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DATE:	April 17, 2019
MEMORANDUM TO:	Jeffrey I. Kessler Assistant Secretary for Enforcement and Compliance
FROM:	Gary Taverman 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 Ninth Antidumping Duty Administrative Review

I. SUMMARY

The Department of Commerce (Commerce) analyzed comments submitted by interested parties in the ninth administrative review (AR) of the antidumping duty (AD) order on certain steel nails (nails) from the People's Republic of China (China).[1] Following the *Preliminary Results*,[2] based on our verification findings and our analysis of the comments received, we made certain changes to the margin calculations for the final results, as discussed below. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments and rebuttal comments from the interested parties:

<u>General Issues</u>
Comment 1: Sample Rate Calculation Methodology
Comment 2: Surrogate Financial Ratios
Comment 3: Changes to Surrogate Financial Ratios

[1] *See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008) (*China 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; 2016-2017*, 83 FR 45883 (September 11, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

Dezhou Hualude[3] Issues

Comment 4:	Application of Partial Facts Available with Adverse Inferences to Tianjin Lingyu
Comment 5:	Incorporate Factors of Production (FOP) Database which includes Missing Control Numbers (CONNUMs)
Comment 6:	Application of Partial AFA for Tianjin Lingyu's FOP for Water Coating
Comment 7:	Materials Classified as Factory Overhead
Comment 8:	Labor Cost
Comment 9:	Adjust Dezhou Hualude's U.S. Price for International Freight and Marine Insurance Expenses
Comment 10:	Use Invoice Data as Dezhou Hualude's U.S. Date of Sale
Comment 11:	Dezhou Hualude's Minor Corrections

Stanley[4] Issues

Comment 12:	Collating Wire Surrogate Value
Comment 13:	Small Glass Balls Surrogate Value
Comment 14:	Sealing Tape Surrogate Value
Comment 15:	Treatment of Stanley's Rubber Bands
Comment 16:	Black Liquor and Passivation Liquid Surrogate Values
Comment 17:	Transportation Distances for Stanley's Packing Materials
Comment 18:	Treatment of Irrecoverable Value Added Tax (VAT)
Comment 19:	Correction of a Transposition Error for Zinc Phosphate

II. BACKGROUND

Commerce published in the *Federal Register* the *Preliminary Results* on September 11, 2018.[5] The verification of Tianjin Lingyu Metal Products Co., Ltd. (Tianjin Lingyu) and Tianjin Yongchang Metal Products Co., Ltd.'s (Tianjin Yongchang) factors of production took place from October 29, 2018, through November 5, 2018.[6] From November 6, 2018, through November 8, 2018, Commerce officials verified Dezhou Hualude's questionnaire responses.[7] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 28, 2019.[8] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now April 17, 2019.

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[3] Dezhou Hualude Hardware Products Co., Ltd. (Dezhou Hualude).

[4] The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively, Stanley)

[5] *See Preliminary Results*.

[6] *See* Memorandum, "Verification of the Questionnaire Responses of Dezhou Hualude Hardware Products Co., Ltd. in the Antidumping Review of Certain Steel Nails from the People's Republic of China," dated December 20, 2018 (Dezhou Hualude Verification Report).

[7] *Id.*

[8] *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this proceeding have been extended by 40 days.

In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. On February 13, 2019, Dezhou Hualude, National Nail Corp. (National Nail), Mid Continent Steel & Wire, Inc. (the petitioner), Stanley, Tianjin Huixinshangmao Co., Ltd., SDC International Aust. PTY. LTD., S-Mart (Tianjin) Technology Development Co., Ltd., Shanxi Hairui Trade Co., Ltd., Shanxi Pioneer Hardware Industrial Co., Ltd. and Shanxi Yuci Broad Wire Products Co., Ltd. (collectively, Tianjin Huixinshangmao *et al.*), Tianjin Jinghai County Hongli Industry & Business Co., Ltd., Tianjin Jinchi Metal Products Co., Ltd., Tianjin Zhonglian Metals Ware Co., Ltd., Shanghai Yueda Nails Industry Co., Ltd. a.k.a. Shanghai Yueda Nails Co., Ltd. and Shanxi Tianli Industries Co., Ltd. (collectively, Tianjin Jinchai *et al.*), and Zhangjiagang Lianfeng Metals Products Co., Ltd. (Zhangjiagang Lianfeng) submitted timely filed case briefs pursuant to our regulations.[9] Additionally, between February 19, 2019 and February 21, 2019, Dezhou Hualude, National Nail, the petitioner, and Stanley submitted timely-filed rebuttal briefs.[10] On February, 25, 2019, in response to Commerce's instructions, National Nail re-filed its rebuttal brief in order to redact untimely new factual information.[11] Based on our analysis of the comments received, as well as our verification findings, we have made certain changes to the *Preliminary Results*.

III. 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

[9] *See* Dezhou Hualude's Case Brief, "Certain Steel Nails from the People's Republic of China: Submission of Dezhou Hualude's Administrative Case Brief," dated February 14, 2019 (Dezhou Hualude's Case Brief); Petitioner's Case Brief, "Certain Steel Nails from the People's Republic of China: Case Brief," dated February 13, 2019 (Petitioner's Case Brief); National Nail's Case Brief, "Steel Nails from the People's Republic of China: Case Brief," dated February 13, 2019 (National Nail's Case Brief); Stanley's Case Brief, "Certain Steel Nails from The People's Republic of China; Ninth Administrative Review; Re-submitted Case Brief of The Stanley Works (Langfang) Fastening Systems Co., Ltd and Stanley Black & Decker, Inc.," dated February 13, 2019 (Stanley's Case Brief); Tianjin Huixinshangmao *et al.* Case Brief, "Steel Nails from the People's Republic of China: Case Brief," dated February 13, 2019 (Tianjin Huixinshangmao *et al.* Case Brief); Tianjin Jinchai *et al.* Case Brief, "Case Brief of Certain Chinese Respondents: Administrative Review of the Antidumping Order on Certain Steel Nails from the People's Republic of China," dated February 13, 2019 (Tianjin Jinchai *et al.* Case Brief); and Zhangjiagang Lianfeng's Case Brief, "Certain Steel Nails from the People's Republic of China: Case Brief," dated February 13, 2019 (Zhangjiagang Lianfeng's Case Brief).

[10] *See* Dezhou Hualude's Rebuttal Brief, "Certain Steel Nails from the People's Republic of China: Submission of Dezhou Hualude's Rebuttal Brief," dated February 21, 2019 (Dezhou Hualude's Rebuttal Brief); National Nail's Rebuttal Brief, "Steel Nails from the People's Republic of China: Rebuttal Case Brief," dated February 21, 2019 (National Nail's Rebuttal Brief); Petitioner's Rebuttal Brief, "Certain Steel Nails from the People's Republic of China: Rebuttal Brief," dated February 21, 2019 (Petitioner's Rebuttal Brief); and Stanley's Rebuttal Brief, "Certain Steel Nails from the People's Republic of China; Ninth Administrative Review; Rebuttal Brief of The Stanley Works (Langfang) Fastening Systems Co., Ltd and Stanley Black & Decker, Inc.," dated February 19, 2019 (Stanley's Rebuttal Brief).

[11] *See* National Nail's Rebuttal Brief, "Steel Nails from the People's Republic of China: Rebuttal Case Brief," dated February 25, 2019 (National Nail Rebuttal Brief).

more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, 7317.00.75, 7907.00.6000,[12] 7318.29.0000, and 8206.00.0000.[13]

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

[12] Commerce 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.
[13] Commerce added the HTSUS categories 7318.29.000 and 8206.00.0000 per a request by U.S. Customs and Border Protection (CBP) on February 24, 2017.

round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. DISCUSSION OF THE ISSUES

General Issues

Comment 1: Sample Rate Calculation Methodology

National Nail's Comments:

- Commerce's inclusion of a total adverse facts available (AFA) rate in the calculation of the sample rate was not in accordance with law.[14]
- Commerce specifically acknowledged that each of the non-selected separate rate respondents had affirmatively demonstrated their *de jure* and *de facto* independence from Chinese government control and, thus, were entitled to receive their own separate rate. Commerce also granted separate rate status to these non-selected separate rate respondents because they had complied with all information requests from Commerce and were fully cooperative. Therefore, there is no basis to impute any measure of AFA to these fully cooperative, non-selected separate rate respondents.[15]
- Two of the three mandatory respondents (Stanley, Dezhou Hualude) received rates that were not zero, *de minimis*, or determined entirely based on the basis of facts available. Thus, Commerce should have calculated a sample rate based on some type of average of the rates of these two mandatory respondents.[16]
- The fact that Commerce used a sampling methodology to select mandatory respondents instead of selecting the largest exporters does not change the statutory obligations that limit the circumstances in which Commerce may apply facts available with adverse inferences.[17] The courts have consistently held that the presence of non-cooperative respondents cannot be used to justify Commerce's choice of dumping margins for otherwise cooperative uninvestigated respondents.[18]
- Although, Commerce has rarely used the sampling methodology to select mandatory respondents, there is nothing in the statutory provision that would permit Commerce to treat the calculation of the sample rate to be different from the calculation of the all-others rate.[19] Therefore, a sample rate may be statistically valid but may also be legally

[14] *See* National Nail's Case Brief at 2; *see also Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65965 (November 4, 2013) (*Sampling Methodology Notice*).
[15] *Id.*
[16] *Id.* at 3.
[17] *Id.* at 3.
[18] *Id.* at 4, citing *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1381 (CIT 2009).
[19] *Id.*

invalid if that rate impermissibly incorporates a rate that is zero, *de minimis*, or based entirely on facts available.[20]

Zhangjiagang Lianfeng Comments:

- Commerce's methodology for assigning a rate based entirely on AFA to non-selected respondents is contrary to law and unsupported by substantial evidence.[21]
- Commerce lacks any reasonable basis to conclude that the margin assigned to Shandong Dinglong is reasonably reflective of the cooperating non-selected respondents' dumping margins, where Stanley and Dezhou Hualude have been assigned their own calculated rates.[22]
- Given that the non-selected respondents have cooperated fully, Commerce could not have reasonably concluded that the dumping margin assigned to Shandong Dinglong based on total AFA is reasonably reflective of the dumping margins of other non-selected respondents.[23]
- Commerce must determine a rate for non-selected respondents that is not based upon an adverse inference or a calculation with such adverse inference, which clearly is inapplicable to cooperative non-selected respondents.[24]

Tianjin Jinghai et al. Comments:

- Commerce should continue to assign Tianjin Jinghai *et al.* a separate rate in this proceeding. Furthermore, Tianjin Jinghai *et al.* incorporate by reference arguments made by other respondents in this proceeding that can reduce the margin assigned to separate rate companies.[25]

Tianjin Huixinshangmao et al. Comments:

- Tianjin Huixinshangmao *et al.* supports the arguments of National Nail regarding the calculation of the separate rates margin in the *Preliminary Results* of this review.[26]

The petitioner's Comments:

- Commerce should continue to employ the sample rate calculation methodology used in the *Preliminary Results* for the final results of this review.[27]
- The respondents' arguments based on Commerce's discretionary practice with respect to calculating a separate rate margin are inappropriate. In this review, Commerce used sampling to select respondents for individual examination. Thus, a sample rate is required, which is different than a separate rate margin.[28]

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[20] *Id.* at 4, citing *Laizhou Auto Brake Equipment Co. v. United States*, 32 CIT 711, 722-25 (2008) (*Laizhou*).
[21] *See* Zhangjiagang Lianfeng's Case Brief at 2.
[22] *Id.* at 3.
[23] *Id.*
[24] *Id.* at 4.
[25] *See* Tianjin Jinghai *et al.* Case Brief at 2.
[26] *See* Tianjin Huixinshangmao *et al.* Case Brief at 1.
[27] *See* Petitioner's Rebuttal Brief at 2.
[28] *Id.*

- Commerce's methodology in the *Preliminary Results* was consistent with both its specific practice and policy adopted in 2013 following a notice-and-comment process,[29] and with the only other case[30] in which sampling has been used since the change in practice was adopted.
- Although the respondents argue that Commerce's sample rate calculation methodology is unlawful because it includes a rate based entirely on AFA in the sample rate calculation, these arguments appear to view the sample rate as the equivalent of the all-others rate or the separate rate. In administrative reviews, Commerce has adopted, as a discretionary matter, the methodology used in market economy (ME) investigations for the all-others rate. However, nothing in the statue requires that this methodology be used in non-market economy (NME) proceedings and nothing in the statute requires it be used when Commerce selects respondents pursuant to section 777A(c)(2)(A) of the Act.[31]
- Commerce's distinction between calculating a separate rate margin when it selects mandatory respondents under section 777A(c)(2)(B) of the Act, and calculating a sample rate when selecting mandatory respondents under 777A(c)(2)(A) of the Act, reflects a lawful and reasonable interpretation of the statute given the enforcement concerns at issue and as established on the record of this review.[32]

Commerce's Position: We agree with the petitioner and, for the reasons discussed below, find it appropriate to continue to include the three mandatory respondents' margins in the sample rate calculation.

Section 777A(c)(2) of the Act allows Commerce the discretion to review a limited number of respondents in an administrative review, where it is not practicable to examine all known producers/exporters of subject merchandise, by either (1) examining a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can reasonably be examined. On November 4, 2013, Commerce published its *Sampling Methodology Notice* in which Commerce explained that it was adopting a refinement to its practice regarding respondent selection.[33] In particular, Commerce noted that its practice, generally, had been to select respondents based on the largest volume in proceedings in which limited examination had been necessary. However, Commerce expressed its concern that:

> One consequence of this is that companies under investigation or review with relatively small import volumes have effectively been excluded from individual examination. Over time, this creates a potential enforcement concern in AD

[29] *Id.* at 3-6, citing to *Sampling Methodology Notice*.
[30] *Id.* at 5, citing to *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review*, 2013–2014, 80 FR 55328 (September 15, 2015) (*Shrimp from Vietnam*) and accompanying Issues and Decision Memorandum (IDM), the only other review that employed the sampling methodology, which was unchallenged. In *Shrimp from Vietnam*, three margins were averaged to calculate the sample rate which included one *de minimis* rate.
[31] *Id*.
[32] *Id.* at 6-7.
[33] *See Sampling Methodology Notice*, 78 FR at 65964.

> administrative reviews because, as exporters accounting for smaller volumes of subject merchandise become aware that they are effectively excluded from individual examination by the Department's respondent selection methodology, they may decide to lower their prices as they recognize that their pricing behavior will not affect the AD rates assigned to them. Sampling such companies under section 777A(c)(2)(A) of the Tariff Act of 1930, as amended (the Act), is one way to address this enforcement concern.[34]

Therefore, Commerce adopted a new practice that it will normally rely on sampling for respondent selection purposes in AD administrative reviews when certain conditions are met: (1) there is a request by an interested party for the use of sampling; (2) Commerce has the resources to individually examine at least three companies; (3) the largest three companies (or more if Commerce intends to select more than three respondents) by import volume of the subject merchandise under review account for normally no more than 50 percent of total volume; and (4) information obtained by, or provided to, Commerce provides a reasonable basis to believe or suspect that the average export prices and/or dumping margins for the largest exporters differ from such information that would be associated with the remaining exporters.[35] With respect to the fourth criterion, Commerce stated that "{s}uch a fact pattern supports the existence of potentially significant enforcement concerns, as variation in the dumping behavior of the population gives rise to concerns that a non-random means of respondent selection may systematically exclude certain dumping behavior."[36]

Commerce explained that it was adopting the "statistically valid" sampling methodology that is random, stratified, and uses probability-proportion-to-size samples (PPS) which additionally furthered its goal of addressing enforcement concerns:

> Random selection ensures that every company has a chance of being selected as a respondent and captures potential variability across the population. Stratification by import volume ensures the participation of companies with different ranges of import volumes in the review, which is key to addressing the enforcement concern identified above. Finally, PPS samples ensure that the probability of a company being chosen as a respondent is proportional to its share of imports in the respective stratum.[37]

Lastly, the *Sampling Methodology Notice* explained that Commerce would calculate and assign sample rates as follows:

> After examination of selected respondents by the sampling method, the Department will need to assign a rate to all non-selected companies. To do so, the Department will calculate a "sample rate," based upon an average of the rates for the selected respondents, weighted by the import share of their corresponding

[34] *Id.*
[35] *Id.*, 78 FR at 65964-65.
[36] *Id.*, 78 FR at 65968.
[37] *Id.*, 78 FR at 65964.

> strata. The respondents selected for individual examination through the sampling process will receive their own rates; all companies in the sample population who were not selected for individual examination will receive the sample rate.[38]

In this review, pursuant to section 777A(c)(2) of the Act, we found that the exporters or producers under review constitute a large number and that it was not practicable to make individual weighted-average dumping margin determinations for each of those companies.[39] Additionally, based on a request by the petitioner to select respondents using the sampling methodology, we found that the conditions provided in the *Sampling Methodology Notice* were satisfied, such that it was appropriate to rely on sampling pursuant to section 777A(c)(2)(A) of the Act.[40] In determining to base respondent selection on sampling, we found that the information provided by the petitioner (*i.e.*, company margins from previous segments of the proceedings) provided a reasonable basis to believe or suspect that the average dumping margins for the exporter who has consistently been examined as one of the largest exporters in each review (Stanley) differ from dumping margins that would be associated with the remaining exporters. We explained:

> Specifically, in each of the eight administrative reviews under this order, Stanley has consistently been one of the largest exporters, and has been selected as a mandatory respondent. In addition, Stanley has consistently been a cooperative respondent, and its average calculated weighted-average dumping margin over the previous eight administrative reviews is 7.02 percent. In contrast, in each of the eight administrative reviews, the other mandatory respondents either obtained a much higher calculated margin, did not qualify for a separate rate, or were otherwise non-cooperative and received a margin based on total {AFA}. We further note that, in the one new shipper review conducted under this order, the respondent received a calculated margin of 34.14 percent (significantly higher than Stanley's 13.9 percent margin for the partially-overlapping period of review). Thus, the average margin for respondents other than Stanley, including non-calculated margins, is 106.77 percent. Even when we do not include those non-calculated margins, the average margin for respondents other than Stanley is 105.71 percent. Moreover, throughout the history of the proceeding, the China-wide rate, assigned to those respondents who have failed to demonstrate their independence from the China-wide entity, has remained 118.04 percent.[41]

In short, we determined that given the large disparity between Stanley's calculated margins and the margins assigned to the other respondents in the past eight administrative reviews, this raised the exact same evasion concern that was expressed in the *Sampling Methodology Notice*. Therefore, in light of these concerns, we appropriately relied on a statistically valid sample to select respondents in this review.

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[38] *Id.*, 78 FR at 65965.
[39] *See* Memorandum, "Antidumping Duty Administrative Review of Steel Nails from the People's Republic of China: Respondent Selection Methodology," dated January 9, 2018.
[40] *Id.*
[41] *Id.* (internal footnotes omitted).

Additionally, following the *Sampling Methodology Notice*, we included in our sample population only those companies that we determined to be eligible for a separate rate,[42] and we employed a stratified random PPS sampling procedure to select respondents for individual examination. We have received no new information since the *Preliminary Results* to warrant reconsideration of our separate rate determinations. As a result, for purposes of these final results, we have continued to average the rates for all three selected respondents, weighted by the import share of their corresponding strata, in determining the sample rate. In particular, we note that two of the mandatory respondents, Stanley and Dezhou Hualude, have weighted-average dumping margins which are above *de minimis*. The other mandatory respondent, Shandong Dinglong, received a rate based on AFA based on its withdrawal from the review. Pursuant to the *Sampling Methodology Notice*, and consistent with our past practice, all determined rates will be included in the sample rate.[43] Accordingly, we have averaged the rates for the three selected respondents, weighted by the import share of their corresponding strata.[44]

We note that the Act does not address the establishment of a rate to be applied to individual companies not selected for examination where, as here, Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Additionally, the Act does not address the establishment of a rate to be applied to individual companies not selected for examination in NME countries, which have otherwise demonstrated their eligibility for a separate rate. However, in administrative reviews involving NME countries, where Commerce does not employ sampling as discussed below, Commerce's practice has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in investigations,[45] for guidance when calculating the separate rate for respondents not examined in an administrative review.

[42] *See Sampling Methodology Notice*, 78 FR at 65965 ("In NME cases, only those exporters who receive a separate rate will be included in the sample population. Companies that do not receive a separate rate will not be subject to review pursuant to the elimination of the conditional review of the NME entity practice described below. Therefore, in order to establish the appropriate sample population at the time of the sampling selection, it is necessary for {Commerce} to make its determinations regarding the separate rate status of the companies under review before the sample is determined. For the purpose of constructing the sample rate, {Commerce} expects that companies' separate rate status will remain unchanged once the sample is determined.")

[43] *Id.*, 78 FR at 65969; *see also Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice Rescission of the 2004/2005 New Shipper Review*, 71 FR 6304 (November 14, 2006) (*Brake Rotors*) and accompanying IDM at Comment 1 (including a rate based on AFA in the sample rate calculation); *Laizhou*, 32 CIT 711, 722-25 ("Computing a statistically valid sample rate that is representative of the population as a whole may include the margins determined for all selected respondents, even if that sample rate happens to be composed in part on a respondent's rate which is based on {AFA}.").

[44] *See* Sample Rate Memorandum.

[45] *See Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 22nd Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Reviews; 2015- 2016*; 82 FR 57718 (December 7, 2017); *see also Tapered Roller Bearings and Parts Thereof,Finished and Unfinished, from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Review*; 2012-2013, 79 FR 42758 (July 23, 2014).

Section 735(c)(5)(A) of the Act states the general rule that "the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776." Section 735(c)(5)(B) of the Act provides an exception to the general rule, stating that, where all rates are zero, *de minimis*, or based entirely on facts available, Commerce may use "any reasonable method" to assign the rate to all-other respondents. The SAA states that "{t}he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available."[46] The weighted-average margin selected as the all-others rate may contain elements of facts available, even if it includes adverse inferences.[47]

However, in this case, as discussed above, Commerce has selected respondents through sampling under section 777A(c)(2)(A) of the Act, as opposed to relying on the largest producers/exporters under section 777A(c)(2)(B) of the Act. While there are situations when it is not appropriate to include AFA or zero/*de minimis* rates in the rate to be applied to companies whose entries are not individually examined, Commerce's determination on whether to include or exclude these rates in this case is based on Commerce's method of respondent selection through sampling and the fact that this is an administrative review and not an investigation.

Commerce's decision to include AFA rates in the sample rate has been affirmed by the Court of International Trade (CIT). In *Asocolflores*, the CIT explained that:

> {Commerce} properly included in its all other rate best information rates for companies selected for the sample who did not respond to questionnaires. Respondents must answer; {Commerce} must be in a position to judge who is properly covered by the investigation. Respondents may not make that choice. In a random sampling situation, to exclude such nonresponding companies from the all other rate would undermine the overall methodology. This case is distinguishable from non-random sampling cases on this point.[48]

The CIT recognized that excluding AFA rates from the sample rate would give respondents the ability to manipulate the all others rate. The CIT further acknowledged the importance of including AFA rates in the sample rate to maintain the validity of the sample – an issue that is not present when respondents are selected based on the largest volume. Where respondents are selected based on largest volume, the examination of the level of dumping of the largest exporters does not necessarily inform Commerce of the behavior of the remaining, non-selected firms in the same way as in a sampling context. In other words, the underlying methodology in a random sampling context creates an expectation that the dumping behavior of the selected firms is representative of the population as a whole. Thus, in investigations involving an NME where

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[46] *See Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (SAA) at 873.
[47] *See, e.g., Navneet Publications (India) Ltd. v. United States*, 999 F. Supp. 2d 1354, 1359 (CIT 2014); sections 735(c)(5)(A) and (B) of the Act.
[48] *See Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1114, 1121 n. 11 (CIT 1989) (*Asocolflores*).

Commerce has limited its investigation by selecting the largest firms, in order to assign a rate to the firms that are not individually investigated, Commerce generally calculates an average of the individual rates, except for zero, *de minimis*, and AFA (unless applying "any reasonable method" as discussed above). This is an appropriate and reasonable method to assign a duty rate to firms whose individual behavior remains unknown and where the same expectations underlying the sampling methodology are not present.

The situation in the instant review is therefore fundamentally different because Commerce has not simply chosen the largest exporters as mandatory respondents, but has employed a statistically valid sampling technique for respondent selection. Moreover, this is an administrative review and Commerce is not calculating the "all others rate" pursuant to section 735(c)(5) of the Act. Under the sampling methodology described above, each exporter has a chance of being chosen that is proportional to that exporter's share of export volume. Under this methodology, unlike cases when Commerce chooses the largest respondents, the result is intended to be representative of the entire population, which is the pool of eligible separate rate exporters included in the administrative review. Since the selected companies form a statistical sample of the entire population, Commerce is correct to calculate a margin that is based on the results of all the selected companies, including the firms in the sample that received margins using AFA. Therefore, because a random sampling procedure was used, Commerce reasonably estimated, in accordance with statistical sampling principles, that other exporters in the population might also have received these rates, had the non-selected firms been individually examined. Because Commerce is constructing a sample that is intended to be representative of the population as a whole, it has included all the observations in the sample rate, including the AFA rates. Disregarding these actual observations would be contrary to the very principle of random sampling and would invalidate the sample since the sample is supposed to be indicative of the population as a whole.

This is consistent with Commerce's approach to the sample rate in *Brake Rotors*[49], which was affirmed by the CIT, and in *Shrimp from Vietnam*[50], which was not challenged at the CIT. In affirming *Brake Rotors*, the CIT found it reasonable for Commerce to calculate the sample rate by weight-averaging the individual rates of the mandatory respondents, which included *de minimis* rates, one rate based on AFA, and two calculated rates.[51] In *Shrimp from Vietnam*, the only other case in which Commerce has employed sampling since the *Sampling Methodology Notice*, Commerce included zero/*de minimis* rates in the sample rate.

In the *Sampling Methodology Notice*, we addressed comments seeking the exclusion of *de minimis* margins and margins based entirely on facts available:

> The aim of the sampling methodology is to obtain the population average (mean) dumping margin which is the trade-weighted average dumping margin across all firms

[49] *See Brake Rotors* at Comment 1 (including a rate based on AFA in the sample rate calculation).
[50] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013–2014*, 76 FR 55328 (September 15, 2015) and accompanying IDM (*Shrimp from Vietnam*).
[51] *See Laizhou*, 32 CIT 711, 722-25 ("Computing a statistically valid sample rate that is representative of the population as a whole may include the margins determined for all selected respondents, even if that sample rate happens to be composed in part on a respondent's rate which is based on {AFA}.").

> under review. {Commerce} considered the approaches suggested by the commenters, but found that the methodology described herein remains the most appropriate approach. {Commerce} intends, however, to address any comments on how to assign rates on a case-by-case basis as they arise within a particular proceeding.

For all the reasons discussed herein, Commerce finds that it is appropriate in this review to include all rates to address concerns that the average export prices and/or dumping margins for the largest exporter (*i.e.*, Stanley) differs from the remaining exporters, and to include companies under review with relatively small import volumes that have effectively been excluded from individual examination. Prior to our use of sampling, these companies maintained a "free-pass" by successfully obtaining a separate rate that would be based solely, or largely, on Stanley's margin. Further, our experience in this proceeding, as outlined above, is that when we selected additional mandatory respondents, these companies either stopped cooperating after selection as a mandatory respondent, or would be found dumping at margins much higher than Stanley's margin. Therefore, our use of sampling, and our decision to maintain all three rates, including an AFA rate, in the sample rate, is consistent with the evasion concerns expressed in the *Sampling Methodology Notice* and our specific evasion concerns regarding the large disparity between Stanley's calculated margins and the margins assigned to the other respondents in the past eight administrative reviews. Indeed, the fact that one of the three mandatory respondents in this review provided a separate rate response, then withdrew from participation after it was selected as a mandatory respondent based on sampling, is reflective of our experience of the non-Stanley respondents in the history of this proceeding, as outlined above. This further demonstrates that the inclusion of the company's AFA rate in the sample rate is indicative of the population as a whole. Thus, Commerce will continue to include all three mandatory respondent rates in the sample rate calculation.

Comment 2: Surrogate Financial Ratios

The petitioner's Comments:

- A careful review of the submitted pages from the Saha Asia Industry Co., Ltd.'s (Saha Asia Industry) website provides strong evidence that the company is not solely a producer of nails.[52]
- To the extent it is a producer of nails, it is not predominantly a producer of comparable merchandise.[53] Nails represent only one of nine categories of products that the company offers for sale. The other eight categories represent steel wire products that are not similar to the merchandise under review (*i.e.*, low carbon steel wire, annealing wire, and galvanized wire).[54]
- Saha Asia Industry's financial statements provide no details on its revenues, thus, there is no information on the share of each product category in the company's revenues. The only information available is that nails represent only one of nine categories of products sold by Saha Asia Industry.[55]

[52] *See* Petitioner's Case Brief at 8.
[53] *Id*.
[54] *Id.* at 8-9.
[55] *Id.* at 9.

- Commerce declined using the financial statements of Sahasilp Rivet Industrial Co. (Sahasilp) because it does not contain a detailed breakout of labor and energy to calculate ratios. Because Saha Asia Industry's financial statements do not contain a breakout of energy as a production expense either, the only advantage of those financial statements is the perceived detailed breakout of labor. However, Sahasilp's financial statements contain more details that are relevant and necessary for the calculation of the surrogate financial ratios than do Saha Asia Industry's financial statements.[56]
- Saha Asia Industry's financial statements provide extensive details of management expenses. However, such details are useless as they add nothing to the accuracy of the ratios because they all belong to selling, general & administrative expenses (SG&A) or interest expenses. Thus, despite the seemingly extensive details, very few of them are actually relevant to the surrogate ratio calculations. In contrast, Sahasilp's financial statements do breakout the labor cost. Specifically, Note 16 details "Expenses by Nature," and labor is listed as one of those expenses.[57]
- The most important advantage of the Sahasilp's financial statements is that they segregate the cost of goods purchased for resale from the cost of raw materials and supplies used. This ensures a more accurate calculation of the manufacturing overhead ratio.[58]

Stanley's Comments:

- Commerce selected Saha Asia Industry's financial statements as "the best available information to calculate financial ratios in this review, because these financial statements represent the most complete financial statements on the record."[59]
- The petitioner's attempt to refute record evidence, that Saha Asia Industry is a manufacturer of nails, is mere speculation.[60] They lack any evidentiary support, for example; Saha Asia Industry states that it is a manufacturer and distributor of high quality steel wire products, a statement that plainly describes the fact that Saha Asia Industry distributes the products that it produces. Thus, the petitioner ignores the plain meaning and leaps to the unsupported assertion that Saha Asia Industry resells products manufactured by other companies. However, there is no evidence that the petitioner's assertion is true.[61]
- Since the first administrative review, Commerce has stated that the consumption of steel wire rod (SWR) is key to concluding that a company produces merchandise comparable to nails.[62] While the drawing of SWR into wire is integral to production of the nails and wire products that Saha Asia Industry makes, there is nothing on the record of this review that establishes that Sahasilp consumes SWR, or possesses the machinery required to.[63]

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[56] *Id.* at 10-11.
[57] *Id.* at 12.
[58] *Id*.
[59] *See* Stanley's Rebuttal Brief at 4-5.
[60] *Id.* at 5.
[61] *Id.* at 5-6.
[62] *Id.* at 7, citing to *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) (*First Review*).
[63] *Id.* at 7-8, citing to *Aristocraft of America, LLC v. United States*, 269 F. Supp. 3d 1316,1333 (CIT 2017), the absence of such evidence is consistent with the 2017 observation of the CIT that Sahasilp does not draw wire from wire rod in its production process.

- Although the petitioner contends that Saha Asia Industry's production of drawn wire products, in addition to nails, somehow disqualifies it as a financial surrogate, the fact is that Stanley also produces other drawn wire products in addition to subject nails. Thus, Saha Asia Industry's production experience is directly comparable to Stanley's.[64] In contrast, the record of this review contains no evidence that Sahasilp consumes SWR or produces any of its products from drawn wire.[65]
- Commerce recently determined, in *Hangers from China*, that Sahasilp's financial statement could not be used to calculate surrogate financial ratios because Sahasilp's financial statements do not contain breakouts of labor and energy as production expenses.[66]

Commerce's Position: We disagree with the petitioner that Sahasilp's financial statements contain more details that are relevant and necessary for the calculation of the surrogate financial ratios. When selecting surrogate values, including financial statements for purposes of calculating surrogate financial ratios, Commerce's practice is to use data from ME surrogate companies based on the specificity, contemporaneity, and quality of the data. In considering these factors, consistent with 773(c)(1)(B), for these final results Commerce will continue to rely on the "best available evidence" and calculate the surrogate financial ratios using the 2016 Saha Asia Industry financial statements. In evaluating financial statements for use in calculating the surrogate financial ratios, it is Commerce's preference to match the surrogate companies' production experience with respondents' production experience, and, whenever possible, to select surrogate country producers of identical merchandise provided that the SV data is not distorted or otherwise unreliable.[67]

We agree with the petitioner that Saha Asia Industry sells products beyond nails. However, importantly, Saha Asia Industry is a producer of identical merchandise also, whereas Sahasilp is merely a producer of comparable merchandise. Although the petitioner contends that Saha Asia Industry's nail production represents only one of nine product categories offered for sale, as noted, Commerce prefers to select producers of identical merchandise. We agree with Stanley that the petitioner's argument that Saha Asia Industry is not predominantly a manufacturer of nails is speculative; there is no direct information on the record to support this claim. Because Saha Asia Industry's statements do not break out sales by product type, there is no record evidence indicating that it is not a significant producer of nails.[68] Accordingly, we continue to find that Saha Asia Industry is a producer of identical merchandise and that the respondents'

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[64] *See* Stanley's Rebuttal Brief at 8.
[65] *Id.*
[66] *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 32634 (July 13, 2018) and accompanying PDM, unchanged *see also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 53449 (October 23, 2018) (*Hangers from China*).
[67] *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 15, 2015) and accompanying IDM at Comment 7.
[68] *See* Stanley's Letter, "Certain Steel Nails from the People's Republic of China; Ninth Administrative Review; Preliminary Surrogate Value Data," dated June 18, 2018 at Exhibit SV-2.

production experience is best matched by Saha Asia Industry, in comparison to the other financial statements on the record.

We agree with Stanley that Commerce previously determined that having an integrated wiredrawing process and consuming steel wire rod (SWR) is integral to demonstrate a production process that closely matches that of producers of subject merchandise, and thereby to support a conclusion that a company produces merchandise comparable to nails.[69] As pointed out by Stanley, the record does not support a conclusion that Sahasilp consumes SWR or possesses the machinery to do so. In contrast, wire drawing is integral to the nails and wire products produced by Saha Asia Industry. Because Sahasilp does not draw SWR while Saha Asia does, Commerce finds that Saha Asia Industry's production experience is more comparable to that of Stanley's than is Sahasilp's. Based on these factors, we continue to find it more appropriate to use Saha Asia Industry as a surrogate producer than to select Sahasilp for this purpose.

We agree with Stanley that Sahasilp's financial statements lack breakouts for certain important categories. Specifically, in previous cases (*e.g.*, *Hangers from China*) we rejected the Sahasilp's financial statements because they did not contain breakouts for labor and energy.[70] Although we agree with the petitioner that Saha Asia Industry's financial statements do not contain a breakout for energy either, when comparing the two financial statements overall, we continue to find Saha Asia Industry's statements are the better alternative. The CIT has confirmed that Commerce has "wide discretion" in selecting surrogate sources.[71] When Commerce is faced with two alternatives, even if both present certain flaws, Commerce has discretion to select the better option, it is not required to select a "perfect" source.[72]

Accordingly, we continue to find that the financial statements of Saha Asia Industry are the best available information on the record with which to calculate surrogate financial ratios in this review, because these financial statements do not have the flaws as do the financial statements of the other companies on the record, and represent the most complete financial statements on the record. As explained above, consistent with our practice, Saha Asia Industry's financial statements are contemporaneous, they come from a producer of subject and comparable merchandise with a comparable production experience to that of the respondents, they do not contain any countervailable subsidies, and they are from the primary surrogate country.[73]

Comment 3: Changes to Surrogate Financial Ratios

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[69] *See First Review* at Comment 3.

[70] *See Hangers from China*. In the PDM, Section C "Data Availability", Commerce indicated that Sahasilp's financial statements do not contain a breakout of labor and energy as production expenses. Of particular relevance to the instant review, although the financial statements of another company likewise did not breakout energy as a production expense, their statements did provide a breakout of labor, and on that basis were found to be more suitable than Sahasilp's statements.

[71] *See Fmc Corp. v. United States*, 27 C.I.T. 240 at 250-51. (2003).

[72] *Id*.

[73] *See Preliminary Results* and accompanying PDM; *see also* Memorandum, "Ninth Antidumping Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Results," dated September 4, 2018.

The petitioner's Comments:

- If Commerce continues to use Saha Asia Industry financial statements, Commerce should move the cost for water and electricity from the management expenses from the Energy column to the SG&A column. This would be consistent with the treatment of labor that is part of SG&A being treated as such.[74]
- Commerce excluded Advertising and Promotion Fees from SG&A, however only direct selling expenses that are reported on a transactional specific basis should be excluded. Likewise, advertising and similar expenses that represent indirect selling expenses, should be included in SG&A.[75]
- Commerce ignored the change in inventory of Remaining Goods from Note 5 of the financial statements. Therefore, Commerce should include the change in inventory of finished and trading goods in the column entitled Traded/Finished Goods.[76]

Commerce's Position: We agree with the petitioner that "Water/Electricity" and "Advertising and Promotion Fees" should be included in SG&A, and that changes in the inventory of finished and trading goods should be included in column Traded/Finished Goods. Specifically, "Water/Electricity" is listed under "Management expenses," and this should have been included in SG&A, because "Wages/Labor Costs" that is listed under "Management expenses" is included in SG&A. In addition, we inadvertently excluded the net changes in finished goods and "Advertising and Promotion Fees" from the surrogate SG&A and profit ratio calculations, when we intended to include them. Accordingly, we will make these changes in the final results.

<u>Dezhou Hualude Issues</u>

Comment 4: Application of Partial Facts Available with Adverse Inferences to Tianjin Lingyu

The petitioner's Comments:

- Commerce should apply partial AFA to all of Dezhou Hualude's sales produced by Tianjin Lingyu.[77]
- Commerce's findings raise very serious concerns about the reliability of Tianjin Lingyu's reported FOP data and the overall veracity of the company. Therefore, Commerce should conclude that the company did not provide complete and accurate information at verification, reject its data, and resort to partial AFA.[78]
- The company's effort to cast itself as an unwitting participant in this evasion scheme is not credible. It is highly questionable whether the factory head would be the individual responsible for receiving the printing templates and coordinating with the company's box suppliers to have them printed with the fraudulent country of origin.[79]

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[74] *See* Petitioner's Case Brief at 13.
[75] *Id.*
[76] *Id.* at 13-14.
[77] *Id.* at 4.
[78] *Id.*
[79] *Id.*

- It is obvious that certain boxes of nails were produced long ago and have been sitting for a long period of time. This indicates that Tianjin Lingyu has been producing fraudulently-marked nails for a long time.[80]
- Other certain boxes of nails indicate that Tianjin Lingyu has a history of producing fraudulently-marked boxes that continues in the present.[81]
- Tianjin Lingyu did not provide complete and accurate information at verification. Moreover, its involvement in obvious customs fraud directly undermines the intended remedial effect of the AD order in this proceeding. Thus, Commerce should find that Tianjin Lingyu has failed to submit complete and accurate information, and has failed to cooperate by failing to act to the best of its ability to comply with Commerce's requests for necessary information.[82]
- As partial AFA, Commerce should assign the 118.04 percent rate to all of Dezhou Hualude's sales of subject merchandise produced by Tianjin Lingyu.[83]

Dezhou Hualude's Comments:

- The petitioner alleges that Tianjin Lingyu's data is not reliable and, therefore, Commerce should reject Tianjin Lingyu's FOP data in its entirety and resort to partial AFA, even though all of Tianjin Lingyu's FOPs were verified. Therefore, application of partial AFA to Tianjin Lingyu on this basis is unwarranted and unsupported by substantial evidence on the record.[84]
- Tianjin Lingyu unequivocally denies any involvement in the alleged transshipment as it simply manufactures nails according to its customers' specifications and is not an exporter of merchandise.[85] Company officials at Tianjin Lingyu explained that Tianjin Lingyu is not responsible for deciding what information is to be placed on the boxes.[86]
- The application of partial AFA is also unwarranted because neither Dezhou Hualude nor any of its U.S. customers during the POR were implicated by the alleged evasion or circumvention.[87] Commerce examined at verification the boxes supplied to Tianjin Lingyu by Dezhou Hualude to package nails destined to the United States for Dezhou Hualude's predominant U.S. customer during the POR.[88]
- The record evidence demonstrates that neither Dezhou Hualude nor any of its customers during the POR were implicated by, or had any knowledge of, any alleged circumvention or evasion. To apply partial AFA to Tianjin Lingyu's reported FOPs, which were verified as accurate by Commerce, on the basis of actions undertaken by Tianjin Lingyu's other customers, would unjustifiably punish Dezhou Hualude and its customers for activities in which they were not involved and had no control.[89]

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[80] *Id.* at 5-6.
[81] *Id.* at 6.
[82] *Id.*
[83] *Id.* at 7.
[84] *See* Dezhou Hualude's Rebuttal Brief at 1.
[85] *Id.*
[86] *Id.*
[87] *Id.* at 2.
[88] *Id.*
[89] *Id.* at 3.

- Commerce's observations at the Tianjin Lingyu verification plant tour occurred outside the POR, and should not be attributed to Dezhou Hualude's sales data or Tianjin Lingyu's production data during the POR.[90]
- Commerce performed multiple completeness tests during verification and analyzed Tianjin Lingyu's reported costs of production which reconciled to its books and records. Consequently, substantial evidence on the record supports a finding that Tianjin Lingyu's data was complete and reliable, and any evidence of evasion or circumvention attributed to unrelated exporters or importers should not taint this finding.[91]
- Commerce should find that the application of partial AFA to Tianjin Lingyu is not supported by substantial evidence on the record.[92]

National Nail's Comments:

- Commerce's observations at the Tianjin Lingyu verification plant tour occurred outside the current POR. Therefore, it would be inappropriate for Commerce to arbitrarily assume that its observations of Tianjin Lingyu's factory in October 2018 necessarily reflect the operations of Tianjin Lingyu during the POR.[93]
- After the Tianjin Lingyu factory tour, Commerce examined Dezhou Hualude and specifically searched Dezhou Hualude's sales records and correspondence for any information related to sales to any of the companies identified in the verification addendum photographs or to any of the Chinese trading companies to which Tianjin Lingyu stated that it made sales. Commerce found no such information that indicated any involvement between Dezhou Hualude and any of these other companies.[94]
- The information from Commerce's verification addendum does not support the application of partial AFA. The information is related to post-POR activities of Tianjin Lingyu and there is no factual basis for Commerce to arbitrarily assume that any current activities of Tianjin Lingyu reflect the actual POR activities of Tianjin Lingyu.[95]

Commerce's Position: As discussed below, based on the parties' arguments and our verification findings, for these final results we have determined that application of partial AFA is warranted with respect to Dezhou Hualude's sales of subject merchandise produced by Tianjin Lingyu.

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

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[90] *Id.* at 4.
[91] *Id.*
[92] *Id.* at 9.
[93] *See* National Nail's Rebuttal Brief at 5.
[94] *Id.*
[95] *Id.*

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

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

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[96] Section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.[97] The SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[98] Although intentional conduct is sufficient to establish a failure to cooperate, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[99]

After consideration of the record evidence and the parties' arguments, we determine that use of partial AFA is appropriate with respect to Dezhou Hualude's sales produced by Tianjin Lingyu.

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[96] *See* section 776(b)(1)(B) of the Act.
[97] *See also* 19 CFR 351.308(c).
[98] *See* SAA at 870.
[99] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) .

During the verification plant tour of Tianjin Lingyu, we observed and photographed empty boxes ready for packaging and sealed boxes ready for shipping which were labeled as certain types of steel nails. The boxes were designated for importation into the United States (*i.e.*, identified as certain types of nails, in English, under the brands of two U.S. companies). The boxes were labeled "Made in Thailand." Tianjin Lingyu explained that it produced the nails in the boxes for certain unaffiliated exporting companies, but claimed to be unaware of the meaning of the box labeling because the factory head did not speak English. Tianjin Lingyu stated that the labels were printed at the request of the ultimate customer.[100] Tianjin Lingyu further explained that it sells all of the nails it produces to unaffiliated Chinese trading companies.[101] Because the aforementioned nails were indeed produced by Tianjin Lingyu but falsely labeled as Thai origin at its Chinese factory, we find that this is evidence of fraudulent transshipment activity, and calls into question the veracity, completeness, and accuracy of all of the information provided by Tianjin Lingyu. Commerce takes seriously its role in preventing fraud and evasion on its proceedings, and cannot rely on information from parties who take part in such activities.

During the verification at Dezhou Hualude, we reviewed Dezhou Hualude's books and records and did not find any link between Dezhou Hualude and the U.S. companies identified on the fraudulently marked boxes of nails.[102] However, Dezhou Hualude's sales of subject merchandise during the POR account for a significant portion of Tianjin Lingyu's total production quantity during the POR.[103] Similarly, Tianjin Lingyu is the supplier of a substantial portion of Dezhou Hualude's sales of subject merchandise during the POR.[104] Therefore, Dezhou Hualude is not only a significant customer of Tianjin Lingyu, but Tianjin Lingyu is a supplier of a substantial portion of Dezhou Hualude's sales of subject merchandise. As a result, we find that Dezhou Hualude could, or should, have been aware of Tianjin Lingyu's fraudulent transshipment activity, and therefore induced Tianjin Lingyu's cooperation by refusing to do business with Tianjin Lingyu.[105] Further, we find that Tianjin Lingyu would not be sufficiently deterred from its fraudulent conduct if its customer (*i.e.*, Dezhou Hualude) was unaffected by Tianjin Liangyu's non-cooperation.

As a result of the above, we find that Tianjin Lingyu has significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act, and has provided information which could not be verified pursuant to section 776(a)(2)(D) of the Act. Therefore, we determine that selection from among the facts otherwise available is necessary. In addition, pursuant to section 776(b) of the

[100] *See* Dezhou Hualude Verification Report at 9; Memorandum, "Certain Steel Nails from the People's Republic of China: Verification Report Addendum," dated December 20, 2018 (Verification Addendum).
[101] *Id.*
[102] *Id.* at 10.
[103] *See* Dezhou Hualude's Letter, "Certain Steel Nails from the People's Republic of China: Submission of Dezhou Hualude's 2nd Supplemental Response," dated July 30, 2018 at Exhibit S3-1; and Dezhou Hualude's Letter, "Certain Steel Nails from the People's Republic of China: Submission of Section D Response of Dezhou Hualude Hardware Products Co., Ltd.," dated June 6, 2017 at Exhibit D-5-1.
[104] *See* Dezhou Hualude's Letter, "Certain Steel Nails from the People's Republic of China: Submission of Section C Response of Dezhou Hualude Hardware Products Co., Ltd.," dated May 21, 2017 at Exhibit C-1.
[105] *See Mueller Comercial De Mexico, S. De R.L. De C.V. v. United States*, 753 F.3d 1227, 1233 (Fed. Cir. 2014) (*Mueller*). In *Mueller*, the Federal Circuit recognized that Commerce may use an adverse inference in selecting from the facts otherwise available in determining a respondent's dumping margin in order to induce cooperation by other interested parties whose information is needed to calculate that respondent's dumping margin, in situations where the respondent has a mechanism to induce the non-cooperating party to cooperate. *Id.*

Act, for the reasons discussed above we find that both Tianjin Lingyu and Dezhou Hualude have failed to act to the best of their ability, and therefore the application of facts otherwise available with an adverse inference is warranted.

We are applying partial AFA for Dezhou Hualude's sales of subject merchandise produced by Tianjin Lingyu. We find that total AFA is not appropriate because we have no evidence that the issues identified above have impacted Dezhou Hualude's sales of subject merchandise produced by other suppliers. We have selected as partial AFA the highest dumping margin applied in any segment of this proceeding, *i.e.*, 118.04 percent pursuant to section 776(d)(1)(B) of the Act. Pursuant to section 776(c)(2), we are not required to corroborate this rate.

Finally, we have serious concerns with Tianjin Lingyu's actions (*i.e.*, producing fraudulently marked boxes of nails and providing contradictory and inaccurate information at verification), which not only reflect a failure to cooperate that warrants application of an adverse inference, but also raise serious concerns regarding attempts to undermine the administrative process. Commerce takes such issues seriously, and we intend to share with CBP evidence gathered in the course of our proceedings. In addition, we will continue to look into this matter further in any future proceeding involving Tianjin Lingyu.

Comment 5: Incorporate FOP database which includes missing CONNUMs

Dezhou Hualude's Comments:

- During the preparation of the overall weight-averaged FOP database and the final sales database in response to Commerce's request for the submission of post-verification databases, Dezhou Hualude realized that despite the appropriate changes to certain CONNUMs, Dezhou Hualude still sold the original CONNUMs during the POR.[106]
- Dezhou Hualude requests that Commerce accept and use the overall weighted-average FOP database, which incorporates the three missing CONNUMs in the final FOP database.[107]

Commerce's Position: We agree with Dezhou Hualude, and will use the FOP database which includes the missing CONNUMs.

Comment 6: Application of Partial AFA for Tianjin Lingyu's FOP for Water Coating

Dezhou Hualude's Comments:

- Commerce's use of the highest report FOP usage rate for zinc coating to value the water coating FOP was not based on substantial evidence on the record and is otherwise not in accordance with law.[108]
- Commerce should rely upon neutral facts available to fill any gaps created by Commerce's rejection of Tianjin Lingyu's reported FOP for water coating. Thus,

[106] *See* Dezhou Hualude's Case Brief at 2-3.
[107] *Id.* at 3.
[108] *Id.* at 3.

Commerce should use Tianjin Yongchang's reported water coating FOP as a more appropriate neutral facts available to value Tianjin Lingyu's water coating FOP.[109]

The petitioner's Comments:

- In the event that Commerce does not find Tianjin Lingyu's data unreliable, Commerce should make no changes to its partial AFA determination for Tianjin Lingyu's FOP for Water Coating, because the record clearly supports Commerce's *Preliminary Results*.[110]
- Dezhou Hualude provides no basis for Commerce to reverse this determination. Commerce should reject respondent's claims and continue to apply partial AFA to the water coating FOP reported for nails supplied by Tianjin Lingyu in the final results.[111]

Commerce's Position: Since we are applying partial AFA for Dezhou Hualude's sales of subject merchandise produced by Tianjin Lingyu, we find this issue moot and will not address it.

Comment 7: Materials Classified as Factory Overhead

The petitioner's Comments:

- Commerce asked Dezhou Hualude to clarify whether any materials were classified as factory overhead and not included in the FOPs. However, Dezhou Hualude evaded this request by limiting its response only to materials that the company itself defined as raw materials.[112]
- Commerce repeated its request to provide a detailed and comprehensive list of all materials you consider to be part of factory overhead. In response, Dezhou Hualude did not submit the requested information, justifying it by the fact that neither the manufacturers of the nails (*i.e.*, Tianjin Lingyu, Tianjin Yongchang), nor its galvanizing tollers use the account of factory overhead to record any costs.[113] Thus, Commerce gave Dezhou Hualude another chance to provide the requested information, but again Hualude dodged the question.[114]
- Since, Dezhou Hualude failed to provide the repeatedly requested information, Commerce should resort to facts available in this respect. As facts available, Commerce could use the details provided for the components of the cost of production for December 2016 in the Tianjin Lingyu cost reconciliation. Based on that information, it is possible to calculate the percentage the cost of maintenance and consumables represented of the cost of raw materials. As facts available for the purposes of final results, Commerce should apply an estimate of the cost omitted as the cost of raw materials for Dezhou Hualude.[115]

Dezhou Hualude's Comments:

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[109] *Id.* at 7-8.
[110] *See* Petitioner's Rebuttal Brief at 14.
[111] *Id.* at 15.
[112] *See* Petitioner's Case Brief at 14.
[113] *Id.* at 15.
[114] *Id.* at 14.
[115] *Id.* at 15-16.

- Dezhou Hualude's suppliers completely and accurately reported their consumption of FOPs and reported all costs of production, including those that could be classified as factory overhead expenses. All expenses have been accounted for and the manner in which Dezhou Hualude's suppliers reported their production costs is consistent with its ordinary course of business and with normal accounting procedures. Contrary to the petitioner's assertions, there is nothing unusual or insidious with respect to this reporting methodology.[116]
- The petitioner's request for an adjustment to the cost of raw materials based on partial AFA is unwarranted under the circumstances because Dezhou Hualude and its tollers and suppliers acted to the best of their ability to supply Commerce the requested information within the constraints of their manual accounting systems.[117]
- In the *Preliminary Results*, Commerce "determined to apply a surrogate ratio for factory overhead."[118] Nothing in the record supports the adjustment requested by the petitioner and Commerce should continue to assign the values relied upon in the *Preliminary Results*.[119]
- Commerce should find that Dezhou Hualude reported complete and accurate factory overhead.[120]

Commerce's Position: We disagree with the petitioner that Dezhou Hualude failed to provide the requested information. In response to Commerce's questions, Dezhou Hualude timely provided the requested information.[121] Dezhou Hualude explained on several occasions that its suppliers and tollers do not record the account of factory overheard in their normal books and records, *i.e.*, they do not record any overhead in their books and records. In addition, section 773(f)(1)(A) of the Act states costs shall normally be calculated on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country. Thus, Dezhou Hualude's suppliers and tollers completely and accurately reported their consumption of FOPs and reported all costs of production, including those that could be classified as factory overhead expenses.

Comment 8: Labor Cost

The petitioner's Comments:

- Commerce instructed Dezhou Hualude to include all labor cost in the reported FOP, and twice asked the company to confirm that it followed the instructions. First, Dezhou Hualude tried to evade the question by referring only to all the workshop workers that

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116 *See* Dezhou Hualude's Rebuttal Brief at 5.
117 *Id.* at 7, citing to *A.K. Steel Corp. v. United States*, 346 F. Supp. 2d 1348, 1354 (CIT 2004) (finding the respondent acted to the best of its ability because it provided "the most precise data available from its accounting system"); *China Steel Corp. v. United States*, 306 F. Supp. 2d 1291, 1303-1304 (CIT 2004).
118 *Id.* at 7, citing to *Preliminary Results* and accompanying PDM at 5.
119 *Id.* at 7-8.
120 *Id.* at 9.
121 *See* Dezhou Hualude's Letter, "Certain Steel Nails from the People's Republic of China: Submission of Dezhou Hualude's 2nd Supplemental Sections D Response," dated July 16, 2018; and Dezhou Hualude's Letter, "Certain Steel Nails from the People's Republic of China: Submission of Dezhou Hualude's 1st Supplemental Response (Questions 27-44, Sections D)," dated July 16, 2018.

had production line jobs. Such a response was evasive because it created a loophole leaving the possibility of some administrative personnel to be excluded. This turned out to be the case when Commerce asked for a more specific confirmation, which forced the company to admit that it did not follow instructions and in fact had excluded the "labor hours associated with sales staff, purchase staff, accounting staff, and HR staff, which are classified into {SG&A}."[122]

- Since Dezhou Hualude failed to follow Commerce's explicit and repeated instructions, which resulted in understatement of the labor FOPs, Commerce should resort to AFA.[123] As AFA, Commerce could use the details provided for the breakdown of its labor cost for December 2016 in the Shandong Hongyi cost reconciliation. Based on that information, it is possible to calculate the percentage of unreported labor cost. Thus, as AFA for the purposes of final results, Commerce should estimate and apply an additional labor cost to the reported labor cost.[124]

Dezhou Hualude's Comments:

- Dezhou Hualude reported all labor hours for sales staff, purchase staff, accounting staff, and human resources (HR) staff which were classified into SG&A. Additionally, Commerce accepted the methodology for reporting labor hours, which is consistent with the suppliers' books and records. Thus, there is no basis to make an adjustment to the labor hours FOP when all hours have been accounted.[125]
- The petitioner seeks to create an issue where none exists and any such adjustment to the labor FOPs is unwarranted.[126]
- Any adjustment to the labor FOPs would result in an impermissible double-counting of costs and should therefore be avoided.[127]
- Commerce should find that Dezhou Hualude reported complete and accurate labor costs.[128]

Commerce's Position: We disagree with the petitioner that Dezhou Hualude failed to follow Commerce's explicit and repeated instructions, which resulted in understatement of the labor FOPs. We find that Dezhou Hualude's initial response was not clear that it reported all labor hours.[129] However, in a supplemental questionnaire, we asked Dezhou Hualude to confirm that all hours were reported in the labor FOP, and included the labor hours of all employees, regardless of their functions, for the three reported manufactures.[130] Dezhou Hualude stated that the FOP database included all labor hours of all employees with workshop jobs, including the

[122] *See* Petitioner's Case Brief at 16.
[123] *Id.* at 17.
[124] *Id.* at 17.
[125] *See* Dezhou Hualude's Rebuttal Brief at 8.
[126] *Id.*
[127] *Id.* at 8-9, citing to *Holmes Products Corp. v. United States,* 795 F. Supp. 1205, 1208 (CIT 1992) ("[F]air (apples to apples) comparison is the goal of price comparisons in antidumping law. Double counting is to be avoided.").
[128] *Id.* at 9.
[129] *See* Dezhou Hualude's Letter, "Certain Steel Nails from the People's Republic of China: Submission of Section D Response of Dezhou Hualude Hardware Products Co., Ltd.," dated June 6, 2018.
[130] *See* Dezhou Hualude's Letter, "Certain Steel Nails from the People's Republic of China: Submission of Dezhou Hualude's 2nd Supplemental Response," dated July 30, 2018.

direct production line work, indirect supporting workshop jobs such as equipment maintenance, warehouse keeping, forklifts, workshop management, *etc*., and packing work.[131] Dezhou Hualude further clarified and stated that the labor hours associated with sales staff, purchase staff, accounting staff, and HR staff are costs which are classified into SG&A, and are not included in the labor hours reported in the FOP database.[132] Therefore, we did not instruct Dezhou Hualude to make any changes to the FOP database with regard to labor. Further, at verification we noted no discrepancies in Dezhou Hualude's reported labor FOP.[133]

Based on our review of Saha Asia Industry's financial statements, we included categories for "sales department wages" and "management expenses – wages/labor cost" in the SG&A expense.[134] Therefore, to include Dezhou Hualude's labor hours for sales staff, purchase staff, accounting staff, and HR staff in the labor FOP, as the petitioner has proposed, would impermissibly double-count SG&A labor.[135]

Comment 9: Adjust Dezhou Hualude's U.S. Price for International Freight and Marine Insurance Expenses

The petitioner's Comments:

- Dezhou Hualude incurred international ocean freight (INTNFRU) and marine insurance (MARNINU) costs for those U.S. sales where "YES" was reported under the INTNFRU and MARNINU fields in the U.S. sales database. However, Commerce did not adjust U.S. price for any of the international freight or marine insurance costs incurred.[136]
- Since the record contains the data and information necessary to make these adjustments, Commerce should deduct international freight and marine insurance from Dezhou Hualude's reported U.S. prices in its final margin calculations.[137]

Commerce's Position: We agree with the petitioner. We inadvertently excluded INTNFRU and MARNINU from the margin programming in the *Preliminary Results*. For the final results, we will adjust U.S. price for INTNFRU and MARNINU in the margin programming.

Comment 10: Use Invoice Data as Dezhou Hualude's U.S. Date of Sale

The petitioner's Comments:

- In its *Preliminary Results* for Dezhou Hualude, Commerce used the invoice date as the date of sale for U.S. sales. However, in its preliminary margin programming, Commerce

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[131] *Id.*
[132] *Id.*
[133] *See Memorandum*, "Verification of the Questionnaire Responses of Dezhou Hualude Hardware Products Co., Ltd. in the Antidumping Review of Certain Steel Nails from the People's Republic of China," dated December 20, 2018 (Verification Report).
[134] *See* Memorandum, "Ninth Antidumping Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Results," dated September 4, 2018 at Exhibit 11.
[135] *See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69494 (December 13, 1999).
[136] *See* Petitioner's Case Brief at 21-22.
[137] *Id.* at 22.

relied on the variable for shipment date (SHIPDATU), rather than invoice date (SALINDTU).[138]

- Commerce should correct this error by simply revising the programming to set the US date equal to SALINDTU.[139]

Commerce's Position: We agree with the petitioner. We inadvertently used SHIPDATU in the margin programming for the *Preliminary Results*. For the final results, we will use SALINDTU in the margin program.

Comment 11: Dezhou Hualude's Minor Corrections

Dezhou Hualude's Comments:

- Commerce should incorporate the minor corrections presented prior to the beginning of Dezhou Hualude's sales verification, and the FOP verifications of Tianjin Yongchang and Tianjin Lingyu in its Dezhou Hualude's margin calculation for these final results.[140]
- Among these corrections are a revised sales database for Dezhou Hualude revising certain payment dates, product codes and relevant characteristics, container weights, container counts, zip codes, and the sales terms for certain of its sales as well as the results changes to expenses.[141]
- In addition, Commerce should revise CONNUMs for Tianjin Lingyu and Tianjin Yongchang's Section D databases.

Commerce's Position: We agree with Dezhou Hualude, in part. For these final results we have accepted Dezhou Hualude's revised sales database and Tianjin Yongchang's revised FOP database as it is Commerce's practice to accept insignificant changes or corrections to a respondent's data on the first day of verification.[142] With respect to Tianjin Lingyu's revised FOP database, as discussed above in Comment 4, because we are not relying on Tianjin Lingyu's information for these final results and instead applying partial facts available to these sales, we are not accepting these minor corrections.

<u>Stanley Issues</u>

Comment 12: Collating Wire Surrogate Value

Stanley's Comments:

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[138] *Id.*
[139] *Id.*
[140] *See* Dezhou Hualude's Case Brief at 1-2.
[141] *Id.* at 2.
[142] *See Certain New Pneumatic Off-the-Road Tires from India: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 82 FR 4848 (January 17, 2018) and accompanying IDM at Comment 5.

- Commerce erroneously valued collating wire at the *Preliminary Results* using HTS 7217.20, "Wire Of Iron, Nonaly Stl, Plated Or Coated with Zinc." However, Stanley reported that the collating wire consumed is coated with copper.[143]
- For the final results, Commerce should value Stanley's collating wire using HTS 7217.30, "wire of iron or non-alloy steel, plated or coated with other base metals."[144]

The petitioner's Comments:

- Commerce should continue to value collating wire using HTS 7217.20. While Stanley's narrative asserts that the wire consumed is copper coated, the specifications provided do not evince this point.[145]
- Moreover, Stanley classified its collating wire under HTS 7217.20 in its surrogate value submission to Commerce.[146]

Commerce's Position: We agree with Stanley. In its original Section D questionnaire, Stanley reported that it "purchased copper-plated, non-alloy steel collating wire from nonmarket suppliers and consumed this material to collate subject nails."[147] While the petitioner asserts that the specifications provided by Stanley do not support this point, we find that the information provided by Stanley is sufficient to conclude that its collating wire is copper plated.[148] Accordingly, for these final results, Commerce will value Stanley's collating wire using Thai HTS 7217.30.

Comment 13: Small Glass Balls Surrogate Value

Stanley's Comments:

- Commerce erroneously valued small glass balls consumed by Stanley's galvanizer using the surrogate value for medium glass balls.[149]
- Commerce should value small glass balls using the correct subheading HTS 7018.20, "Glass Microspheres Not Exceeding 1 mm in Diameter" for these final results.

Commerce's Position: We agree with Stanley. At the *Preliminary Results*, we inadvertently applied the incorrect HTS to small glass balls consumed by Stanley's galvanizer.[150] For these final results, we will value small glass balls using Thai HTS category 7018.20.

Comment 14: Sealing Tape Surrogate Value

Stanley:

[143] *See* Stanley's Case Brief at 4-5.
[144] *Id.* at 5.
[145] *See* Petitioner's Rebuttal Brief at 11.
[146] *Id.*
[147] *See* Stanley's June 4, 2018 Section D Questionnaire Response (Stanly DQR) at 30.
[148] *Id.* at page 1 of Exhibit D-14.
[149] *See* Stanley's Case Brief at 5-6.
[150] *See* Stanley SDR at 62.

- Commerce should revise its calculation of the SV for Stanley's sealing tape of 412.58 baht per-kilogram (kg) based on the value of imports classified under Thai HTS subheading 3919.10, because this HTS subheading is a general basket category that does not differentiate products based on the kind of plastic from which the sealing tape is made.[151] The SV used in the preliminary results overstates the correct SV for sealing, which should be corrected in the final results.[152]
- This preliminary calculation conflicts with the seventh administrative review of *Nails from China*, in which Commerce, over the petitioner's objections, based the SV for Staley's sealing tape on Thai HTS subheading 3920.20.10. Further, the CIT ruled that Commerce's calculation of the SV of Stanley's sealing tape in the seventh administrative review was lawful. The sealing tape used in the present review is the same sealing tape used in the seventh administrative review.[153]
- Stanley's sealing tape is more specifically described in 3920.20.10 with a SV of 88.23 baht per-kg.[154]
- There is no factual or legal justification for Commerce to calculate the SV of Stanley's sealing tape under any subheading other than 3920.20.10.[155]

Commerce'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."[156] Based on the Thai description of 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.[157]

Comment 15: Treatment of Stanley's Rubber Bands

The petitioner's Comments:

- In the *Preliminary Results*, Commerce incorrectly treated Stanley's rubber band input as a packing material rather than a direct material input.[158]
- Because its responses show that rubber bands were used in the packaging of its coiled nail products to prevent unwinding, rubber bands are necessary to the survival of coiled collated nails.[159]
- In the sixth administrative review, Commerce determined that Stanley's rubber ban input is a direct material input.[160]

[151] *See* Stanley's Case Brief at 6.
[152] *Id.* at 8.
[153] *Id*. at 7-8.
[154] *Id.* at 6.
[155] *Id.* at 8.
[156] *See* Stanley Section D Response at Exhibit D-1(a).
[157] *See* Stanley Final Analysis Memorandum.
[158] *See* Petitioner's Case Brief at 17.
[159] *Id.* at 18-19.
[160] *Id.* at 19-20.

Commerce's Position: We agree with the petitioner. Commerce addressed this issue in the sixth administrative review.[161] There, we fully explained our rationale for treating Stanley's rubber bands as a direct material input and we find that nothing has changed since then. Specifically, the rubber bands are inescapably purchased along with the collated coil nails and serve the function of preventing the finished product from unwinding. That the rubber band input was treated as a packing material rather than a direct material input was inadvertent. In fact, ever since Stanley first reported rubber bands as a FOP during the sixth administrative review,[162] Commerce has consistently classified its rubber bands as a direct material in the margin calculation due to how they are used in the production process, as described by Stanley.

Comment 16: Black Liquor and Passivation Liquid Surrogate Values

The petitioner's Comments:

- In the *Preliminary Results*, Commerce intended to value Stanley's passivation liquid using Thai HTS 3810.10, "Pickling Preparation for Metal Surfaces, Soldering, *Etc*." as indicated in its Preliminary SV Memo.[163]
- However, Commerce applied the SV corresponding to Thai HTS 3810.10.00.001, "Pickling Preparation For Metal Surfaces," the input for Stanley's black liquor which is listed immediately below passivation liquid on the aforementioned worksheet.
- Commerce should correct this error for the final results and value the passivation liquid input using HTS 3810.10.

Stanley's Comments:

- The petitioner is correct that an error was made in applying the SV corresponding to Thai HTS 3810.10.00.001 to our value passivation liquid. However, it was also wrong to value our black liquor under Thai HTS 3810.10.00.001. category. In fact, both inputs should be valued under Thai HTS category 3810.90, "Pickling preparations for metal surfaces: Other".[164]
- Thai HTS 3810.10 covers "Pickling preparations for metal surfaces; soldering, welding, or brazing powders and pastes consisting of metal other materials."[165]
- By contrast, as evidenced by their names, passivation liquid and black liquor are neither powders nor pastes and should instead be valued using HTS 3810.90.[166]

Commerce's Position: Commerce agrees with Stanley that black liquor and passivation liquids are neither powders nor pastes according to their names. Accordingly, for these final results, Commerce will value Stanley's black liquor and passivation liquid using Thai HTS 3810.90.

Comment 17: Transportation Distances for Stanley's Packing Materials

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[161] *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 IDM at Comment 9.
[162] *Id.*
[163] *See* Petitioner's Case Brief at 21.
[164] *See* Stanley's Rebuttal Brief at 10-11.
[165] *Id.*
[166] *Id.*

Stanley's Comments:

- In the *Preliminary Results,* Commerce incorrectly stated that no freight distances were reported for rubber bands, sealing tap, wood, ink, airbags, blank labels, and film. As a result, Commerce used the *Sigma* distance to calculate transportation costs for these inputs.[167] The use of *Sigma* distance distorts the transport expenses for these packaging materials.[168]
- Stanley reported the transportation distances for these inputs at Exhibit D-1(a) of Stanley's Section D questionnaire response, and thus Commerce should use the actual reported distances in the final results.[169]

Commerce's Position: Commerce agrees with Stanley. In the *Preliminary Results,* Commerce inadvertently adjusted Stanley's reported transportation distances for rubber bands, sealing tape, wood, ink, airbags, blank labels, and film. Commerce added to Thai import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value, in accordance with the decision of the Federal Circuit in *Sigma*.[170] However, while the distances at issue were not included in Stanley's FOP database, Stanley correctly notes that it reported the transportation distances for each of the above packing material inputs at Exhibit D-1(a) of Stanley's Section D questionnaire response.[171] Accordingly, for these final results, Commerce is correcting this inadvertent error in the *Preliminary Results* and is using the actual distances reported by Stanley in its Section D questionnaire response.

Comment 18: Treatment of Irrecoverable VAT

Stanley's Position:

- At the *Preliminary Results,* Commerce made a downward adjustment to Stanley's U.S. selling prices by deducting an amount equal to twelve percent of the export value of each shipment to account for VAT that is not refunded upon export.[172]
- In recent decisions, the CIT has held this reduction to be unlawful because Commerce's statements that "irrecoverable VAT 'amounts to an export tax, duty, or other charge imposed on exported merchandise' … and "is a product-specific export tax, duty, or other charge that is incurred on the export of subject merchandise" are statements "that are not equivalent of a finding that VAT actually was paid 'on the exportation of' the subject {merchandise}.[173]

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[167] *See* Stanley's Case Brief at 8, citing *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997) (*Sigma*).
[168] *Id.* at 9.
[169] *Id.* at 8-9.
[170] *See* PDM at 26-27; Memorandum, "Eighth Administrative Review of Certain Steel Nails from the People's Republic of China: Preliminary Results Analysis Memorandum for Stanley," dated September 4, 2018 at Attachment 1, lines 1174-1181.
[171] *See* Stanley DQR at Exhibit D-1(a).
[172] *See* Stanley's Case Brief at 9.
[173] *Id.* at 9-10.

- The CIT also found Commerce's interpretation of Section 772a(c)(2)(B) of the Act to be unlawful on the basis of the statute's plain meaning.[174]
- Further, the CIT found that Commerce's interpretation of the statute to conflict with congressional intent because, according to the Statement of Administrative Action, "the only charge to the export tax adjustment {in the prior law, *i.e.*, the Trade Agreements Act of 1979 (TAA 1979)} Congress intended to make in enacting the URAA was the change to the new terminology used to describe what was being adjusted."[175]
- The Court also concluded that Commerce's adjustment to account for irrecoverable VAT conflicted with the principle that dumping margins should be tax neutral and making an adjustment under these circumstances would be double counting.[176]
- The Court found that under the correct implementation of the statute, irrecoverable VAT does not result in an increase or a decrease in a dumping margin regardless of whether the exporting country is a ME country or a NME country because Congress made no exception for the determination of the export price or constructed export price for goods exported from NME countries. Although ME and NME countries are treated differently as to the determination of normal value, they are not treated differently as to the determination of U.S. price.[177]
- The Court rejected Commerce's attempt to distinguish China from other countries with respect to VAT, disagreeing with the Department's "flawed reasoning" that Chinese irrecoverable VAT is within the scope of Section 772a(c)(2)(B) of the Act simply because it is irrecoverable.[178]

The petitioner's Comments:

- While Commerce did eliminate the adjustment for irrecoverable VAT in the recent proceeding on remand (*e.g., Qingdao Qihang Tyre I*), it did so under protest. As such, in other cases Commerce has continued its established practice and regularly adjusted for irrecoverable VAT in other antidumping proceedings involving imports from China.[179]
- For these final results, Commerce should continue to adjust for irrecoverable VAT.[180]

Commerce's Position: We agree with the petitioner. While Stanley cites to the CIT's recent findings in *Qingdao I*, *Qingdao II*, and *Jiangsu Senmao*,[181] the petitioner correctly notes that Commerce eliminated this adjustment for irrecoverable VAT under protest.[182] Specifically, Commerce stated that "{w}e disagree with the Court's finding that Commerce impermissibly

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[174] *Id.* at 10, citing *Qingdao Qihang Tyre Co., Ltd. v. United States*, 308 F. Supp 3d 1329, 1339 (CIT 2018) (*Qingdao I*).
[175] *Id.* at 11-12.
[176] *Id.* at 12.
[177] *Id.*
[178] *Id.* at 12-13.
[179] *See* Petitioner's Rebuttal Brief at 11-12.
[180] *Id.* at 12-13.
[181] *See Qingdao I*, 308 F. Supp 3d 1329; *see also Qingdao Qihang Tyre Co., Ltd. v. United States*, 352 F. Supp. 3d. 1345 (CIT December 21, 2018 (*Qiangdao II*); and *Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. v. United States*, 322 F. Supp. 3d 1308 (CIT 2018) (*Jiangsu Senmao*).
[182] *See Qingdao Qihang Tyre Co., Ltd. et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-35 (CIT 2018); *Final Results of Redetermination Pursuant to Court Demand* at 8 (July 24, 2018).

construed section 772(c)(2)(B) of the Act with respect to irrevocable VAT, and maintain our current practice."[183] Accordingly, for these final results, Commerce will continue to adjust Stanley's U.S. price for irrecoverable VAT.

Comment 19: Correction of a Transposition Error for Zinc Phosphate

The petitioner's Comments:

- In the *Preliminary Results*, Commerce intended to value Stanley's zinc phosphate using Thai HTS 2835.29.90.090, "Phosphates, Nesoi, Other," as indicated in its Preliminary SV Memo.[184]
- However, Commerce inadvertently valued Stanley's zinc phosphate using Thai HTS 2834.2990.090, "Nitrates, Except Nitrates of Potassium Or Of Bismuth, Nesoi, Other," the SV for nickel nitrate.[185]

Commerce's Position: We agree with the petitioner. At the *Preliminary Results*, Commerce inadvertently transposed the SV for zinc phosphate using the Thai HTS 2834.2990.090. For these final results, we will correctly value Stanley's zinc phosphate using Thai HTS 2835.29.90.090.

V. RECOMMENDATION

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

☒	☐
Agree	Disagree

4/17/2019

X

Signed by: JEFFREY KESSLER