A-583-854
Investigation
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DATE: December 17, 2014

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Steel Nails from Taiwan

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain steel nails from Taiwan are not being, or are not likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins for (1) PT Enterprise Inc. (and its affiliated producer, Pro-Team Coil Nail Enterprise Inc.) (PT), and (2) Quick Advance, Inc. (and its affiliated producer, Ko's Nails Inc.) (Quick Advance), are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On May 29, 2014, the Department received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of certain steel nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam,[1] which were filed in proper form by Mid Continent Steel & Wire, Inc. (petitioner). With regard to the AD investigations, supplements to the petition are described in the *Initiation Notice* and the accompanying Initiation Checklists, including that for Taiwan.[2] On

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the SocialistRepublic of Vietnam (May 29, 2014) (Petition).

[2] *See Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 79 FR 36019 (June 25, 2014) (*Initiation Notice*).

June 25, 2014, the Department published notice of the initiation of the AD investigation of certain steel nails from various countries, including Taiwan, in the *Federal Register*.[3] The Department subsequently postponed the deadline for issuing the preliminary determination in this investigation to no later than 182 days after the date on which it initiated this investigation pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[4]

As stated in the Respondent Selection Memorandum, the Department based its selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.[5] The Department released the CBP entry data under an administrative protective order (APO) on June 25, 2014.[6] Subsequently, on July 2, 2014, petitioner and Progressive Steel & Wire, LLC (PSW) filed comments regarding the CBP entry data and the respondent selection methodology.[7] On July 24, 2014, the Department selected PT and Quick Advance as mandatory respondents.[8] On the same day, the Department issued initial questionnaires to PT and Quick Advance.[9]

On August 29, 2014, PT and Quick Advance submitted responses to section A of the Department's Initial Questionnaire. On September 17, 2014, PT and Quick Advance submitted responses to sections C and D of the Department's Initial Questionnaire.[10] Petitioner submitted comments on PT's and Quick Advance's initial questionnaire responses on September 8, 2014; September 22, 2014; September 26, 2014; September 29, 2014; and September 30, 2014.

The Department issued supplemental questionnaires to PT on September 11, 2014; September 29, 2014; September 30, 2014; November 10, 2014; November 25, 2014, and December 4, 2014. The Department received timely responses to these supplemental questionnaires on October 2, 2014; October 22, 2014; October 23, 2014; November 25, 2014; December 2, 2014; and December 8, 2014. Petitioner submitted comments on PT's supplemental responses on October 8, 2014; October 31, 2014 (Section D); and November 10, 2014.

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[3] *Id.*

[4] *See Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Postponement of Preliminary Determination of Antidumping Duty Investigations Sugar From Mexico: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 79 FR 63082 (October 22, 2014).

[5] *See* Memorandum to Christian Marsh, "Antidumping Duty Investigation of Certain Steel Nails from Taiwan: Respondent Selection Memorandum," dated July 24, 2014 (Respondent Selection Memorandum), at 3, 5 and Attachment 1.

[6] *See* Memorandum to the File, dated June 25, 2014.

[7] The public record of the review, including all public or public versions of correspondence filed by parties or the Department, may be accessed electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to guest and registered users at http://access.trade.gov and is also available to the public in the Central Records Unit, room 7046 of the main Department of Commerce building.

[8] *See* Respondent Selection Memorandum.

[9] *See* Letters to PT and Quick Advance, "Antidumping Duty Questionnaire," dated July 24, 2014 (Initial Questionnaire).

[10] Neither respondent had a viable home or third-country market. Accordingly, neither submitted a section B response. *See* the "Normal Value" section, *infra*.

The Department issued supplemental questionnaires to Quick Advance on September 15, 2014; October 3, 2014; October 20, 2014; October 24, 2014; and November 14, 2014. The Department received timely responses to these supplemental questionnaires on October 7, 2014; October 28, 2014; November 7, 2014; November 14, 2014; and November 27, 2014. Petitioner submitted comments on Quick Advance's supplemental responses on October 14, 2014; November 6, 2014; and November 25, 2014.

Petitioner filed allegations of middleman dumping by PT and Quick Advance on October 23, 2014. On the same date, petitioner also filed allegations that PT and Quick Advance were affiliated to their respective U.S. customer. On October 31, 2014, PT and Quick Advance filed rebuttal comments concerning petitioner's allegation of middleman dumping and affiliation. The Department met with petitioner's counsel and counsel to PT and Quick Advance regarding their allegations of affiliation and middleman dumping on November 12, 2014 and November 19, 2014, respectively.

Moreover, on October 17, 2014, the Department issued a letter, providing all interested parties the opportunity to comment and submit new factual information on constructed value (CV) profit and selling expenses. Petitioner filed comments on CV profit and selling expenses on October 31, 2014. On November 10, 2014, PT and Quick Advance filed rebuttal comments on CV profit and selling expenses.[11]

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2013, through March 31, 2014. This period corresponds to the four most recent fiscal quarters prior to the month in which the Petition was filed.[12]

[11] The Department found that PT and Quick Advance's November 10, 2014 submission contained new factual information. On November 24, 2014, we sent a letter rejecting their submission with an opportunity to refile. On November 25, 2014, PT and Quick Advance resubmitted their submission with the new factual information removed. In addition, petitioner and respondents submitted new factual information on November 17, 2014, stating that the information was filed pursuant to 19 CFR 351.301(c)(5). On November 21, 2014, PT and Quick Advance filed rebuttal factual information in response to petitioner's November 17, 2014 submission. On November 25, 2014, we rejected PT and Quick Advance's November 17, 2014 submission of factual information since we found that it failed to comply with 19 CFR 351.102(b)(21)(v) and 19 CFR 351.301(c)(5) because it satisfied the definition of information described in 19 CFR 351.102(b)(21)(i). On November 26, 2014, we rejected, but with the opportunity to resubmit, petitioner's November 17, 2014 submission of factual information, because it failed to provide a detailed narrative of exactly what information was contained in the submission and why it should be considered pursuant to 19 CFR 351.301(c)(5). On the same day, we also rejected PT and Quick Advance's November 21, 2014 submission of rebuttal information since it was filed in response to petitioner's November 17, 2014 submission, which we subsequently rejected. Petitioner resubmitted its information on December 1, 2014 with an additional explanation and stated that it was in accordance with 19 CFR 351.301(c)(5). On December 8, 2014, we rejected petitioner's December 1, 2014 resubmission because the information satisfied the definition of information described in 19 CFR 351.102(b)(21)(i), and it was therefore untimely new factual information. In addition, on December 3, 2014, PT and Quick Advance requested the Department to reconsider the decision to reject certain information placed on the record by letters dated November 10, November 17, and November 24, 2014. On December 11, 2014, we denied the request to reconsider.

[12] *See* 19 CFR 351.204(b)(1).

IV. POSTPONEMENT OF FINAL DETERMINATION

On December 8, 2014, PT and Quick Advance requested that the Department postpone the final determination in the event of an affirmative preliminary determination.[13] On December 10, 2014, petitioner requested that the Department postpone the final determination in the event of a negative preliminary determination.[14] Because our preliminary determination is negative, in accordance with section 735(a)(2)(B) of the Act, we are granting petitioner's request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*.

V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.[15] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. 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 may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. 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. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

Excluded from the scope of this investigation are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25.

Also excluded from the scope of this investigation are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this investigation are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.20.00 and 7317.00.30.00.

[13] *See* Letter from PT and Quick Advance to the Department, dated December 8, 2014.
[14] *See* Letter from the petitioner to the Department, dated December 10, 2014.
[15] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

Also excluded from the scope of this investigation are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (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.

Also excluded from the scope of this investigation are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this investigation are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this investigation also may be classified under HTSUS subheading 8206.00.00.00.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

VI. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period for interested parties to raise issues regarding product coverage.[16] The Department specified that any such comments were due by July 8, 2014, which was 20 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by July 18, 2014.[17]

On July 8, 2014, IKEA Supply AG and IKEA Distributions Services Inc. (collectively IKEA), Target Corporation, and The Home Depot, interested parties in the investigation, each submitted comments to the Department, expressing concern that the scope would cover nails that were packaged with other types of merchandise (*e.g.*, ready-to-assemble furniture, *etc.*) for use with such other merchandise. These parties believe the existing scope exclusion for nails numbering less than 25 is inadequate, and urge that the language of the scope be modified to broaden the exclusion of nails packaged with non-subject merchandise. On July 18, 2014, Petitioner submitted rebuttal comments, noting the language of the scope as written is clear, and rejecting the aforementioned parties' proposed changes. On October 17, 2014, Target Corporation and The Home Depot submitted additional comments, reiterating their concerns regarding the coverage of nails packaged with non-subject merchandise. On October 24, 2014, Petitioner submitted additional comments, again advocating that the Department reject the arguments of Target Corporation and The Home Depot. On November 3, 2014, IKEA also submitted additional comments, reiterating the concerns it had expressed in its earlier submission.

We are now evaluating the comments received but, for purposes of this preliminary

[16] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997).
[17] *See Initiation Notice* at 36020.

determination, no change to the scope is being made at this time.

VII. AFFILIATION

A. Legal Standard

Affiliation

The Act requires the Department to consider certain persons affiliated. Specifically, section 771(33) of the Act, provides that:

> The following persons shall be considered to be "affiliated" or "affiliated persons":
>
> (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
> (B) Any officer or director of an organization and such organization.
> (C) Partners.
> (D) Employer and employee.
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
> (G) Any person who controls any other person and such other person.

Regarding control, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) further explains that control may be found to exist within corporate groupings.[18] The Department's regulations at 19 CFR 351.102(b)(3) state that, in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.

[18] *See* SAA, H.R. Doc. 103-316 (1994), at 838, *reprinted in* 1994 U.S.C.C.A.N. 4040 *et seq.* (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

B. PT

PT shares a common shareholder with producer Pro-Team Coil Nail Enterprise Inc. (Pro-Team), and that common shareholder owns a sufficient percentage of PT and Pro-Team to establish control over both companies.[19] Because both companies are controlled by that common shareholder, we find PT and Pro-Team are affiliated pursuant to section 771(33)(F) of the Act.

C. Quick Advance

Quick Advance shares a common owner with producer Ko's Nails Inc. (Ko's);[20] because both companies share a common owner, we find they are affiliated under section 771(33)(F) of the Act.

D. Close Supplier Relationship Affiliation

Petitioner alleges that PT and Quick Advance are affiliated with a certain U.S. customer through a close supplier relationship between the respondents and the customer.[21] Petitioner argues PT and Quick Advance are affiliated with the customer based on: (1) their reliance on the U.S. customer for the sale of the "vast majority" of sales during the POI; (2) their dependence on the U.S. customer for 100 percent of their sales since the respondents' inception; (3) their ability to influence its U.S. customer's purchases of subject merchandise; and (4) the U.S. customer's ability to exercise control of production, pricing, and costs. Therefore, petitioner urges that evidence on the record supports a preliminary determination of affiliation consistent with the Department's past practice.

PT and Quick Advance filed rebuttal comments to petitioner's allegation, stating that a finding of affiliation by virtue of a close supplier relationship would be inappropriate in this proceeding.[22] They argue that in numerous other proceedings, the Department has set the standard for close supplier relationship as requiring "evidence that the seller was somehow required by a selling or supply agreement to sell merchandise to a particular buyer or that the seller could not, if it so desired, look to other buyers for its goods."[23] PT and Quick Advance further argue that the petitioner has not provided any credible evidence that PT and Quick Advance and its U.S. customer are affiliated parties by reason of a close supplier relationship. Therefore, the Department should not make a preliminary determination of affiliation.

We disagree with petitioners and preliminary determine PT and Quick Advance are not affiliated with their U.S. customer. Consistent with the Department's past decisions, we find that a respondent making the vast majority of sales to one customer does not, by itself, constitute

[19] *See* PT's August 28, 2014 submission at 4, Exhibit A-2, and Exhibit A-3,
[20] See Quick Advance's August 28, 2014 submission at 4, Exhibit A-2, and A-3.
[21] *See* Letter to the Department "Certain Steel Nails from Taiwan: Affiliation Analyses," dated October 23, 2014 at 4.
[22] *See* Letter to the Department "Quick Advance Inc. and PT Enterprises Response to Petitioner's Affiliation Analysis Antidumping Duty Investigation of Certain Steel Nails from Taiwan," dated October 31, 2014.
[23] *See id.* at 8.

sufficient evidence to determine affiliation by virtue of a close supplier relationship.[24] The record does not show any contracts, exclusivity agreements, or affiliated individuals between PT and Quick Advance and its U.S. customer. Instead, the record establishes that the U.S. customer in question has vendors located in many countries around the world and is not solely reliant on PT and Quick Advance for its subject merchandise needs.[25] Therefore, the Department finds that the U.S. customer's relationship to PT and Quick Advance is not so significant that it could not be replaced.[26] Conversely, there is no evidence on the record that establishes that PT and Quick Advance are debarred from selling to other U.S. importers.[27] Therefore, the record does not establish that the U.S. customer exercises restraint or direction as defined under section 771(33) of the Act. On this basis, we preliminarily determine that PT and Quick Advance are not affiliated to any U.S. customer.

VIII. MIDDLEMAN DUMPING

In cases where the producer or producers under investigation sell subject merchandise to an unaffiliated party prior to its arrival in the United States with knowledge of the final destination, we normally use as export price the price at which the producer sells the subject merchandise to the first unaffiliated party, pursuant to section 772(a) of the Act.

However, when an exporter sells its merchandise to an unaffiliated exporter who, in turn, resells the merchandise to the United States at prices below the reseller's acquisition and selling costs, it is possible that "middleman dumping" may exist. In such cases, the Department will calculate an antidumping duty margin based on a combination of the price paid by the middleman to the exporter, and the price paid to the middleman from the unaffiliated U.S. customer. Congress indicated in its legislative history that it intended for the Department to prevent middleman dumping from occurring, and the Courts have affirmed this application of the law as necessary to prevent the circumvention of the antidumping duty law.[28] On October 23, 2014, petitioner filed allegations of middleman dumping against both respondents, PT and Quick Advance. Petitioner argues that the Department has the authority to initiate an investigation of trading companies notwithstanding foreign producers' knowledge of the destination of the subject merchandise. Petitioner maintains that the Department's practice regarding middleman dumping allegations is clear and unambiguous. Petitioner then goes on to state that evidence on the record supports its

[24] *See, e.g., TIJID v. United States*, 29 CIT 307, 322 (CIT 2005); *Grain-Oriented Electrical Steel From the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014) and accompanying Issues and Decision Memorandum at comment 1.
[25] *See* Quick Advance and PT's October 31, 2014 submission at 9.
[26] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 34122 (June 18, 2004) and accompanying Issues and Decision Memorandum at 8; *Solid Urea From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 76 FR 66690 (October 27, 2011) and accompanying Issues and Decision Memorandum at 1.
[27] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China*, 66 FR 58115 (November 20, 2001) and accompanying Issues and Decision Memorandum at comment 4.
[28] *See Tung Mung Dev. Co., Ltd., et al. v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff'd* 354 F. 3d 1371 (Fed. Cir. 2004); S. Rep. No. 96-249 at 94 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 480; and H.R. Rep. No. 96-317 at 75 (1979) (both discussing the need to prevent middleman dumping).

claims of middleman dumping for both respondents, arguing that the unaffiliated resellers in Taiwan sold subject merchandise to the United States at prices below their cost of acquisition during the POI.

PT and Quick Advance responded to petitioner's allegations on October 31, 2014. PT and Quick Advance claim that petitioner's allegations do not involve a sufficient quantity of subject merchandise for the Department to undertake a costly and time consuming middleman dumping investigation. They also argue that petitioner has not presented sufficient evidence to support its allegations that Taiwan trading companies were guilty of middleman dumping. Therefore, respondents assert, the Department should not conduct a middleman dumping investigation.

As an initial matter, we agree with petitioner that the Department has the authority to investigate a middleman dumping allegation. We also disagree with respondents that the quantity of subject merchandise at issue is insufficient to justify a middleman dumping investigation. However, after reviewing the record, we find evidence that PT and Quick Advance are not engaging in middleman dumping by means of their sales to Taiwanese trading companies. Record evidence indicates that amounts actually remitted by the trading companies to PT or Quick Advance account for the trading companies' acquisition costs by deducting certain operating expenses from the invoice price of the subject merchandise.[29] These deductions in the price paid by the Taiwanese trading companies indicate that the parties involved are taking into account acquisition costs and are not reselling subject merchandise below cost. Therefore, in light of this evidence, we preliminarily determine to not initiate a middleman dumping investigation. We will examine this issue closely at the Department's upcoming verifications of both respondents.

IX. DISCUSSION OF METHODOLOGY

A. Fair Value Comparisons

To determine whether sales of certain steel nails from Taiwan to the United States were made at LTFV, we compared the export prices (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this memorandum. As explained below, the Department preliminarily determines that the use of constructed export prices (CEPs) is not warranted.

[29] *See* PT and Quick Advance's October 31, 2014, submission at 7-9; PT's December 8, 2014, submission entitled, "PT Enterprise 2nd Channel 3 Sales Supplemental Questionnaire Response: Antidumping Duty Investigation of Certain Steel Nails from Taiwan"; Quick Advance's October 6, 2014, section A supplemental response at 10; Quick Advance's November 21, 2014, section C supplemental response at 1-2 and Exhibit SA-8; and Letter to the Department, "PT Enterprise and Pro-Team Coil Nail Enterprise Response to Petitioner's Pre-Preliminary Comments: Antidumping Duty Investigation of Certain Steel Nails from Taiwan," dated December 8, 2014, at 8.

B. Product Control Numbers

As explained below, for both PT and Quick Advance, we based NV on CV because neither respondent had a viable home market or third-country market during the POI. Therefore, no comparisons are made of EPs with NVs based on home market or third-country market sales where it would be necessary to identify identical or similar merchandise.

As discussed below, CV is based on cost of production reported by both PT and Quick Advance. Each respondent's cost of production is reported by the product control number (CONNUM). CONNUMs are defined by the reported physical characteristics established by the Department in this investigation: nail form, product form, steel type, surface finish, diameter, shank length, collation material, head style, shank style, and heat treatment.[30]

C. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. The Department's regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to EPs (or CEPs) of individual transactions (average-to-transaction or A-to-T method).[31] In recent AD investigations, the Department applied a "differential pricing" (DP) analysis for determining whether application of the A-to-A comparison method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).[32] The Department may determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the A-to-T method. The Department will continue to develop its approach in this area based on comments received in this investigation and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

The DP analysis used in this preliminary determination requires a finding of a pattern of EPs for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes reported by PT and the Quick

[30] *See* Initial Questionnaire.
[31] *See* 19 CFR 351.414(b)(2)-(3).
[32] *See, e.g., Xanthan Gum From Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2251 (January 10, 2013), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) (*Xanthan Gum From Austria*), and accompanying Issues and Decision Memorandum at 2.

Advance. Regions are defined using the reported destination (*i.e.*, State) 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 POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP and NV for the individual AD margins.

In the first stage of the DP analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data 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 net prices to a particular purchaser, region or time period differ significantly from the net 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. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales were 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 accounts for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A 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 A-to-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-to-A method, and application of the A-to-A 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 A-to-A 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 EPs that differ significantly, such that an alternative comparison method should be considered, then in the second stage of the DP analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative 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 A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an

alternative 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 margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

Results of the DP Analysis

PT

Based on the results of the DP analysis, the Department finds that 41.73 percent of PT's U.S. sales pass the Cohen's *d* test, such that we considered, as an alternative comparison method, applying a combination of the A-to-A comparison method to those sales that did not pass the Cohen's *d* test, and the A-to-T comparison method to those sales that passed the Cohen's *d* test.[33] However, the Department finds that the A-to-A method appropriately accounts for such differences because there is not a meaningful difference in the weighted-average dumping margins calculated for PT when calculated using the A-to-A method and the A-to-T method.[34] Accordingly, the Department has determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for PT.[35]

Quick Advance

Based on the results of the DP analysis, the Department finds that 29.11 percent of Quick Advance's U.S. sales pass the Cohen's *d* test, which confirms that there is not a pattern of EPs for comparable merchandise that differ significantly among purchasers or time periods.[36] Accordingly, the Department has determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Quick Advance.[37]

D. Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of 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 subsection (c)." In accordance

[33] *See* Memorandum to the File, "Antidumping Duty Investigation of Certain Steel Nails from Taiwan: PT Enterprise Preliminary Analysis Memorandum," dated concurrently with this memorandum (PT Preliminary Analysis Memorandum).
[34] *Id.*
[35] *Id.*
[36] *See* Memorandum to the File, "Antidumping Duty Investigation of Certain Steel Nails from Taiwan: Quick Advance Inc. Preliminary Analysis Memorandum," dated concurrently with this memorandum (Quick Advance Preliminary Analysis Memorandum).
[37] *Id.*

with section 772(a) of the Act, we used the EP methodology for both PT and the Quick Advance because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted.

For both PT and Quick Advance, we calculated EP based on the sales price to unaffiliated purchasers. These companies resell PT's and Quick Advance's products to U.S. customers with the producer's knowledge of the final destination of the merchandise. We made adjustments, where appropriate, from the starting price for billing adjustments. We also made deductions, where applicable, for any movement expenses (*e.g.*, foreign inland freight, port charges, export processing fees, international freight, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act.[38]

E. Normal Value

1. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared PT's and Quick Advance's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(B) of the Act. For both PT and Quick Advance, we found that the aggregate volume of home market sales of the foreign like product was less than five percent of the aggregate volume of U.S. sales, and, thus, PT's and Quick Advance's sales in the home market were not viable.[39] When sales in the home market are not viable, section 773(a)(1)(B)(ii) of the Act provides that sales to a third-country market may be utilized if: (1) the prices in such market are representative; (2) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (3) the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the U.S. price. Again, for both PT and Quick Advance, we found that the aggregate quantity of the foreign like product sold in any third-country market was less than five percent of the aggregate volume of U.S. sales, and, therefore neither PT nor Quick Advance had a viable third-country market.[40] As a result, for both PT and Quick Advance, we used CV as the basis for calculating NV, in accordance with section 773(a)(4) of the Act.

2. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV because PT and Quick Advance did not have a viable comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative (G&A) expenses, interest expenses, U.S. packing expenses, and profit in the calculation of CV. We relied on PT and Quick's submitted materials and fabrication costs,

[38] *See* PT Preliminary Analysis Memorandum; *see also* Quick Advance Preliminary Analysis Memorandum.
[39] *See* 19 CFR 351.404(b)(1)-(2); *see also* PT's August 28, 2014, section A response at A-3 and Exhibit A-1; PT's October 2, 2014 submission at 7; Quick Advance's August 28, 2014, section A response at A-3 and Exhibit A-1; Quick Advance's October 7, 2014, section A supplemental response at 8-9.
[40] *See* PT Preliminary Analysis Memorandum; *see also* Quick Advance Preliminary Analysis Memorandum.

G&A, interest expenses, and U.S. packing costs, except in instances where we determined that the information was not valued correctly, as described below. Based on our examination of the record evidence, PT and Quick did not appear to experience significant changes in the cost of manufacturing during the period of investigation. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

We relied on Quick Advance's producer, Ko's, submitted cost data except as follows:

1. Ko's used an affiliated toller to apply phosphate coating to its steel nails. We adjusted the transfer price paid for phosphate coating application to reflect the market price.[41]
2. We excluded packing material and labor expenses from the cost of goods sold denominator in Ko's general and administrative and financial expense ratio calculations.[42]

We relied on PT's submitted cost data except as follows:

1. PT used affiliated and unaffiliated tollers to produce its steel nails. We adjusted the transfer price paid for wire drawing and nail making to reflect the market price.[43]

Because PT and Quick Advance do not have viable home or third-county markets, we are unable to calculate a CV profit using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home market or third country sales made in the ordinary course of trade. When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the "profit cap").

Because PT and Quick make only nails and did not sell any non-subject comparable merchandise in the home market during the POI, we are unable to calculate a profit under section 773(e)(2)(B)(i), *i.e.*, based on sales of the same general category of product. We are also unable to calculate a profit under 773(e)(2)(B)(ii), *i.e.*, based on the average of the preferred method profit from the other exporters or producers being examined, because PT and Quick Advance are our only respondents. We must therefore calculate profit under section 773(e)(2)(B)(iii), *i.e.*, any other reasonable method.

On October 17, 2014, we sent a request to all parties for constructed value profit and selling expense comments and information. Parties provided their responses on October 31, 2014, and

[41] *See* Memorandum from Gina Lee to Neal M. Halper re: Cost of Production and Constructed Value Adjustments for the Preliminary Determination – Quick Advance Inc., dated December 17, 2014.
[42] *Id*.
[43] *See* Memorandum from Laurens van Houten to Neal M. Halper re: Cost of Production and Constructed Value Adjustments for the Preliminary Determination – PT Enterprise Inc., dated December 17, 2014.

their rebuttals to submissions of the other party on November 10, 2014. We have considered five possible options for CV profit under section 773(e)(2)(B)(iii) of the Act, based on the information on the record of this investigation: the profit reflected in the audited financial statements for three Taiwanese manufacturers of screws, bolts and fasteners (Chun Yu Work and Co., Ltd., OFCO Industrial Corp., and Sumeeko Industries Co. Ltd.),[44] the profit reflected in the audited financial statements of Hitech Fastener Manufacture (Thailand) Co., Ltd. (Hitech), a Thai producer of screws and rivets,[45] and the profit for Sundram Fasteners Limited (Sundram), an Indian producer of auto parts and fasteners.[46]

We acknowledge that each of these options has its limitations. The difficulty of this issue revolves around the conflict between having CV profit reflect the production and sale of merchandise in the market under consideration and the need for the profit to reasonably reflect the merchandise under investigation. With regard to Hitech and Sundram, we note that although each of these companies produces comparable merchandise, neither of them produce or sell in the market under consideration. Additionally, although Sundram does produce some comparable merchandise, a large proportion of its production consists of various automobile parts that are not comparable to nails. Further, with specific regard to one of the three Taiwanese producers (Sumeeko), we note that portions of the submitted financial statements lack English translations, and therefore, consistent with the Department's past practice, we do not use the untranslated financial statements.[47]

Thus, in having to choose a reasonable source for CV profit data amongst the available options before us, we have preliminarily determined to use the simple-average profit earned by OFCO Industrial Corp. and Chun Yu Work and Co., Ltd., Taiwanese producers of comparable merchandise, in accordance with section 773(e)(2)(B)(iii) of the Act.

We further note that we have been unable to calculate the amount normally realized by exporters or producers in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category, because the record does not contain public information for making such calculation.

Section 776(a)(1) of the Act provides that, if necessary information is not available on the record, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (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 demonstrated that

[44] *See* Petitioners' Submission of New Factual Information on Constructed Value Profit and Selling Expenses, dated October 31, 2014, at Exhibits 2A, 2B and 11C; *see also* PT Enterprise and Quick Advance Submission of Factual Information for CV Profit and Selling Expenses, dated October 31, 2014, at Exhibits 1 and 2.
[45] *See* Petitioners' Submission of New Factual Information on Constructed Value Profit and Selling Expenses, dated October 31, 2014, at Exhibit 7B.
[46] *Id.* at Exhibit 10A.
[47] *See, e.g., Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 14499 (March 12, 2012), and accompanying Issues and Decision Memorandum at Comment 2.

it acted to the best of its ability; and (5) the information can be used without undue difficulties. Therefore, because there is no other information available on the record, as facts available, we are not quantifying a profit cap in applying option (iii) of section 773(e)(2)(B) of the Act.

With respect to selling expenses, because PT and Quick do not have a viable home market or third-country market, the Department does not have comparison market selling expenses to use in its calculations, as directed by section 773(e) of the Act. As an alternative, to calculate selling expenses the Department has used the same financial statements that it used to calculate CV profit, in accordance with section 773(e)(2)(B)(iii) of the Act. For more information, *see* PT and Quick Preliminary Analysis Memoranda.

F. Date of Sale

19 CFR 351.40l(i) states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[48] The Court of International Trade (CIT) stated that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[49] Alternatively, the Department may exercise its discretion to rely on a date other than invoice date if the Department "provides a rational explanation as to why the alternative date 'better reflects' the date when 'material terms' are established."[50] The date of sale is generally the date on which the parties establish the material terms of the sale,[51] which normally includes the price, quantity, delivery terms, and payment terms.[52]

For Quick Advance's direct sales, the date of sale is the declaration date to Taiwan customs.[53] Declaration date is used for Quick Advance's direct sales date because it is the date on which Quick Advance realized revenue for its direct sales.[54] After reviewing the information provided by Quick Advance, we preliminarily determine the date of sale for Quick Advance's sales to Taiwanese customers is the invoice date. The material terms of sale may change after the purchase order (*e.g.*, price may change and certain production specifications are not finalized until the date of invoice). Thus, for Quick Advance's sales to Taiwanese customers, the date of sale is the invoice date.[55]

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[48] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001).
[49] *Allied Tube*, 132 F. Supp. at 1090 (brackets and citation omitted).
[50] *SeAH Steel Corp., Ltd. v. United States*, 25 CIT 133, 135 (CIT 2001).
[51] 19 CFR 351.401(i).
[52] *See USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).
[53] *See* Quick Advance's August 29, 2014, section A response at 13-14; *see also* Quick Advance's September 17, 2014, section C response at 17.
[54] Quick Advance's October 28, 2014, supplemental section C response at 10.
[55] *Id*.

PT stated that it was using the invoice date as the date of sale.[56] After reviewing the information provided PT, we preliminarily determine that material terms of sale change after the purchase order (*e.g.*, price may change and certain production specifications are not finalized until the date of invoice). Thus, because the material terms of sale are not established until the invoice date for PT, we are relying on the date of invoice as the date of sale for U.S. sales.[57]

G. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

X. U.S. INTERNATIONAL TRADE COMMISSION NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the U.S. International Trade Commission (ITC) of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 735(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain steel nails from Taiwan before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

XI. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[58] Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.[59]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[60] This summary should be limited to five pages total, including footnotes.

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[56] *See, e.g.*, PT's September 17, 2014 submission at 15.
[57] *Id*.
[58] *See* 19 CFR 351.224(b).
[59] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).
[60] *See* 19 CFR 351.309(c)(2) and (d)(2).

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[61] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[62] Electronically filed documents must be received successfully in their entirety by 5:00 PM Eastern Time,[63] on the due dates established above.

XII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify information relied upon in making our final determination.

XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

December 17, 2014

Date

[61] *See* 19 CFR 351.310(c).
[62] *See* 19 CFR 351.303(b)(2)(i).
[63] *See* 19 CFR 351.303(b)(1).