A-570-909
AR: 8/1/2017 - 7/31/2018
Public Document
E&C/OV: AC/BB

October 10, 2019

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2017-2018 Antidumping Duty Administrative Review: Certain Steel Nails from the People's Republic of China

---

SUMMARY

The Department of Commerce (Commerce) is conducting the tenth administrative review of the antidumping duty (AD) order on certain steel nails (nails) from the People's Republic of China (China).[1] Commerce preliminarily determines that mandatory respondents Shanxi Pioneer Hardware Industrial Co., Ltd (Pioneer), Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively Stanley), and Tianjin Universal Machinery Imp. & Exp. Corporation (Universal), sold merchandise at below normal value (NV) during the period of review (POR), August 1, 2017, through July 31, 2018.[2] Commerce also preliminarily determines that, with respect to information necessary to calculate a dumping margin, Universal failed to cooperate to the best of its ability by not responding to the AD questionnaire, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)-(b) of the Tariff Act of 1930, as amended (the Act).[3] As adverse facts available (AFA), we preliminarily determine to apply the AFA rate of 118.04 percent to Universal. In addition to the three mandatory respondents, 17 other separate rate applicants demonstrated that

---

[1] *See Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008).
[2] *See* the petitioner's Letter, "Certain Steel Nails from the People's Republic of China: Comments on CBP Data and Request for Sampling," dated December 12, 2018; and Stanley's Letter, "Antidumping Duty Order, Certain Steel Nails from the People's Republic of China; Request for Ninth Administrative Review," dated August 30, 2017.
[3] *See* Universal's Letter, "Certain Steel Nails from the People's Republic of China, 10th Administrative Review," dated June 25, 2019; s*ee also*, "Use of Facts Otherwise Available" and "Use of Adverse Inferences" sections below for further details.

they are entitled to a separate rate and have been assigned the sample rate.[4] Moreover, 11 companies reported that they had no shipments during the POR. Additionally, we preliminarily determine that 182 other companies for which a review was initiated are ineligible for a separate rate and considered to be part of the China-wide entity. The preliminary rates assigned to each of these companies can be found in the "Preliminary Results of Review" section of the accompanying *Federal Register* notice.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

BACKGROUND

Between August 30 and August 31, 2018, Stanley, Mid Continent Steel & Wire, Inc. (the petitioner), Shanxi Tianli Industries Co., Ltd. and Shanghai Yueda Nails Industry Co., Ltd., Dezhou Hualude Hardware Products Co., Ltd. and Mingguang Ruifeng Hardware Products Co., Ltd. and Qingdao D&L Group Ltd., requested an administrative review.[5] On October 4, 2018, Commerce initiated the tenth administrative review of nails from China with respect to 202 companies.[6] On January 28, 2019, Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from December 22, 2018, through January 28, 2019.[7] On May 19, 2019, Commerce extended the deadline to issue the preliminary results by an additional 120 days.[8]

On December 7, 2018, Commerce released U.S. Customs and Border Protection (CBP) data under administrative protective order (APO) to all interested parties having an APO and invited

[4] *See* Memorandum, "Preliminary Results of the Tenth Antidumping Administrative Review of Certain Steel Nails from the People's Republic of China: Calculation of the Sample Margin for Respondents Not Selected for Individual Examination," dated concurrently with this memorandum (Sample Rate Memorandum).

[5] *See* Stanley's Letter, "Antidumping Duty Order, Certain Steel Nails from the People's Republic of China; Request for a Tenth Administrative Review," dated August 30, 2018; *see also* the petitioner's Letter, "Certain Steel Nails from China: Request for Administrative Reviews," dated August 30, 2018; *see also* Shanxi Tianli Industries Co., Ltd. and Shanghai Yueda Nails Industry Co., Ltd.'s Letter, "Request for Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China, A-570-909 (POR 8/1/17-7/31/18)," dated August 31, 2018; *see also* Dezhou Hualude Hardware Products Co., Ltd. and Mingguang Ruifeng Hardware Products Co., Ltd. and Qingdao D&L Group Ltd.'s Letter, "Certain Steel Nails from the People's Republic of China: Requests for Administrative Review," dated August 31, 2018.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077, 50082-84 (October 4, 2018); *see also* corrections in *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 57411, 57414-17 (November 15, 2018); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 2159, 2166 (February 6, 2019) (collectively, *Initiation Notice*).

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

[8] *See* Memorandum, "Tenth Antidumping Duty Administrative Review of Certain Steel Nails form the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated May 13, 2019.

comments regarding CBP data and respondent selection.[9] On December 12, 2018, the petitioner and Stanley, submitted comments on respondent selection.[10] In its December 12, 2018, comments, the petitioner requested that Commerce employ its sampling methodology pursuant to section 777A(c)(2)(A) of the Act in the tenth administrative review to select respondents.[11]

On April 1, 2019, based on the comments we received and taking into consideration the history of this order and the separate rate companies, Commerce released a memorandum stating our intention to use the sampling methodology in this administrative review to select respondents, and that Commerce would select three mandatory respondents. [12] Additionally we released our proposed selection methodology and sampling pool, and provided interested parties with an opportunity to comment.[13] In Commerce's April 1, 2019 Letter, we also preliminarily, for purposes of our respondent selection process under the sampling methodology, granted a separate rate to the 20 companies that requested separate rate status and filed the necessary information.[14] On April 5, 2019, Stanley submitted comments on Commerce's decision to sample and proposed sampling methodology in this administrative review.[15] On May 7, 2019, Commerce issued a final memorandum addressing the comments raised by Stanley and held a sampling respondent selection meeting on May 10, 2019, to select mandatory respondents in this review.[16] Accordingly, on May 10, 2019, Commerce limited the number of companies individually examined to a sample of exporters, producers, or types of products that is statistically valid, pursuant to section 777A(c)(2) of the Act, and selected Stanley, Pioneer, and Universal as mandatory respondents.[17]

On May 13, 2019, Commerce issued AD questionnaires to Stanley, Pioneer, and Universal, to which both Stanley and Pioneer responded in a timely manner.[18] Stanley responded to Commerce's section A questionnaire on June 6, 2019, section C questionnaire on July 3, 2019,

[9] *See* Commerce's Letter, "2017-2018 Administrative Review of the Antidumping Duty Order of Certain Steel Nails from the People's Republic of China: CBP Data for Respondent Selection," dated December 7, 2018.
[10] *See* Petitioner's Letter, "Certain Steel Nails from the People's Republic of China: Comments Regarding CBP Imports Data and Request for Sampling," dated December 12, 2018 (Request for Sampling). *See also* Stanley's Letter, "Tenth Administrative Review of Certain Steel Nails from the People's Republic of China; Comments on Selection of Mandatory Respondents," dated December 12, 2018.
[11] *See* Request for Sampling.
[12] *See* Memorandum, "Antidumping Duty Administrative Review of Steel Nails from the People's Republic of China: Sampling Pool for Selection of Respondents and Selection Methodology," dated April 1, 2019.
[13] *Id.*
[14] *Id.* at 8-14.
[15] *See* Stanley's Letter, "Tenth Administrative Review of Certain Steel Nails from the People's Republic of China; Comments on Sampling Pool and Sampling Methodology for Selection of Mandatory Respondents," dated April 5, 2019.
[16] *See* Memorandum, "Antidumping Duty Administrative Review of Steel Nails from the People's Republic of China: Sampling Pool for Selection of Respondents and Sampling Methodology," dated May 7, 2019.
[17] *See* Memorandum to the File, "Respondent Selection for Certain Steel Nails from the People's Republic of China: Sampling Meeting with Outside Parties," dated May 10, 2019
[18] *See* Commerce's Letter to Stanley dated May 13, 2019; Commerce's Letter to Pioneer dated May 13, 2019; and Commerce's Letter to Universal dated May 13, 2019, (collectively, AD Questionnaire).

and section D questionnaire on June 26, 2019.[19] Pioneer responded to Commerce's section A questionnaire on June 10, 2019, section C and section D questionnaire on June 26, 2019.[20] Universal did not respond to the AD questionnaire for which section A and sections C&D questionnaire responses were due on June 3, 2019 and June 19, 2019, respectively.[21] On June 25, 2019, Universal submitted notice that it would not be submitting any questionnaire response.[22] On July 11, 2019, the petitioner submitted comments regarding Pioneer's section A, C, and D questionnaire responses.[23] Between July 12 and August 13, 2019, Commerce issued supplemental questionnaires to Stanley and Pioneer.[24] Stanley and Pioneer timely responded to the supplemental questionnaires.[25]

On May 14, 2019, Commerce placed the Surrogate Country List on the record and solicited comments from interested parties regarding the selection of the surrogate country and offered an opportunity to provide surrogate value (SV) data and specified the deadlines for these respective submissions.[26] Between July 12, and 29, 2019, Commerce received surrogate country comments and rebuttal comments from the petitioner, Stanley, and Pioneer.[27] Between August 5 and

---

[19] *See* Stanley's Letter, "Tenth Administrative Review of Certain Steel Nails from The People's Republic of China; Section A Questionnaire Response of The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc.," dated June 6, 2019 (Stanley's Section A Questionnaire Response); Stanley's Letter, "Tenth Administrative Review of Certain Steel Nails from The People's Republic of China; Section C Questionnaire Response of The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc.," dated July 3, 2019, (Stanley's Section C Questionnaire Response); and Stanley's Letter, "Tenth Administrative Review of Certain Steel Nails from The People's Republic of China; Section D Questionnaire Response of The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc.," dated June 26, 2019.

[20] *See* Pioneer's Letter, "Certain Steel Nails from the People's Republic of China: Section A Questionnaire Response," dated June 10, 2019 (Pioneer's Section A Questionnaire Response); Pioneer's Letter, "Certain Steel Nails from the People's Republic of China: Sections C&D Questionnaire Response," dated June 26, 2019 (Pioneer's Section C Questionnaire Response).

[21] *See* AD Questionnaire.

[22] *See* Universal's Letter, "Certain Steel Nails from the People's Republic of China, 10th Administrative Review," dated June 25, 2019.

[23] *See* Petitioner's Letter, "Certain Steel Nails from China: Comments on Pioneer's Sections A, C, and D Responses," dated July 11, 2019.

[24] *See* Commerce's Letter, "2017-18 Administrative Review of Certain Steel Nails from the People's Republic of China: Supplemental Questionnaire for Sections A, C and D," dated July 12, 2019; Commerce's August 13, 2019 Letter to Pioneer.

[25] *See* Stanley's Letter, "Tenth Administrative Review of Certain Steel Nails from The People's Republic of China; Response of The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. to the Supplemental Section A, C, and D Questionnaire," dated August 2, 2019; *see also* Pioneer's Letter, "Certain Steel Nails from the People's Republic of China: Supplemental ACD Questionnaire Response," dated August 29, 2019.

[26] *See* Commerce's Letter, "Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated May 14, 2019 (Surrogate Country Letter).

[27] *See* Petitioner's Letter, "Certain Steel Nails from the People's Republic of China: Comments On Surrogate Country Selection," dated July 12, 2019 (the petitioner's surrogate country comments); Stanley's Letter, "Tenth Administrative Review of Certain Steel Nails from The People's Republic of China; Comments of The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc., Concerning Selection of a Primary Surrogate Country," dated July 12, 2019 (Stanley's surrogate country comments); Pioneer's Letter, "Certain Steel Nails from the People's Republic of China: Surrogate Country Comments," dated July 12, 2019; Petitioner's Rebuttal Letter Certain Steel Nails from the People's Republic of China: Rebuttal Comments on Surrogate Country Selection," dated July 29, 2019; Stanley's Rebuttal Letter, "Tenth Administrative Review of Certain Steel Nails

August 15, 2019, Commerce received SV comments from the petitioner, Stanley, and Pioneer as well as rebuttal comments from the petitioner and Stanley.[28]

SCOPE OF THE ORDER[29]

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this order are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, 7317.00.75, and 7907.00.6000.[30]

Excluded from the scope 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, inclusive of the following modifications: 1) Non-collated (*i.e.*, hand-driven or bulk), steel nails as described in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, as modified by the following description: 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; 2) Wire collated steel nails, in coils, as described in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, as modified by the following description: having a galvanized finish, a smooth, barbed or ringed shank, an actual

---

from The People's Republic of China; Rebuttal Comments of The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc., Concerning Selection of a Primary Surrogate Country,” dated July 29, 2019; and Pioneer’s Rebuttal Letter, “Certain Steel Nails from the People’s Republic of China: Surrogate Country Rebuttal Comments,” dated July 29, 2019 (Pioneer’s surrogate country rebuttal comments).

[28] *See* petitioner’s Letter, “Certain Steel Nails from the People’s Republic of China: Surrogate Value Data for the Tenth Administrative Review (2017-2018),” dated August 5, 2019; Stanley’s Letter, “Certain Steel Nails from the People’s Republic of China; Tenth Administrative Review; Preliminary Surrogate Value Data,” dated August 5, 2019; Shanxi Pioneer’s Letter, “Certain Steel Nails from the People’s Republic of China: Surrogate Value Comments,” dated August 5, 2019; petitioner’s Letter, “Certain Steel Nails from the People’s Republic of China: Rebuttal Comments on Surrogate Value Data,” dated August 15, 2019; and Stanley’s Letter, “Certain Steel Nails from The People’s Republic of China; Tenth Administrative Review; Rebuttal Surrogate Value Information,” dated August 15, 2019.

[29] *See Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 49508 (September 20, 2019).

[30] Commerce added the Harmonized Tariff Schedule category 7907.00.6000, “Other articles of zinc: Other,” to the language of the AD order on Nails from China. *See Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 18816, 18816 n.5 (April 5, 2018).

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 3) Non-collated (*i.e.*, hand-driven or bulk), as described in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, as modified by the following description: 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 are the following steel nails: 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.

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

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

DISCUSSION OF THE METHODOLOGY

Preliminary Determination of No Shipments

As an initial matter, we note that, for the purposes of sampling,[31] we preliminary determined on April 1, 2019, that the companies below had no reviewable shipments during the POR. Our preliminary analysis is discussed below.

[31] *See* Memorandum, “Antidumping Duty Administrative Review of Steel Nails from the People’s Republic of China: Sampling Pool for Selection of Respondents and Selection Methodology,” dated April 1, 2019 (April 1 Sampling Memorandum).

Between October 23 and November 5, 2018, the following eleven companies filed no shipment certifications[32] indicating that they did not export subject merchandise to the United States during the POR:

1. Astrotech Steels Pvt. Ltd.
2. Geeky Wires Limited
3. Hebei Minmetals Co., Ltd.
4. Jinhai Hardware Co., Ltd.
5. Nanjing Yuechang Hardware Co., Ltd.
6. Region Industries Co., Ltd.
7. Region System Sdn. Bhd.
8. Shandong Oriental Cherry Hardware Group Co., Ltd.
9. Shandong Oriental Cherry Hardware Import & Export Co., Ltd.
10. Shanghai Jade Shuttle Hardware Tools Co., Ltd.
11. Zhangjiagang Lianfeng Metals Products Co., Ltd.[33]

With respect to the above companies, in order to examine these claims, Commerce sent inquiries to CBP requesting that CBP inform Commerce if it had any information contrary to the no-shipment claims.[34] CBP provided no information contrary to the no-shipment claims. Based on the record evidence thus far, we preliminarily determine that the above companies had no shipments during the POR. In addition, we find that it is appropriate not to rescind this review, in part, with respect to these companies, and to complete the review, issuing appropriate

[32] Two additional companies, Shanxi Yuci Broad Wire Products Co., Ltd. and Certified Products International Inc., filed no-shipment certifications. *See* Shanxi Yuci Broad Wire Products Co., Ltd.'s Letter, "Certain Steel Nails from the People's Republic of China: No Shipment Certification," dated November 2, 2018; and Certified Products International Inc.'s Letter, "No Shipment Letter for CPI in the Tenth Annual Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China (A-570-909)," dated November 5, 2018. However, because these companies were not among those companies for whom we initiated a review, we have not examined their no-shipment certifications. Therefore, we only evaluated the no shipment claims of the eleven companies that submitted no shipments letters and for which this review was initiated.

[33] *See* Astrotech Steels Private Limited's Letter, "Certain Steel Nails – China Request for No Shipment during the Period of Review (POR)," dated November 2, 2018; Geekay Wires Limited's Letter. "Certain Steel Nails – China Request for No Shipment during the Period of Review (POR)," dated November 2, 2018; Hebei Minmetals Co., Ltd.'s Letter, "Certain Steel Nails from the People's Republic of China: Hebei Minmetal's No Shipment Letter," dated October 23, 2018; Jinhai Hardware Co., Ltd.'s Letter, "Certain Steel Nails from the People's Republic of China: Submission of Statement of No Shipments," dated November 5, 2018; Nanjing Yuechang Hardware Co., Ltd.'s Letter, "Certain Steel Nails from the People's Republic of China – Notice of No Sales," dated November 1, 2018; Region Industries Co., Ltd. and Region System Sdn. Bhd.'s Letter, "Steel Nails from Malaysia," dated October 31, 2018; Shandong Oriental Cherry Hardware Group Co., Ltd.'s Letter, "Certain Steel Nails from the People's Republic of China; No Shipment Certification," dated November 1, 2018; Shandong Oriental Cherry Hardware Import & Export Co. Ltd.'s Letter, "Certain Steel Nails from the People's Republic of China; No Shipment Certification," dated November 1, 2018; Shanghai Jade Shuttle Hardware Tools Co., Ltd.'s Letter, "No Shipment Letter for Shanghai Jade Shuttle Hardware Tools Co., Ltd. in the Tenth Annual Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China, A-570-909," dated November 5, 2018; and Zhangjiagang Lianfeng Metals Products Co., Ltd.'s Letter, "Certain Steel Nails from the People's Republic of China: Notice of No Sales," dated October 31, 2018.

[34] *See* Memorandum, "Certain Steel Nails from the People's Republic of China: No Shipment Instructions, dated April 1, 2019.

instructions to CBP based on the final results of the review.[35] Should evidence contrary to these companies' no-shipments claims arise, we will revisit this issue in the final results.

Non-Market Economy Country Status

Commerce considers China to be a non-market economy (NME) country.[36] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

Separate Rates

As an initial matter, we note that, for the purposes of sampling,[37] we preliminary determined on April 1, 2019, that the 20 companies discussed below demonstrated eligibility for a separate rate. We further determined that certain companies below did not demonstrate eligibility for a separate rate. Our preliminary analysis is discussed below.

In proceedings involving NME countries, Commerce has a rebuttable presumption that all companies within China are subject to government control and, thus should be assessed a single AD rate.[38] It is Commerce's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports. To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, Commerce analyzes each exporting entity in a NME country under the test established in *Sparklers*,[39] as further clarified in *Silicon Carbide*.[40] However, if Commerce determines that a company is wholly foreign-owned or located in a market economy (ME) country, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

---

[35] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).
[36] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, "China's Status as a Non-Market Economy," dated October 26, 2017 (China NME Status Memo)), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).
[37] *See* April 1 Sampling Memorandum.
[38] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24892, 24899 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010).
[39] *See Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).
[40] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-89 (May 2, 1994) (*Silicon Carbide*).

Commerce continues to evaluate its practice with regard to the separate rate analysis in light of the diamond sawblades from the China AD proceeding, and its determinations therein.[41] In particular, in litigation involving the diamond sawblades from China proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.[42] Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[43] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of board members, management, and the profit distribution of the company.

In order to demonstrate separate rate status eligibility, Commerce normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification (SRC) stating that they continue to meet the criteria for obtaining a separate rate.[44] For entities that were not assigned a separate rate in the previous segment of this proceeding, to demonstrate eligibility, Commerce requires a separate-rate application (SRA).[45] Companies that submit an SRA or SRC which are

---

[41] *See* Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at http://enforcement.trade.gov/remands/12-147.pdf, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014). *See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying IDM at Comment 1.

[42] *See, e.g.*, *Advanced Technology I*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *Id*. at 1351 ("Further substantial evidence of record does not support the inference that SASAC's [state-owned assets supervision and administration commission] 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); *Id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *Id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

[43] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part,* 79 FR 53169 (September 8, 2014) and accompanying Preliminary Decision Memorandum at 5-9.

[44] *See Initiation Notice*.

[45] *Id.*

subsequently selected as mandatory respondents must respond to all parts of Commerce's questionnaire in order to be eligible for separate rate status.[46]

In this review, Pioneer, Stanley, and Universal submitted separate rate certifications/applications and subsequently were selected as mandatory respondents.[47]

Commerce also received SRC/SRA between October 25, 2018 and February 19, 2019, from the following 17 companies (separate rate applicants), which had entries of subject merchandise during the POR:

1. Dezhou Hualude Hardware Products Co., Ltd.
2. Hebei Cangzhou New Century Foreign Trade Co., Ltd.
3. Mingguang Ruifeng Hardware Products Co., Ltd.
4. Nanjing Caiqing Hardware Co., Ltd.
5. Qingdao D&L Group Ltd.
6. SDC International Australia Pty. Ltd.
7. Shandong Qingyun Hongyi Hardware Co., Ltd.
8. Shanghai Curvet Hardware Products Co., Ltd.
9. Shanghai Yueda Nails Industry Co., Ltd. a.k.a Shanghai Yueda Nails Co., Ltd.
10. Shanxi Hairui Trade Co., Ltd.
11. Shanxi Tianli Industries Co., Ltd.
12. S-Mart (Tianjin) Technology Development Co., Ltd.
13. Suntec Industries Co., Ltd.
14. Tianjin Jinchi Metal Products Co., Ltd.
15. Tianjin Jinghai County Hongli Industry & Business Co., Ltd.
16. Tianjin Zhonglian Metals Ware Co., Ltd.
17. Xi'an Metals and Minerals Import & Export Co., Ltd.

In sum, between the three mandatory respondents and the separate rate applicants, we received 20 requests for a separate rate. The companies that did not submit either an SRC or SRA; did not demonstrate their eligibility for separate-rate status and therefore preliminarily remain included as part of the China-wide entity and are subject to the China-wide rate.[48]

---

[46] *Id.*

[47] *See* Pioneer's Letter, "Steel Nails from the People's Republic of China: Separate Rate Certification," dated November 1, 2018 (Pioneer's Separate Rate Certification); Stanley's Letter, "Tenth Administrative Review of Certain Steel Nails from The People's Republic of China; Separate Rate Application of The Stanley Works (Langfang) Fastening Systems Co., Ltd.," dated November 3, 2018 (Stanley's Separate Rate Application); Universal's Letter, "Certain Steel Nails from the People's Republic of China, 10th Administrative Review; Separate Rate of Tianjin Universal Machinery Imp. & Exp. Corporation," dated November 5, 2018 (Universal's Separate Rate Certification); and Respondent Selection Memorandum.

[48] *See* the Attachment to the memorandum.

A. *Hebei Canzhou New Century Foreign Trade Co., Ltd., Nanjing Caiqing Hardware Co., Ltd., Shanghai Yueda Nails Industry Co. Ltd. a.k.a Shanghai Yueda Nails Co., Ltd., and S-Mart (Tianjin) Technology Development Co., Ltd.*

The CBP data collected for respondent selection showed zero entries for Hebei Cangzhou New Century Foreign Trade Co. Ltd. (New Century), Nanjing Caiqing Hardware Co., Ltd. (Nanjing Caiqing), Shanghai Yueda Nails Industry Co. Ltd. a.k.a Shanghai Yueda Nails Co., Ltd. (collectively, Shanghai Yueda), and S-Mart (Tianjin) Technology Development Co. Ltd. (S-Mart (Tianjin)). However, New Century, Nanjing Caiqing, Shanghai Yueda, and S-Mart (Tianjin) were able to provide evidence of sales and entries during the POR,[49] specifically, CBP Form 7501s, which indicate these companies had entries during the POR. Therefore, we preliminarily determine that New Century, Nanjing Caiqing, Shanghai Yueda, S-Mart (Tianjin) have met the criteria for a separate rate. Additionally, Commerce requested from New Century, Nanjing Caiqing, Shanghai Yueda, S-Mart (Tianjin) the total quantity and values of subject merchandise imported into the United States during the POR and will assign these entities a quantity equal to that submitted to Commerce.[50]

B. *Wholly Foreign Owned*

SDC International Australia Pty. Ltd., Shanghai Curvet Hardware Products Co., Ltd., S-Mart (Tianjin), and Stanley each reported 100 percent ownership by foreign entities.[51] As there is no Chinese ownership of these four companies, and because Commerce has no evidence indicating that these companies are under the control of the Chinese government, we find that these companies are independent from government control.[52] Consequently, we preliminarily determine that SDC International Australia Pty. Ltd., Shanghai Curvet Hardware Products Co. Ltd., S-Mart (Tianjin), and Stanley meet the criteria for a separate rate.

---

[49] *See* New Century's Letter, "Certain Steel Nails from the People's Republic of China; Separate Rate Certification Supplemental Response," dated February 19, 2018; Nanjing Caiqing's Letter, "Steel Nails from the People's Republic of China: Response to Separate Rate Certification Supplemental Questionnaire," dated February 19, 2019; Shanghai Yueda's Letter, "Separate Rate Certification Supplemental Questionnaire Response for Shanghai Yueda in the Tenth Annual Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China, A-570-909," dated February 18, 2019; and S-Mart (Tianjin)'s Letter, "Steel Nails from the People's Republic of China: Supplemental SRC Questionnaire Response," dated April 9, 2019.

[50] *See* Hebei Cangzhou New Century Foreign Trade Co., Ltd. SRC Supplemental Response, dated February 19, 2019; Nanjing Caiqing Hardware Co., Ltd. SRC Supplemental Response, dated February 19, 2019; and Shanghai Yueda Nails Industry Co. Ltd. SRC Supplemental Response, dated February 18, 2019.

[51] *See* SDC International Australia Pty. Ltd.'s Letter, "Steel Nails from the People's Republic of China: Separate Rate Certification," dated November 1, 2018; Shanghai Curvet Hardware Products Co. Ltd.'s Letter, "Certain Steel Nails from the People's Republic of China: Separate Rate Certification," dated October 30, 2018; S-Mart (Tianjin)'s Letter, "Steel Nails from the People's Republic of China: Separate Rate Certification," dated November 1, 2018; and Stanley's Separate Rate Application.

[52] *See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999).

C. *Absence of De Jure Control*

Of the 20 separate rate applicants, 16 companies require additional analysis to determine separate rate status.[53] Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[54] The evidence provided by the 16 companies in their separate rate applications/certifications supports a preliminary finding of an absence of *de jure* government control based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.[55]

D. *Absence of De Facto Control*

Typically, Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[56]

An analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control over export activities which would preclude Commerce from assigning separate rates. For all 16 companies, we determine that the evidence on the record supports a finding of an absence of *de facto* government control based on record statements and supporting documentation showing the following for each respondent: (1) the respondent sets its own export prices independent of the government and without the approval of a government authority; (2) the respondent has the authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from the government regarding the selection of management; and (4) the respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses. The evidence placed on the record of this review in the separate rate applications/certifications for the 16 companies for which additional analysis is required demonstrates an absence of *de jure* and *de*

[53] The 16 companies include; Dezhou Hualude Hardware Products Co., Ltd., New Century, Mingguang Ruifeng Hardware Products Co., Ltd., Nanjing Caiqing, Pioneer, Qingdao D&L Group Ltd., Shandong Qingyun Hongyi Hardware Co., Ltd., Shanghai Yueda Nails Industry Co., Ltd., Shanxi Hairui Trade Co., Ltd., Shanxi Tianli Industries Co., Ltd., Suntec Industries Co., Ltd., Tianjin Jinchi Metal Products Co., Ltd., Tianjin Jinghai County Hongli Industry and Business Co., Ltd., Tianjin Zhonglian Metals Ware Co., Ltd., Universal, and Xi'an Metals and Minerals Imp. & Exp. Co., Ltd.

[54] *See Sparklers*.

[55] *See the Separate Rate Applications and Certifications*, dated November 2-15, 2017.

[56] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). *See also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

facto government control with respect to the companies' exports of subject merchandise, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

USE OF FACTS OTHERWISE AVAILABLE (FA)

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" 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 by the deadlines for submission of the information or in the form and manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act.

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 party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party 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 782(c)(1) of the Act further states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

Application of FA for Universal

As previously noted, Universal did not respond to the AD questionnaire issued by Commerce on May 13, 2019. In addition, Universal did not submit a response to sections C and D of the AD questionnaire before the deadline of June 19, 2019. On June 25, 2019, Universal notified Commerce that it had insufficient resources to respond to the AD questionnaire.[57] However, prior to the June 19 deadline, Universal did not notify Commerce that it was unable to answer the questionnaire in the form and manner requested, did not provide an explanation of any

[57] *See* Universal's Letter, "Certain Steel Nails from the People's Republic of China, 10th Administrative Review," dated July 25, 2019.

difficulties, and did not suggest an alternative form in which to provide Commerce information that was requested in the questionnaires.

Accordingly, Commerce finds, pursuant to section 776(a)(1) of the Act, that necessary information needed to calculate a margin is not available on the record of this proceeding. Further, based upon Universal's failure to submit responses to Commerce's questionnaire, Commerce finds that Universal withheld requested information, failed to provide the information by the deadline for submission, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Therefore, Commerce must rely on the facts otherwise available in order to determine the preliminary margin for Universal.

USE OF ADVERSE INFERENCES

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among 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.[58] Further, 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 AD investigation, a previous administrative review, or other information placed on the record.[59] When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[60] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[61] When selecting an AFA rate, Commerce is not required to estimate what the respondent's AD rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the selected AFA rate reflects an "alleged commercial reality" of the interested party.[62]

Application of AFA for Universal

As previously stated, Universal did not respond to the AD questionnaire. We preliminarily find that Universal's failure to respond demonstrates a failure to act to the best of its ability in complying with Commerce's requests pursuant to section 776(b) of the Act. Accordingly, pursuant to sections 776(a)(1), 776(a)(2)(A)-(C) and 776(b) of the Act, Commerce preliminarily

---

[58] *See* section 776(b)(1)(B) of the Act.
[59] *See* 19 CFR 351.308(c).
[60] *See, e.g., Countervailing Duty investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences."
[61] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4199.
[62] *See* section 776(d)(3) of the Act.

finds that the application of AFA to Universal is warranted. Because Universal has failed to act to the best of its ability by not respondent to the AD questionnaire, Commerce has assigned to Universal, as AFA, a separate rate of 118.04 percent, which is the highest rate applied in any segment of this proceeding.[63]

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.[64] 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 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.[65]

Therefore, Commerce adopted a 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

---

[63] Section 776(c)(2) provides that Commerce shall not be required to corroborate any dumping margin applied in a separate segment of the same proceeding. Because we are applying a dumping margin applied in a prior segment of this proceeding, we are not required to corroborate the AFA rate assigned to Shandong Dinglong pursuant to section 776(c)(2) of the Act.

[64] *See 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*) at 65964.

[65] *Id.*

from such information that would be associated with the remaining exporters.[66] 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."[67]

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.[68]

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 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.[69]

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.[70] 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.[71] 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

[66] *Id.*, 78 FR at 65964-65.
[67] *Id.*, 78 FR at 65968.
[68] *Id.*, 78 FR at 65964.
[69] *Id.*, 78 FR at 65965.
[70] *See* April 1 Sampling Memorandum.
[71] *Id.*

review (Stanley) differ from dumping margins that would be associated with the remaining exporters. We explained:

> Specifically, in each of the nine prior administrative reviews under this order, Stanley has consistently been one of the largest exporters, and for this reason has been selected as a mandatory respondent in those prior reviews. Stanley consistently has been a cooperative respondent, its average calculated weighted-average dumping margin over the nine previous administrative reviews is 6.76 percent. In contrast, in each of the nine prior administrative reviews, the other mandatory respondents either obtained a much higher calculated margin, did not qualify for a separate rate, or were non-cooperative otherwise and received a margin based on total adverse facts available (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 15.43 percent margin for the partially-overlapping period of review). Thus, the average margin for respondents other than Stanley, including non-calculated margins, is 74.96 percent through the preliminary results of the 2016-2017 administrative review. Even when we do not include those non-calculated margins, the average margin for respondents other than Stanley is 57.00 percent through the preliminary results of the 2016-2017 administrative review. Moreover, throughout the history of the proceeding, the China-wide rate, assigned to respondents that failed to demonstrate their independence from the China-wide entity, has consistently been 118.04 percent.[72]

In short, we determined that given the large disparity between Stanley's calculated margins and the margins assigned to the other respondents in eight prior administrative reviews, this raised the exact same evasion concern that was expressed in the *Sampling Methodology Notice*. In the ninth administrative review, where we relied on sampling, we found that the pattern of non-participation continued with one respondent failing to participate after being selected using the sampling method. Therefore, in light of these concerns, we appropriately relied on a statistically valid sample to select respondents in this review.

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,[73] for guidance when calculating the separate rate for respondents not examined in an administrative review.

---

[72] *Id.* (internal footnotes omitted).

[73] *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 are available."[74] The weighted-average margin selected as the all-others rate may contain elements of facts available, even if it includes adverse inferences.[75]

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.[76]

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 only (*i.e.*, not though a sampling method), 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

---

[74] *See Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (SAA) at 873.
[75] *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.
[76] *See Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1114, 1121 n. 11 (CIT 1989) (*Asocolflores*).

dumping behavior of the selected firms is representative of the population as a whole. Thus, in investigations involving an NME where 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 prior reviews 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*[77], which was affirmed by the CIT[78], and in *Shrimp from Vietnam*[79], 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.[80] 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.

---

[77] *See 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).

[78] *See Laizhou Auto Brake Equipment Co. v. United States*, 32 CIT 711, 722-25 (2008) (*Laizhou*).

[79] *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*).

[80] *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}.").

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 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 preliminarily 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. Now after the use of sampling, we find that the certain previously excluded companies, if selected, do not cooperate. 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 past 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, as in the last administrative review of this order,[81] Commerce will continue to include all three mandatory respondent rates in the sample rate calculation. Accordingly, we have averaged the rates for the three selected respondents, weighted by the import share of their corresponding strata.[82]

SURROGATE COUNTRY

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to determine NV, in most circumstances, on the NME producer's factors of production (FOP) based on the best available information regarding the values of such factors in

[81] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments; 2016-2017,* 84 FR 17134 (April 24, 2019) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM), unchanged in *Certain Steel Nails from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 24751 (May 29, 2019).
[82] *See* Sample Rate Memorandum.

a surrogate ME country, or countries, considered to be appropriate by Commerce.[83] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.[84] Further, Commerce normally values all FOPs in a single surrogate country.[85]

On May 14, 2019, Commerce invited parties to comment on surrogate country selection and provide information regarding FOP valuation in the instant review.[86] The petitioner recommends Mexico as a surrogate country because it is a significant producer of comparable merchandise and has reliable, contemporaneous SV data.[87] Stanley recommends Romania as a surrogate country because it is at the same level of economic comparability as China, is a significant producer of comparable merchandise, and has reliable, contemporaneous SV data.[88] Pioneer recommended Malaysia as a surrogate country because Malaysia is a net exporter of subject merchandise, noting that both Malaysia and Romania are significant producers.[89]

1. Comparable Level of Economic Development

Section 773(c)(4)(A) of the Act is silent with respect to how Commerce may determine that a country is economically comparable to the NME country. As such, Commerce's practice, in accordance with its regulation 19 CFR 351.408(b), has been to identify those countries which are at the same level of economic development as China in terms of per capita gross national income (GNI) data available in the World Development Report provided by the World Bank.[90] We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT, which found the use of per capita GNI to be a "consistent, transparent, and objective metric to identify and compare a country's level of economic development" and "a reasonable interpretation of the statute."[91]

Pursuant to section 773(c)(4) of the Act, Commerce listed Romania, Malaysia, Russia, Mexico, Brazil, and Kazakhstan as countries that are at the same level of economic development as China

---

[83] For a description of our practice, *see* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (*Policy Bulletin*).
[84] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the People's Republic of China: Selection of Surrogate Countries," dated November 17, 2017 (Surrogate Country Memorandum).
[85] *See* 19 CFR 351.408(c)(2).
[86] *See* Surrogate Country Letter.
[87] *See* the petitioner's surrogate country comments at 3-6.
[88] *See* Stanley's surrogate country comments at 3-8.
[89] *See* Pioneer's surrogate country rebuttal comments.
[90] *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) and accompanying IDM at Comment 4.
[91] *See Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1330 (CIT 2014).

in terms of 2017 per capita GNI data available in the World Development Report provided by the World Bank; Commerce provided parties an opportunity to comment on this list.[92] No party challenged Commerce's list of economically comparable countries.

Commerce is satisfied that the countries on the Surrogate Country List are equally comparable in terms of economic development and serve as an adequate group to consider when gathering the SV data.

2. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[93] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[94] Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.[95] "In cases where the identical merchandise is not produced, {Commerce} must determine if other merchandise that is comparable is produced. How {Commerce} does this depends on the subject merchandise."[96] In this regard, Commerce recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[97]

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.[98] Moreover, while the legislative history provides that the term

---

[92] *See* Surrogate Country Letter at Attachment 1 (Surrogate Country List).
[93] *See Policy Bulletin* at 2.
[94] The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.
[95] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").
[96] *See Policy Bulletin* at 2.
[97] *Id.* at 3.
[98] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

"significant producer" includes any country that is a significant "net exporter,"[99] it does not preclude reliance on additional or alternative metrics.

Stanley provided 2017-2018 GTA data at the 6-digit level for HTS 7317.00 for Romania, Malaysia, Russia, Mexico, Brazil, and Kazakhstan. At the 6-digit level, HTS classification 7317.00 refers to "Nails Tacks, Drawing Pins, Staples (Other Than In Strips), And Similar Articles, Of Iron Or Steel, Excluding Such Articles With Heads Of Copper," as such includes steel nails subject to this review.[100] Thus, Commerce finds that each of the countries on the Surrogate Country List (Romania, Malaysia, Russia, Mexico, Brazil, and Kazakhstan) are significant producers of comparable merchandise.

As further discussed below, because each of the six countries on the Surrogate Country List remain eligible for selection as the primary surrogate country, we are basing our determination on an evaluation of which of these countries has the best available information, *i.e.*, available and reliable data that meet our selection criteria for purposes of SV selection.

3. Data Availability

The *Policy Bulletin* states that, if more than one country is at a level of economic development comparable to that of the NME and is a significant producer, "then the country with the best factors data is selected as the primary surrogate country."[101] Importantly, the *Policy Bulletin* explains further that "data quality is a critical consideration affecting surrogate country selection" and that "a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable."[102]

Section 773(c)(1) of the Act instructs Commerce to value the FOPs based upon the best available information from an ME country or a country that Commerce considers appropriate. When considering what constitutes the best available information, Commerce considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, represent a broad-market average, and are specific to the input.[103] Commerce's preference is to satisfy the breadth of the aforementioned selection criteria.[104] Moreover, it is Commerce's practice to carefully consider the available evidence in light of the particular facts of each

[99] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).
[100] *See* Stanley's surrogate country at Attachment A.
[101] *See Policy Bulletin*.
[102] *Id*.
[103] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006) (*Lined Paper*) at Comment 3.
[104] *See, e.g.*, *Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011) and accompanying IDM at Comment 2.

industry when undertaking its analysis of valuing the FOPs.[105] Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[106]

In this case, Commerce has identified a number of FOPs for which we require SV data, with certain carbon content levels of steel wire rod (SWR) considered among the most significant inputs used in the production of nails. Commerce also looks for usable financial statements from producers of identical or comparable merchandise. The petitioner submitted data from Mexico for surrogate valuation purposes. Stanley and Pioneer submitted data from Romania for surrogate valuation purposes. There are no data on the record for any other FOP for Malaysia, Russia, Brazil, and Kazakhstan, nor any surrogate financial statements. Additionally, no party has argued that Russia, Brazil, and Kazakhstan should be selected as the surrogate country. Thus, based on record evidence, Commerce is left with Romania and Mexico as the best options for a potential primary surrogate country.

Parties provided Mexican and Romanian SV data from GTA for all raw materials consumed in the production of subject merchandise. As stated above, SWR is the main input to producing nails. Therefore, we evaluated each respondent's reported SWR of differing carbon contents. Stanley reported using between .16-.19 percent, .45 percent, and .64 percent carbon content; and Pioneer reported using less than .25 percent carbon content. SWR SV data from Romania are specified as equal to or less than .06 percent, greater than .06 to less than .25 percent, greater than .25 percent to equal to or less than .75 percent, and greater than .75 percent of carbon content, while SWR SV data from Mexico are only specified as below and above .4 percent carbon content. Therefore, the SV data from Romania are more specific to the inputs used by each respondent. Furthermore, no party submitted any surrogate financial statements from a Mexican producer of comparable merchandise. Thus, Romania has specific SVs for all the respondents' FOPs, including surrogate financial statements[107] and the key material inputs, SWR.[108]

No party raised concerns regarding the broad-market average, tax and duty exclusivity, and public availability criteria that, per its practice, Commerce also evaluates in the SV and surrogate country selection process to determine the best available information.

Therefore, based on examination of all record evidence as discussed above, we find Romania to have usable SV data on the record, and to be the best choice for the primary surrogate country.

[105] *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Sixth Mushrooms AR*) and accompanying IDM at Comment 1; *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying IDM at Comment 2.
[106] *See, e.g., Sixth Mushrooms AR*, 71 FR 40477 at Comment 1.
[107] *See* the Preliminary SV Memorandum (we note that no interested parties submitted Mexican financial statements to calculate surrogate financial ratios).
[108] *See*, generally, the SV submissions from the interested parties and the Preliminary SV Memorandum.

A detailed explanation of the SVs is provided below in the "Normal Value" section of this notice and the Preliminary SV Memorandum.[109]

DATE OF SALE

Pursuant to 19 CFR 351.401(i), Commerce starts with a presumption that the invoice date is the correct date of sale unless record evidence indicates that the material terms of sale, such as price and quantity, are established on another date. Stanley, as in previous reviews, explained that because of alterations or cancellations, the earlier of invoice date or shipment date is the appropriate date of sale because it reflects the date on which the material terms no longer change.[110] Consistent with the regulatory presumption for invoice date and because Commerce found no evidence on the record contrary to Stanley's claims, for these preliminary results, Commerce used the invoice date as the date of sale except when shipment date preceded invoice date. In those instances, consistent with Commerce's practice[111] and as Stanley provided evidence that the material terms of sale were set on shipment date, Commerce used the shipment date as the date of sale.[112]

Pioneer explained that the invoice date is the correct date of sale because the price and quantity of the sale are subject to change until the commercial invoice is issued to the customer.[113] Consistent with the regulatory presumption for invoice date and because Commerce found no evidence on the record contrary to Pioneer's claims, for these preliminary results, Commerce used the invoice date as the date of sale except when shipment date preceded invoice date.

NORMAL VALUE COMPARISONS

In accordance with section 773(a) of the Act, Commerce compared the export price (EP) or constructed export price (CEP) of the U.S. sales of the merchandise under consideration to the weighted-average NV to determine whether the individually-examined respondents sold merchandise under consideration to the United States at less than normal value during the POR.

1. Export Price and Constructed Export Price

Pursuant to section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under section 772(c) and (d) of the Act. For Stanley's sales, Commerce based U.S. price on CEP, in accordance with section 772(b) of the Act, because sales were made on behalf of the

[109] *See* Memorandum, "Tenth Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Results," dated concurrently with this memorandum (Preliminary SV Memorandum).
[110] *See* Stanley's Section C Questionnaire Response at 19.
[111] *See Certain Steel Nails from the People's Republic of China: Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 77 FR 53845, 53850-51(September 4, 2012) (unchanged in *AR3 Final*).
[112] *See* Stanley's Section A Questionnaire Response at 27-31.
[113] *See* Pioneer's Section A Questionnaire Response at 18.

China-based company by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, Commerce based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, Commerce made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, Commerce also deducted those selling expenses associated with economic activities occurring in the United States. Commerce deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, Commerce valued these services using SVs (*see* "Factor Valuation Methodology" section below for further discussion). For those expenses that were provided by an ME provider and paid for in an ME currency, Commerce used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Stanley, *see* Stanley's Analysis Memorandum, dated concurrently with these preliminary results.

Pursuant to section 772(a) of the Act, EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, Commerce calculated EP for all sales to the United States for Pioneer because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted on those sales. Commence calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, Commerce deducted from the sales price certain foreign inland freight, and brokerage and handling. Because the inland freight and brokerage and handling services were either provided by an NME vendor or paid for using an NME currency, Commerce based the deduction of these charges on SVs.[114] For a detailed description of all adjustments made to U.S. price for Pioneer, *see* Pioneer's Analysis Memorandum, dated concurrently with these preliminary results.

2. Value-Added Tax

Value-added tax (VAT) is an indirect, *ad valorem* consumption tax imposed on the purchase (sale) of goods. It is levied on the purchase (sale) price of the good, *i.e.*, it is paid by the buyer and collected by the seller. For example, if the purchase price is $100 and the VAT rate is 15%, the buyer pays $115 to the seller, $100 for the good and $15 in VAT. VAT is typically imposed at every stage of production. Thus, under a typical VAT system, firms (1) pay VAT on their purchases of production inputs and raw materials (input VAT) as well as (2) collect VAT on sales of their output (output VAT).

Firms calculate input VAT and output VAT for tax purposes on a company-wide basis, *i.e.*, in the case of input VAT, on the basis of <u>all input purchases</u> regardless of whether used in the

[114] *See* Preliminary SV Memorandum for details regarding the SVs for movement expenses.

production of goods for export or domestic consumption, and in the case of output VAT, on the basis of all sales to all markets, foreign and domestic. Thus, a firm might pay the equivalent of \$60 million in total input VAT across all input purchases and collect \$100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only \$40 million of the \$100 million in output VAT collected on its sales because of a \$60 million credit for input VAT paid that the firm can claim against output VAT.[115] As a result, the firm bears no "VAT burden (cost)": the firm through the credit is refunded or recovers all of the \$60 million in input VAT it paid, and the \$40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer or the good, not on the firm. This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a reduction in or offset to the input VAT that can be credited against output VAT. This formula for this reduction/offset is provided in Article 5 of the 2012 PRC government tax regulation, *Notice of the Ministry of Finance and the State Administration of Taxation on VAT and Consumption Tax Policies for Exported Goods and Labor Services* ("*2012 VAT Notice*"):[116]

$$\textbf{Reduction/Offset} = \mathbf{(P - c)} \times \mathbf{(T_1 - T_2)},$$

where,
P = (VAT-free) FOB value of export sales;
c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;
T_1 = VAT rate; and
T_2 = refund rate specific to the export good.
Using the example above, if P = \$200 million, c = 0, T_1 = 17% and T_2 = 10%, then the reduction/offset = (\$200 million - \$0) x (17% - 10%) = \$200 million x 7% = \$14 million. Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the \$14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Notice*.

Creditable input VAT = Total input VAT – Reduction/Offset

Using again the example above, the firm can credit only \$60 million – \$14 million = \$46 million of the \$60 million in input VAT against output VAT. Since the \$14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to \$14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of $T_1 - T_2$. This cost therefore functions as an "export tax, duty, or other charge" because the firm does not incur it but for exportation of the subject merchandise, and under Chinese law must be recorded as a cost of exported goods.[117] It is for this "export tax, duty, or other charge" that Commerce

[115] The credit if not exhausted in the current period can be carried forward.
[116] *Notice of the Ministry of Finance and the State Administration of Taxation on VAT and Consumption Tax Policies for Exported Goods and Labor Services*, Article 5 (Ministry of Finance, State Administration of Taxation, [2012] No. 39, issued May 25, 2012).
[117] Article 5(3) of the *2012 VAT Notice* states: "Where the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of exported goods and services."

makes a downward adjustment to U.S. price under section 772(c) of the Tariff Act of 1930, as amended.[118]

It is important to note that under Chinese law the reduction/offset described above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether used in the production of goods for export or domestic consumption. The reduction/offset does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales. At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company would not incur but for the export sales it makes, a tax fully allocable to export sales because the firm under Chinese law must book it as cost of exported goods.

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are not subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Notice* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and are thus subject to output VAT at the full rate.[119] The formulas discussed above from Article 5 of the *2012 VAT Notice* do not apply to firms that export these goods, and there is therefore no reduction in or offset to their creditable input VAT. For these firms creditable input VAT = total input VAT, *i.e.*, these firms recover all of their input VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate, T_1.[120] Commerce must therefore deduct this tax from U.S. price[121] under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.[122]

Commerce requested that Stanley report net irrecoverable VAT for the subject merchandise.[123] Stanley reported that the official VAT rate for exports of subject merchandise is 17 percent and that the recoverable rate is five percent, under the applicable China regulations.[124] Thus, Stanley incurred an effective VAT rate of 12 percent on exports of nails. Because Stanley reported that it

118 Because the $14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as "irrecoverable input VAT." However, that phrase is perhaps misleading because the $14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Notice* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the $14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula's reliance on the FOB export value as the tax basis for the calculation. The $14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company's export sales. Thus, "irrecoverable input VAT" is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.

119 *2012 VAT Notice*. For these goods, the VAT refund rate on export is zero.

120 *2012 VAT Notice*, Article 7.2(1).

121 Commerce will divide the VAT-inclusive export price by (1 + T), where T is the applicable VAT rate.

122 Pursuant to sections 772(c) and 773(c) of the Act, the calculation of normal value based on factors of production in NME antidumping cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.

123 *See* AD Questionnaire.

124 *See* Stanley's Section C Questionnaire Response at 74-75.

pays VAT associated with subject merchandise that is not recoverable at a rate of 12 percent, Commerce adjusted Stanley's net price for the irrecoverable VAT it reported in its Section C database, in order to calculate a CEP net of VAT.[125] We note that this is consistent with Commerce's longstanding policy and the intent of the statute, that dumping comparisons be tax-neutral.[126]

Commerce requested that Pioneer report net irrecoverable VAT for the subject merchandise.[127] Pioneer reported that the official VAT rate for exports of subject merchandise was 17 percent, prior to May 1, 2018, and is 16 percent, thereafter, and that the recoverable rate is five percent, under the applicable China regulations.[128] Thus, Pioneer incurred an effective VAT rate of either 12 or 11 percent on exports of nails. Because Pioneer reported that it pays VAT associated with subject merchandise that is not recoverable at a rate of 12 or 11 percent, Commerce adjusted Pioneer's net price for the irrecoverable VAT it reported in its U.S. sales database, in order to calculate a EP net of VAT.[129] We note that this is consistent with Commerce's longstanding policy and the intent of the statute that dumping comparisons be tax-neutral.[130]

3. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using a FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in a NME context, Commerce will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Commerce's questionnaire requires that the respondents provide information regarding the weighted-average FOPs on a product matching control number (CONNUM)-specific basis, either using actual quantities or to develop a reasonable methodology, across all of the companies' plants and suppliers that produce the

[125] *See* Stanley's Analysis Memorandum.
[126] *See Methodological Change*, 77 FR at 36483 (citing *Antidumping Duties*; *Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) and Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. I 03-316, vol. I, 827, reprinted in 1994 U.S.C.C.A.N. 3773, 4172); *see also Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Administrative Review;* 2011- 2012, 78 FR 78333 (December 26, 2013) and accompanying Preliminary Decision Memorandum at Issue 9, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37715 (July 2, 2014).
[127] *See* AD Questionnaire.
[128] *See* Pioneer's Section C Questionnaire Response at 41.
[129] *See* Pioneer's Analysis Memorandum.
[130] *See Methodological Change*, 77 FR at 36483 (*citing Antidumping Duties*; *Countervailing Duties*, 62 FR27296, 27369 (May 19, 1997) and Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. I 03-316, vol. I, 827, reprinted in 1994 U.S.C.C.A.N. 3773, 4172); *see also Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Administrative Review;* 2011- 2012, 78 FR 78333 (December 26, 2013) and accompanying Preliminary Decision Memorandum at Issue 9, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37715 (July 2, 2014).

merchandise under consideration, not just the FOPs from a single plant or supplier.[131] This methodology ensures that the Commerce's calculations are as accurate as possible.[132]

Commerce calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by the respondents in the production of nails include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. Commerce based NV on the respondents' reported FOPs for materials, energy, and labor.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, for subject merchandise produced by the respondents or their suppliers, Commerce calculated NV based on the FOPs reported by Stanley's and Pioneer's suppliers for the POR. Commerce used Romanian import data and other publicly available Romanian sources in order to calculate SVs. To calculate NV, Commerce multiplied the reported per-unit FOP quantities by publicly available SVs. Commerce's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.

As appropriate, Commerce adjusted input prices by including freight costs to render them delivered prices. Specifically, Commerce added to Romanian 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. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997) because, where necessary, we used the capped distances reported by the respondent. Additionally, where necessary, Commerce adjusted SVs for inflation and exchange rates, taxes, and converted all applicable FOPs to a per-kilogram basis.

Furthermore, with regard to the Romanian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be dumped or subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, and South Korea may have been subsidized, because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.[133] Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an

[131] *See* AD Questionnaire, Section D at D-2.
[132] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 28, 2003) and accompanying IDM at Comment 19.
[133] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010) and accompanying IDM at 4-5; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying IDM at 17, 19-20; *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011) and accompanying IDM at 1.

"unspecified" country from the average value because Commerce could not be certain that they were not from an NME country or a country with general export subsidies. Therefore, we have not used prices from these countries either in calculating the Romanian import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier that are produced in an ME and paid for the inputs in ME currency in meaningful quantities, Commerce uses the actual price paid by the respondent to value those inputs, if substantially all of the factor, by total volume, is purchased from the market economy supplier. In accordance with the regulation, substantially all is defined to be 85 percent or more of the total volume purchased of the factor.[134] Information reported by Stanley demonstrates that certain inputs were sourced and produced from an ME country and paid for in ME currencies. The information reported by Stanley also demonstrates that such inputs were purchased in significant quantities (*i.e.*, 85 percent or more) from ME suppliers. As a consequence, Commerce used Stanley's actual ME purchase prices to value these inputs. Where appropriate, freight expenses were added to the ME price of the input.

Commerce has previously found that data from GTA, such as that on the record for this input, is publicly-available, represents a broad market average, and is tax- and duty- exclusive.[135] Additionally, the Romanian GTA data submitted on the record of this review is contemporaneous with the POR; thus, GTA data meet Commerce's SV criteria and represent the best available information to value Stanley's and Pioneer's FOPs.

For these preliminary results, Commerce used Romanian Import Statistics from the GTA to value certain raw materials, byproducts, and packing material inputs that Stanley and Pioneer used to produce subject merchandise during the POR, except where listed below. Parties placed data from the GTA for Romania on the record for the certain raw materials, byproducts, and packing material inputs that Stanley and Pioneer used to produce subject merchandise, and the GTA is a source that is regularly used by Commerce because the data therein meet Commerce's SV criteria.

We valued electricity by the price established in *Doing Business 2019 – Romania* by the World Bank. Water was valued by using data from *Romania Water Diagnostic Report: Moving toward EU Compliance, Inclusion, and Water Security* by the World Bank.[136]

We valued brokerage and handling (B&H) using a price list of export procedures necessary to export a standardized cargo of goods in Romania published in *Doing Business 2019: Romania* by the World Bank.[137] The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport that is published in *Doing Business 2019: Romania* by the World Bank. The reported prices were contemporaneous with the POR.

---

[134] *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings,* 78 FR 46799 (August 2, 2013).
[135] *See, e.g., Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination***,** 78 FR 13019 (February 26, 2013) and accompanying IDM at Comment 2.
[136] For more information on the electricity and water SV calculations, *see* Preliminary SV Memorandum.
[137] For more information on the B&H SV calculation, *see* Preliminary SV Memorandum.

We used Romanian transport information in order to value the freight-in cost of the raw materials. Commerce determined the best available information for valuing truck freight to be from *Doing Business 2019: Romania*. This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container from the largest business city in the exporting country to the largest business city in the importing country. We calculated the per-unit inland freight costs using the distance between Romania and Germany. We calculated a per-kilogram, per-kilometer surrogate inland freight rate based on the methodology used by the World Bank.

We valued ocean freight charged using data obtained from Intercargo, which is the source used in prior reviews.[138] Since the most current data are from 2012, we inflated the value to represent the POR value.

For these preliminary results, pursuant to *Labor Methodologies*,[139] Commerce determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.

Accordingly, we valued labor using manufacturing-specific data from POR-specific data (*i.e.*, August 2017 through July 2018) from the Institutul National de Statistica – Romania (publicly available through Trading Economics). Although the manufacturing-specific data are not from the ILO, Commerce finds that this fact does not preclude us from using this source for valuing labor. In *Labor Methodologies*, Commerce described its decision to use ILO Chapter 6A data, rather than ILO Chapter 5B data, as they previously had used, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[140] Commerce did not, however, preclude all other sources for evaluating labor costs in NME AD proceedings. Rather, we continue to follow our practice of selecting the "best information available" to determine SVs for inputs such as labor. We find that the POR-specific data from Trading Economics is the best available information for valuing labor for this segment of the proceeding. Specifically, the Trading Economics data are manufacturing-specific. As stated above, Commerce used Romanian data reported through Trading Economics, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Thus, we valued Stanley's and Pioneer's labor input using the Trading Economics POR-specific data. Additionally, where the financial statements used to calculate the surrogate financial ratios include itemized detail of labor costs, Commerce made adjustments to certain labor costs in the surrogate financial ratios.

Commerce considers whether financial statements are contemporaneous, comparable to the respondent's experience, complete and publicly available when determining the best available information. Moreover, for valuing factory overhead, selling, general, and administrative (SG&A) expenses and profit, Commerce normally will use non-proprietary information gathered

---

[138] For more information on ocean freight, *see* Preliminary SV Memorandum.
[139] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36092-93 (June 21, 2011) (*Labor Methodologies*).
[140] For more information on the labor SV calculation, *see* Preliminary SV Memorandum.

from producers of identical or comparable merchandise in the surrogate country.[141] In addition, the CIT has held that in the selection of surrogate producers, Commerce may consider how closely the surrogate producers approximate the NME producer's experience.[142] To value factory overhead, SG&A expenses, and profit, Commerce used the average of the 2018 audited public financial statements of Mecanica Sighetu S.A. and Metalicplas ACTIV S.A., because they are Romanian producer of comparable merchandise.[143]

COMPARISONS TO NORMAL VALUE

Pursuant to section 773(a) of the Act, in order to determine whether Stanley's and Pioneer's sales of the subject merchandise from China to the United States were made at less than normal value, Commerce compared the export price (or constructed export price) to the normal value as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.[144]

In numerous investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[145] Commerce finds that

---

[141] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006) and accompanying IDM at Comment 2; *see also* section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).
[142] *See Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1250-51 (CIT 2002); *see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying IDM at Comment 1.
[143] For more information on the surrogate financial ratios calculations, *see* Preliminary SV Memorandum.
[144] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying IDM at Comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1322 (CIT 2014), *aff'd*, 862 F.3d 1337 (Fed. Cir. 2017).
[145] *See, e.g., Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair,* 78 FR 33351 (June 4, 2013); Steel *Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported common customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.,* 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.[146]

2. Results of Differential Pricing Analysis

For Stanley, based on the results of the differential pricing analysis, Commerce preliminarily finds that 64.4 percent of the value of U.S. sales pass the Cohen's *d* test,[147] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce determines that there is meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the mixed alternative method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the mixed alternative method to all U.S. sales.

---

[146] The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See, e.g.*, *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.
[147] *See* Stanley's Analysis Memorandum.

For Pioneer, based on the results of the differential pricing analysis, Commerce preliminarily finds that 6.01 percent of the value of U.S. sales pass the Cohen's *d* test,[148] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method can account for such differences because there is less than a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method to calculate the weighted-average dumping margin for Pioneer.

CURRENCY CONVERSION

Where necessary, Commerce made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at http://enforcement.trade.gov/exchange/index.html.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

10/10/2019

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

[148] *See* Pioneer's Analysis Memorandum.

Attachment

Companies Not Granted a Separate Rate

1 Air It on Inc.
2 A-Jax Enterprises Ltd.
3 A-Jax International Co. Ltd.
4 Anhui Amigo Imp.& Exp. Co. Ltd.
5 Anhui Tea Imp. & Exp. Co. Ltd.
6 Asiahan Industrial Trading Ltd.
7 Baoding Jieboshun Trading Co., Ltd.
8 Beijing Catic Industry Ltd.
9 Beijing Jinheung Co., Ltd.
10 Beijing Qin-Li Jeff Trading Co., Ltd.
11 Beijing Qin-Li Metal Industries Co., Ltd.
12 Bodi Corporation.
13 Cana (Rizhou) Hardward Co. Ltd.
14 Cangzhou Nandagang Guotai Hardware Products Co., Ltd.
15 Cangzhou Xinqiao Int'l Trade Co. Ltd.
16 Certified Products Taiwan Inc.
17 Changzhou Kya Trading Co. Ltd.
18 Chanse Mechatronics Scientech Development (Jiangsu) Inc.
19 Chia Pao Metal Co. Ltd.
20 China Dinghao Co. Ltd.
21 China Staple Enterprise Co. Ltd.
22 Chinapack Ningbo Imp. & Exp. Co. Ltd.
23 Chite Enterprise Co. Ltd.
24 Chonyi International Co. Ltd.
25 Crelux Int'l Co. Ltd.
26 Daejin Steel Co. Ltd.
27 Dingzhou Baota Metal Products Co. Ltd.
28 Dong E Fuqiang Metal Products Co. Ltd.
29 Dream Rising Co., Ltd.
30 Eco-Friendly Floor Ltd.
31 Ejen Brother Limited.
32 Everglow Inc.
33 Everleading International Inc.
34 Faithful Engineering Products Co. Ltd.
35 Fastening Care.
36 Fastgrow International Co. Inc.
37 Foshan Hosontool Development Hardware Co. Ltd.
38 GD CP International Ltd.
39 GDCP International Co., Ltd.
40 Glori-Industry Hong Kong Inc.

41 Guangdong Meite Mechanical Co. Ltd.
42 Guangdong TC Meite Intelligent Tools Co., Ltd.
43 Hangzhou Orient Industry Co., Ltd.
44 Hebei Jindun Trade Co., Ltd.
45 Hebei Minghao Imp. & Exp. Co. Ltd.
46 Hengtuo Metal Products Co. Ltd.
47 Home Value Co., Ltd.
48 Hongkong Shengshi Metal Products Co., Ltd.
49 Hongyi (HK) Hardware Products Co. Ltd.
50 Huaiyang County Yinfeng Plastic Factory.
51 Hualude International Development Co. Ltd.
52 Huanghua Haixin Hardware Products Co., Ltd.
53 Huanghua Yingjin Hardware Products.
54 Inmax Industries Sdn. Bhd.
55 ITW Construction Products.
56 Jade Shuttle Enterprise Co. Ltd.
57 Jiang Men City Yu Xing Furniture Limited Company.
58 Jiangsu General Science Technology Co. Ltd.
59 Jiangsu Holly Corporation.
60 Jiangsu Huaiyin Guex Tools.
61 Jiangsu Inter-China Group Corp.
62 Jiangu Soho Honry Imp. and Exp. Co. Ltd.
63 Jiaxing TSR Hardware Inc.
64 Jinsco International Corp.
65 Jinsheung Steel Corporation.
66 Koram Inc.
67 Korea Wire Co. Ltd.
68 Liang’s Ind. Corp.
69 Liaocheng Minghui Hardware Products.
70 Linyi FlyingArrow Imp. & Exp. Co Ltd.
71 M&M Industries Co., Ltd.
72 Maanshan Lilai International Trade Co. Ltd.
73 Max Co., Ltd.
74 Milkway Chemical Supply Chain Service Co., Ltd.
75 Mingguang Abundant Hardware Products Co. Ltd.
76 Modern Factory For Metal Products.
77 Nailtech Co. Ltd.
78 Nanjing Nuochun Hardware Co. Ltd.
79 Nanjing Tianxingtong Electronic Technology Co. Ltd.
80 Nanjing Tianyu International Co. Ltd.
81 Nanjing Toua Hardware & Tools Co. Ltd.
82 Nanjing Zeejoe International Trade.
83 Nantong Intlevel Trade Co., Ltd.
84 Natuzzi China Limited.

85 Nielsen Bainbridge LLC.
86 Ningbo Adv. Tools Co. Ltd.
87 Ningbo Angelar Trading Co., Ltd.
88 Ningbo Fine Hardware Production Co. Ltd.
89 Ningbo Freewill Imp. & Exp Co., Ltd.
90 Ningbo Langyi Metal Products Co., Ltd.
91 Ningbo Sunrise International Ltd.
92 Ningbo WePartner Imp. & Exp. Co., Ltd.
93 Overseas Distribution Services Inc.
94 Overseas International Steel Industry.
95 Paslode Fasteners Co. Ltd.
96 Patek Tool Co. Ltd.
97 President Industrial Inc.
98 Promising Way (Hong Kong) Ltd.
99 Qingda Jisco Co. Ltd.
100 Qingdao Ant Hardware Manufacturing Co. Ltd.
101 Qingdao D&L Hardware Co. Ltd.
102 Qingdao Gold Dragon Co. Ltd.
103 Qingdao Hongyuan Nail Industry Co. Ltd.
104 Qingdao JCD Machinery Co., Ltd.
105 Qingdao Meijialucky Industry and Co.
106 Qingdao MST Industry and Commerce Co. Ltd.
107 Qingdao Powerful Machinery Co., Ltd.
108 Qingdao Top Metal Industrial Co., Ltd.
109 Qingdao Top Steel Industrial Co. Ltd.
110 Qingdao Uni-Trend International.
111 Quzhou Monsoon Hardware Co. Ltd.
112 Rise Time Industrial Ltd.
113 Romp Coil Nail Industries Inc.
114 R-Time Group Inc.
115 Ruifeng Hardware Products Co., Ltd.
116 Senco Asia Manufacturing Ltd.
117 Shandong Dinglong Imp. & Exp. Co., Ltd.
118 Shandong Liaocheng Minghua Metal Pvt. Ltd.
119 Shanghai Cedargreen Imp. & Exp. Co., Ltd.
120 Shanghai Curvet Hardware, Co., Ltd.
121 Shanghai Haoray International Trade Co. Ltd.
122 Shanghai Seti Enterprise Int'l Co. Ltd.
123 Shanghai Sutek Industries Co., Ltd.
124 Shanghai Yiren Machinery Co., Ltd.
125 Shanghai Yueda Fasteners Co., Ltd.
126 Shanghai Yueda Nails Co. Ltd.
127 Shanghai Zoonlion Industrial Co., Ltd.
128 Shanxi Easyfix Trade Co. Ltd.

129 Shanxi Xinjintai Hardware Co., Ltd.
130 Shaoxing Chengye Metal Producing Co. Ltd.
131 Shenzhen Xinjintai Hardware Co. Ltd.
132 Stanley Black & Decker, Inc.
133 Sueyi International Ltd.
134 Sumec Machinery and Electric Co., Ltd.
135 Suzhou Xingya Nail Co. Ltd.
136 Taizhou Dajiang Ind. Co. Ltd.
137 Test-Rite International Co., Ltd.
138 Theps International.
139 Tianji Hweschun Fasteners Manufacturing Co. Ltd.
140 Tianjin Baisheng Metal Products Co. Ltd.
141 Tianjin Bluekin Indusries Ltd.
142 Tianjin Coways Metal Products Co. Ltd.
143 Tianjin Dagang Jingang Nail Factory.
144 Tianjin Evangel Imp. & Exp. Co. Ltd.
145 Tianjin Fulida Supply Co. Ltd.
146 Tianjin Huixingshangmao Co. Ltd.
147 Tianjin Jin Xin Sheng Long Metal Products Co. Ltd.
148 Tianjin Jinghai Yicheng Metal Pvt.
149 Tianjin Jinlin Pharmaceutical Factory.
150 Tianjin Jinmao Imp. & Exp. Corp. Ltd.
151 Tianjin Lianda Group Co. Ltd.
152 Tianjin Liweitian Metal Technology
153 Tianjin Tianhua Environmental Plastics Co. Ltd.
154 Tianjin Yong Sheng Towel Mill.
155 Tianjin Yongye Furniture Co. Ltd.
156 Tianjin Zhonglian Times Technology.
157 Tianjin Zhongsheng Garment Co. Ltd.
158 Tinjin Tiaolai Import & Export Company Ltd.
159 Tsugaru Enterprise Co., Ltd.
160 Unicorn Fasteners Co. Ltd.
161 Verko Incorporated.
162 Win Fasteners Manufactory (Thailand) Co. Ltd.
163 Wire Products Manufacturing Co., Ltd.
164 Wulian Zhanpeng Metals Co. Ltd.
165 Xiamen Zhaotai Industrial Corp.
166 Yongchang Metal Product Co.
167 Youngwoo Fasteners Co., Ltd.
168 Yuyao Dingfeng Engineering Co. Ltd.
169 Zhanghaiding Hardware Co., Ltd.
170 Zhangjiagang Longxiang Industries Co. Ltd.
171 Zhaoqing Harvest Nails Co. Ltd.
172 Zhejiang Best Nail Industry Co. Ltd.

173 Zhejiang Jihengkang (JHK) Door Ind. Co. Ltd.
174 Zhejiang Saiteng New Building Materials Co., Ltd.
175 Zhejiang Yiwu Yongzhou Imp. & Exp. Co. Ltd.
176 Zhong Shan Daheng Metal Products Co. Ltd.
177 Zhong Shan Shen Neng Metals Products Co. Ltd.
178 Zhucheng Jinming Metal Products Co. Ltd.
179 Zhucheng Runfang Paper Co. Ltd.
180 Beijing Camzone Industry & Trading Co., Ltd.
181 Qingdao YuanYuan Metal Products LLC
182 Shanxi Fastener & Hardware Products