise under consideration if evidence is provided that such by-product has commercial value.[179] Moreover, parties requesting a by-product offset have the burden of presenting to the Department not only evidence that the generated by-product is sold or re-used in the production of the subject merchandise, but also all the information necessary for the Department to incorporate such offsets into the margin calculation.[180] In the *Preliminary Results,* we did not grant the by-product offset for Stanley's wiredrawing scrap toller. While Stanley argues that its documentation of sale of wire drawing scrap meets the burden described in *Nails AR5*,[181] we find that the documentation provided by Stanley is not sufficient. As discussed in *Nails AR5*, and above, our practice is to grant an offset for by-products generated during the production of the merchandise under consideration[182] While Stanley provided weigh ticket receipts for its scrap sales, they did not provide documentation demonstrating that this scrap was produced during the production of subject merchandise.[183] Accordingly, for these final results, we will continue to deny Stanley's by-product offset for wire drawing scrap steel.

Comment 7: Surrogate Financial Ratio Calculation

Stanley's Comments:

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176 *Id.*
177 *See* Petitioner's Case Brief at 2.
178 *Id.* at 4.
179 *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) and accompanying Issues and Decision Memorandum at Issue 10.
180 *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 74 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 34.
181 *See* Stanley's Case Brief at 9.
182 *See Nails AR5* and accompanying Issues and Decision Memorandum at 47-48.
183 *See* Stanley Section D at 92 and Exhibit D-11(e).

- The Department erred in calculating the profit ratio for LSI at the *Preliminary Results*. Specifically, the Department incorrectly used LSI's income for 2013 for calculating LSI's profit ratio despite stating in the *Preliminary Results* that it was using LSI's 2014 "Profit from Income Statement" for this calculation.[184]

No other parties commented on this issue.

Department's Position:
The Department agrees with Stanley. The Department inadvertently used LSI's income for 2013 in calculating its profit ratio. For the final results, the Department has corrected this error by calculating LSI's profit ratio using the income from its 2014 financial statement.[185]

Comment 8: Surrogate Value for Stanley's Paper Tape

Stanley's Comments:
- In the *Preliminary Results*, the Department incorrectly calculated Stanley's cost per kilogram market economy (ME) purchases of paper tape. Specifically, the Department used the column for cost per roll of paper tape instead of cost per kilogram.[186]
- Additionally, the Department transposed the weighted ME purchase price and SV for paper tape in its calculation of the weighted-average FOP value.[187]

No other party commented on this issue.

Department's Position:
The Department agrees with Stanley. In the *Preliminary Results*, the Department inadvertently calculated Stanley's ME purchase cost using the column for cost per roll of paper tape instead of cost per kilogram of paper tape. Moreover, the Department also inadvertently transposed weighted ME purchase price and SV for paper tape in its calculation of the weighted-average FOP value. For the final results, the Department used the correct column for cost per kilogram in calculating Stanley's ME purchases. Additionally, the Department corrected the weighted-average FOP value for Stanley's weighted ME purchase price and SV.[188]

Comment 9: Surrogate Value for Stanley's Sealing Tape

Petitioner's Comments:

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[184] *See* Stanley's Case Brief at 6.
[185] *See* Memorandum to the File, through Paul Walker, Program Manager, Office V, Enforcement and Compliance, from Susan Pulongbarit, Senior International Trade Analyst, Office V, Enforcement and Compliance, regarding Seventh Antidumping Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Final Results, dated concurrently with and hereby adopted by this notice (Final SV Memo).
[186] *See* Stanley's Case Brief at 7.
[187] *Id.*
[188] *See* Memorandum to Paul Walker, Program Manager, from Susan Pulongbarit, Senior International Trade Analysis, "Seventh Administrative Review of Certain Steel Nails from the People's Republic of China: Final Results Analysis Memorandum for Stanley," dated concurrently with this memorandum (Stanley Analysis Memo).

- The Department should value Stanley's sealing tape input using the Thai HTS category 3919.10, "Plates, Sheets, Film, Foil, Tape, And Other Flat Shapes Of Plastics, Self-Adhesive, In Roll Not Over 20 Cm. (8 in.) Wide."[189]

Stanley's Comments:

- The Department should reject Petitioner's argument because Thai HTS subheading 3919.10 is a general basket category that does not differentiate products based on the kind of plastic from which the tape is made.[190]
- Instead, the Thai HTS category 3920.20.10, "Other plates, sheets, film, foil, and strip of plastics, non-cellular and not reinforced, laminated, supported, or similarly combined with other materials: of polymers of polypropylene: biaxially oriented polypropylene film."

Department's Position:

We agree with Stanley. In its Section D questionnaire response, Stanley describes its sealing tape as "basic packaging tape made from biaxially oriented polypropylene and adhesive."[191] Based on the Thai description Thai GTA data under HTS 3920.20.10, we find that Stanley's sealing tape is included in this HTS category. Accordingly, for these final results, we will use Thai HTS 3920.20.10 to value Stanley's sealing tape.[192]

Comment 10: Surrogate Value for Stanley's Plastic Granules

Petitioner's Comments:

- The Department incorrectly valued plastic granules at the *Preliminary Results* using HTS 3902.10.90.090, "Other," which falls under HTS 3902.10, "Polypropylene, In Primary Forms." However, Stanley reported that its plastic granules are made from "calcium carbonate reinforced polypropylene plastic" indicating that the granules contain more than just polypropylene.[193]
- As a result, the Department should value Stanley's plastic granules input using the Thai HTS category 3921.90.90.

Stanley's Comments:

- The Department should value plastic granules using the Thai HTS category, 3902.10.90, which follows the Department's practice on this same issue in the three immediately preceding segments.[194]
- The notes of HTS Chapter 39 clearly demonstrate that Stanley's plastic granules should not be classified under HTS 3921.90.90.[195]

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[189] *See* Petitioner's Case Brief at 3.
[190] *See* Stanley's Case Brief at 2-3.
[191] *See* Letter from Stanley, to the Department, regarding "Seventh Administrative Review of Certain Steel Nails from The People's Republic of China; Section D Questionnaire Response of The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc." dated February 17, 2016 (Stanley Section D) at 103.
[192] *See* Stanley's Analysis Memo.
[193] *See* Petitioner's Case Brief at 3-4.
[194] *See* Stanley's Rebuttal Brief at 4-5.
[195] *Id.* at 5.

Department's Position:
The Department agrees with Stanley. The Department addressed this issue in the three previous administrative reviews.[196] 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 record evidence that Stanley's plastic beads lend themselves to being cut into regular shapes as per HTS 3921 categories.[197] We find that these same reasons are supported by the record of this administrative review.[198] Thus, for the final results, we will use value Stanley's plastic granules for these final results using Thai HTS subheading 3902.10.90.[199]

Comment 11: Surrogate Value for Stanley's Cardboard Corner Board

Petitioner's Comments:

- The Department should value Stanley's cardboard corner board using HTS category 4808.10, "Corrugated Paper And Paperboard, Whether Or Not Perforated, Nesoi, In Rolls or Sheets," consistent with the previous administrative review.[200]

No other parties commented on this issue.

Department's Position:
The Department agrees with Petitioner. In the *Preliminary Results,* the Department inadvertently assigned Thai HTS 4819.10, "Cartons, Boxes And Cases Of Corrugated Paper And Paperboard Used In Offices, Shops, Or The Like." Stanley reported that it consumes its cardboard corner boards during its palletization process and does not specify whether doing so occurs in an office or shop.[201] Moreover, this is consistent with the previous administrative review.[202] As a result, we find that Thai HTS 4808.10, "Corrugated Paper And Paperboard, Whether Or Not Perforated, Nesoi, In Rolls Or Sheets" more closely matches Stanley's description of its cardboard corner board. Thus, for the final results, we will use Thai HTS 4808.10 to value Stanley's cardboard corner board.[203]

Comment 12: Surrogate Value for Stanley's Insert Paper Board

Petitioner's Comments:

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[196] *See Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) and accompanying Issues and Decision Memorandum at Comment 11; *Nails AR5 Final Results* and accompanying Issues and Decision Memorandum at Comment 12; *Nails AR6 Final Results* and accompanying Issues and Decision Memorandum at Comment 8.
[197] *Id.*
[198] *Id.*
[199] *See* Final SV Memo.
[200] *See* Petitioner's Case Brief at 2-3.
[201] *See* Stanley's Section D Response at 98.
[202] *See* Letter from Stanley, to the Department
[203] *See* Final SV Memo.

- In the *Preliminary Results,* the Department assigned the incorrect SV variable to value Stanley's insert paper board. This should correct be corrected in the final results.

No other parties commented on this issue.

Department's Position:
We agree with Petitioner that the Department inadvertently assigned the incorrect SV to value Stanley's insert paper board in the *Preliminary Results*. For the final results, we will assign the correct variable, IPBOARD, to value Stanley's insert paper board.[204]

Comment 13: Surrogate Value for Stanley's Pallet Board

Petitioner's Arguments:
- In the *Preliminary Results,* the Department assigned the incorrect SV variable to value Stanley's pallet board. This should be corrected for the final results.[205]

No other parties commented on this issue.

Department's Position:
We agree with Petitioner that the Department inadvertently assigned the incorrect SV to value Stanley's pallet board in the *Preliminary Results*. For the final results, we will assign the correct variable, PLBOARDSV, to value Stanley's pallet board.[206]

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*.

☒ ☐

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Agree Disagree

[204] *See* Stanley Analysis Memo.
[205] *See* Petitioner's Case Brief at 1-2.
[206] *See* Final SV Memo.

3/13/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance