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AD/CVD Operations, OVI: VCho, SHoefke

February 6, 2018

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

**FROM:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
2015-2016 Administrative Review of the Antidumping Duty Order  
on Certain Steel Nails from Taiwan

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## I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on certain steel nails from Taiwan covering the period of review (POR) May 20, 2015 to June 30, 2016. The review covers mandatory respondents: Bonuts Hardware Logistic Co., Ltd.<sup>1</sup> (Bonuts); PT Enterprise, Inc. (PT) and its affiliated producer Pro-Team Coil Nail Enterprise, Inc. (Pro-Team) (collectively, PT/Pro-Team); Unicatch Industrial Co. Ltd. and its affiliated U.S. reseller, TC International, Inc. (collectively, Unicatch). This review also covers non-selected companies: Hor Liang Industrial Corp. and Romp Coil Nails Industries Inc. Based upon our analysis of the comments received, we made changes from the *Preliminary Results*<sup>2</sup> with respect to Unicatch

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<sup>1</sup> Commerce initiated a review of Bonuts Hardware Logistic Co., Ltd., but has referred to the company as Bonuts Hardware Logistics Co., LLC and Bonuts Logistics LLC at different times during this segment of the proceeding, based on the company's submissions.

<sup>2</sup> See *Certain Steel Nails from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016*, 82 FR 36744 (August 7, 2017) (*Preliminary Results*), and accompanying Memorandum, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Steel Nails from Taiwan; 2015-2016," dated July 31, 2017 (Preliminary Decision Memorandum).

and the rate assigned to the non-examined companies. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

## **II. LIST OF ISSUES**

### **A. PT/Pro-Team-Specific Issue**

Comment 1: Application of Adverse Facts Available to PT/Pro-Team

### **A. Unicatch-Specific Issues**

Comment 2: Application of Adverse Facts Available to Unicatch

Comment 3: Other Cost Issues

Comment 4: Unicatch’s U.S. Sales Data

Comment 5: Middleman Dumping for Unicatch

Comment 6: Constructed Value Profit and Selling Expenses

Comment 7: Correction of Preliminary Results Clerical Errors

## **III. BACKGROUND**

On August 1, 2017, Commerce released its preliminary calculation materials to interested parties. On August 3, 2017, Unicatch submitted a request that Commerce correct certain ministerial errors in its *Preliminary Results*.<sup>3</sup> On August 14, 2017, Commerce issued its response to Unicatch’s ministerial error allegation, stating that comments concerning ministerial errors made in the preliminary results of a review should be included in a party’s case brief, pursuant to 19 CFR 351.224(c)(1).<sup>4</sup>

On August 7, 2017, Commerce published the *Preliminary Results* of this administrative review.<sup>5</sup> In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Results*.<sup>6</sup> On September 22, 2017, we timely received case briefs from Mid Continent Steel & Wire, Inc. (the petitioner), PT/Pro-Team, Unicatch, and PrimeSource Building Products (PrimeSource), a U.S. importer.<sup>7</sup> On September 27, 2017, we timely received rebuttal briefs from the petitioner, PT/Pro-Team, and Unicatch.<sup>8</sup> Based on the request of PT/Pro-Team and Unicatch,<sup>9</sup> Commerce held a public hearing on October 25, 2017. On December 1, 2017,

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<sup>3</sup> See Unicatch’s August 3, 2017 Clerical Error Comments.

<sup>4</sup> See Memorandum, “Antidumping Duty Administrative Review of Certain Steel Nails from Taiwan: Preliminary Results Ministerial Errors Allegation,” dated August 14, 2017.

<sup>5</sup> See *Preliminary Results*, 82 FR at 36745.

<sup>6</sup> *Id.*

<sup>7</sup> See Petitioner’s September 22, 2017 Case Brief (Petitioner Case Brief); PT/Pro-Team’s September 22, 2017 Case Brief (PT/Pro-Team Case Brief); Unicatch’s September 22, 2017 Case Brief (Unicatch Case Brief); and PrimeSource’s September 22, 2017 Case Brief (PrimeSource Case Brief).

<sup>8</sup> See Petitioner’s September 27, 2017 Rebuttal Brief (Petitioner Rebuttal Brief); see Unicatch’s September 27, 2017 Rebuttal Brief (Unicatch Rebuttal Brief); and see PT/Pro-Team’s September 27, 2017 Rebuttal Brief (PT/Pro-Team Rebuttal Brief).

<sup>9</sup> See PT/Pro-Team and Unicatch’s August 14, 2017 Hearing Request.

and January 12, 2018, Commerce extended the deadline for the final results of this administrative review, until February 3, 2018.<sup>10</sup> Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now February 6, 2018.<sup>11</sup>

Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

#### **IV. SCOPE OF THE ORDER**

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches.<sup>12</sup> 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.

Excluded from the scope of these orders 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. 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, unless otherwise excluded based on the other exclusions below.

Also, excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings:

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<sup>10</sup> See Memorandum, "Certain Steel Nails from Taiwan: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2015-2016," dated December 1, 2017; *see also* Memorandum, "Certain Steel Nails from Taiwan: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2015-2016," dated January 12, 2018.

<sup>11</sup> See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

<sup>12</sup> 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.

1) builders' joinery and carpentry of wood that are classifiable as windows, French windows and their frames; 2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; 3) swivel seats with variable height adjustment; 4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); 5) seats of cane, osier, bamboo or similar materials; 6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); 7) furniture (other than seats) of wood (with the exception of i) medical, surgical, dental or veterinary furniture; and ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or 8) furniture (other than seats) of materials other than wood, metal, or plastics (e.g., furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also, excluded from the scope of these orders 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 these orders are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also, excluded from the scope of these orders 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 these orders 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 these orders are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to these orders 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 these orders also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

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

## V. RATE FOR NON-EXAMINED COMPANIES

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any rates that are zero, *de minimis* or based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to all other respondents. The SAA states that the "expected method" under "any reasonable method" is that we will weight-average the rates that are zero, *de minimis*, and based entirely on facts available.<sup>13</sup>

In this review, we have determined a dumping margin for all mandatory respondents (*i.e.*, PT/Pro-Team, Unicatch, and Bonuts) based entirely on facts available. Applying the method set forth in section 735(c)(5)(B) of the Act and described as the "expected method" in the SAA, we determine to apply to companies not selected for individual examination in this review the rate determined for all mandatory respondents.<sup>14</sup> Accordingly, we assign to the non-selected companies the dumping margin of 78.17 percent.

## VI. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the *Initiation Notice* of the requested review. On December 12, 2016, Mid Continent withdrew its request for administrative review with respect to multiple companies, including Yusen Logistics (Taiwan) Ltd. (Yusen Logistics).<sup>15</sup> However, Commerce inadvertently omitted Yusen Logistics from the list companies for which this administrative

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<sup>13</sup> See Uruguay Round Agreements Act Statement of Administrative Action, attached to H.R. Rep. No. 103-316 Vol. I at 873 (1994), reprinted in 1994 U.S.C.C.A.N 3773, 4163 (SAA).

<sup>14</sup> In previous cases, the Department determined that a "reasonable method" to use when, as here, the rate of the respondent selected for individual examination is based on AFA, is to apply to those companies not selected for individual examination the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available (which may be from the investigation or a prior administrative review). See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 16. However, the U.S. Court of Appeals for the Federal Circuit recently rejected the Department's reliance on methodologies that pulled forward rates from prior segments of the proceeding for non-selected companies in light of, *inter alia*, section 735(c)(5)(B) of the Act and the SAA's identification of an "expected method." See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016). See also *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 45124 (July 12, 2016) and Accompanying Preliminary Decision Memorandum at V(b); unchanged for the final results, 81 FR 80635 (November 16, 2016).

<sup>15</sup> See Mid Continent December 12, 2016, Withdrawal of Request for Administrative Reviews.

review was rescinded in the *Preliminary Results*. Because Mid Continent timely withdrew its request for administrative reviews of Yusen Logistics within 90 days of the date of publication of the *Initiation Notice*, and no other interested party requested a review of Yusen Logistics, Commerce is rescinding this review with respect to this company, in accordance with 19 CFR 351.213(d)(1).

## VII. DISCUSSION OF THE ISSUES

### A. PT/Pro-Team Issue

#### Comment 1: Application of Adverse Facts Available to PT/Pro-Team

PrimeSource's Argument:<sup>16</sup>

- The application of adverse facts available (AFA) to PT/Pro-Team in the *Preliminary Results* was a case of wildly excessive punishment in response to data reporting that, while disorganized, was nonetheless accurate and complete. There was no gap in the record due to PT/Pro-Team's timeliness or due to PT/Pro-Team's completeness of the record that warrant resorting to total AFA of PT/Pro-Team.
- PT/Pro-Team had a very small amount of domestic sales, not nearly enough for normal value to be based on home market price; therefore, PT/Pro-Team provided constructed value data to Commerce. Commerce should base its final results on the submitted data and should calculate an assessment rate of zero percent.
- Court precedent holds that refusing to consider "corrective" information – even untimely submitted corrective information – may amount to an abuse of Commerce's discretion.<sup>17</sup> This line of cases has been specifically applied, and use of AFA overturned on appeal, in the circumstance of a deficient Q&V response that was later corrected by a respondent.<sup>18</sup>
- Commerce's six-factor test for corrective information compels acceptance of PT/Pro-Team's correction showing that its home market was not viable:
  - 1) the error was clerical, rather than methodological;
  - 2) corrective documentation provided to Commerce was clearly reliable;
  - 3) PT/Pro-Team availed itself of the earliest reasonable opportunity to correct the error once alerted to it by Petitioner's June 9, 2017, allegation;
  - 4) corrective documentation was submitted ahead of the case brief due date;
  - 5) the correction did not entail any substantial revision of the response; and
  - 6) the corrective documentation does not contradict information previously determined to be accurate at verification.

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<sup>16</sup> See PrimeSource Case Brief at 2-4.

<sup>17</sup> See PrimeSource Case Brief, at 3 citing *Timken U. S. Corp. v. United States*, 434 F. 3d 1345, 1353–54 (Fed. Cir. 2006) (*Timken*); *NTN Bearing Corp. v. United States*, 74 F. 3d 1204, 1208–09 (Fed. Cir. 1995) (*NTN*); *Grobtest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1365 (2012) (*Grobtest*); *Fischer S.A. Comercio, Industria & Agricultura v. United States*, 700 F. Supp. 2d 1364, 1375–77 (2010) (*Fischer*). See also *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 25 CIT 1150, 1157 (2001) (“{A} completely errorless investigation is simply not a reasonable expectation. Even the most diligent respondents will make mistakes, and Commerce must devise a non-arbitrary way of distinguishing among errors.”).

<sup>18</sup> See PrimeSource Case Brief, at 4 citing *Fine Furniture*, 865 F. Supp. 2d 1254, 1266-1267.

PT/Pro-Team's Argument:<sup>19</sup>

- Based on a proper application of controlling law, judicial precedent, and administrative practice to the facts of this case, Commerce should calculate PT/Pro-Team's dumping margin for the final results based on its data on the record.
- Commerce's decision to apply AFA was based on its preliminary finding that "the record lacks the necessary information to determine the viability of PT/Pro-Team's home market for purposes of section 773 of the Act." This statement is simply not true, as the record contains the necessary information in Exhibit P-2 in PT/Pro-Team's Rebuttal Comments.<sup>20</sup> This exhibit facilitates Commerce's completion of its analysis of PT/Pro-Team's home market viability. This document, based entirely on information already on the record, shows that PT/Pro-Team's home market was not viable.
- All of PT/Pro-Team's submissions in this proceeding were timely filed, complete and accurate with the sole exception of its inadvertent clerical error in completing Commerce's quantity and value (Q&V) chart.
- Since Commerce requested that PT/Pro-Team submit the Q&V of home market and U.S. sales in a summary format, and since the summary in PT/Pro-Team's Rebuttal Comments is on the record, Commerce is required by law to consider its contents in its final results, as reasoned in *Fine Furniture*.<sup>21</sup>
- PT/Pro-Team's Rebuttal Comments (1) do not contain new factual information, but merely summarized timely filed information (*i.e.*, PT/Pro-Team's January 19, 2017 reconciliation); (2) was filed in direct response to Petitioner's June 9, 2017 allegation that PT/Pro-Team's home market was viable because, according to Petitioner, "otherwise PT/Pro-Team would have reported the data requested;" and (3) was timely filed within the parameters set forth in Section 351.301(c)(1)(v).
- In its *Preliminary Results*,<sup>22</sup> Commerce noted that the data in PT/Pro-Team's Rebuttal Comments was not "provided in the form or manner requested for submitting quantity and value data." However, in this letter, PT/Pro-Team provided Commerce with the precise data required by the Q&V chart for Commerce to determine home market viability. That this information was not presented in the precise format specified in the Q&V chart is not a sufficient reason to disregard the response.<sup>23</sup>
- In deciding whether to accept record evidence confirming that PT/Pro-Team's home market was not viable, Commerce is bound by the Federal Circuit's decisions in *NTN*, *Timken*, and multiple related judicial decisions applying *NTN* and *Timken* to the facts before the court. Application of the principles discussed in these cases and their progeny

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<sup>19</sup> See PT/Pro-Team Case Brief, at 12-31.

<sup>20</sup> See PT/Pro-Team's June 14, 2017 Rebuttal Comments (PT/Pro-Team's Rebuttal Comments).

<sup>21</sup> See PT/Pro-Team Case Brief, at 14 citing *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1266-1267 (Ct. Int'l Trade Aug. 31, 2012 (*Fine Furniture*)).

<sup>22</sup> See *Preliminary Results* and accompanying Preliminary Decision Memorandum, at 10.

<sup>23</sup> See PT/Pro-Team Case Brief, at 16 citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F. 3d 1370, 1378 (Fed. Cir. May 20, 2013) (*Bestpak*), citing *United States v. Eurodif S. A.*, 555 U. S. 305, 317-18, 129 S. Ct. 878, 172 L. Ed. 2d 679 (2009) ("{F}orm should be disregarded for substance and the emphasis should be on economic reality.").

to the facts in POR 1 leads to the conclusion that Commerce should calculate PT/Pro-Team's antidumping duty margin data based on CV data it submitted rather than AFA.

- PT/Pro-Team was a mandatory respondent in the initial investigation and subject to onsite verification. Commerce found no discrepancies during verification. PT/Pro-Team has exhibited exemplary cooperation and never engaged in conduct that could be characterized as impeding Commerce's investigation or this review.
- PT/Pro-Team provided Commerce with extensive documentation supporting its decision to calculate Normal Value based on CV, rather than home market sales, in its Section C reconciliation submitted in PT/Pro-Team's Rebuttal Comments.
- PT/Pro-Team's failure to submit the summary worksheet which Commerce normally reviews to determine home market viability in a timely manner was clearly the result of a clerical error, an error Commerce apparently recognized in requesting that PT/Pro-Team amend its Q&V chart to include the home market sales appearing in the reconciliation documents.
- PT/Pro-Team's Rebuttal Comments were submitted almost seven weeks before Commerce issued its *Preliminary Results*, and five and a half months before Commerce's unextended deadline to issue its final results. Commerce had more than enough time to determine the viability of PT/Pro-Team's home market after reviewing the evidence of record, in accordance with *NTN*.
- Commerce failed to acknowledge PT/Pro-Team's Rebuttal Comments, which summarized the precise quantity and value of its home market sales. PT/Pro-Team did not resubmit its Section A Q&V chart in the identical format cannot possibly be a reason why Commerce's would disregard PT/Pro-Team's entire submission and rely on AFA.
- The fact that Commerce may have needed to extend the deadline for its preliminary results to review PT/Pro-Team's home market sales is not a valid reason to disregard its submission and to rely on AFA, as reasoned in *Bestpak*.
- Commerce's AFA decision was expressly intended to punish PT/Pro-Team for initially making a mistake, and then not correcting that mistake when the error was brought to PT/Pro-Team's attention. The experience of PT/Pro-Team and its counsel, as well as their record of prior and current compliance, provides support for the conclusion that the failure to provide the corrected Q&V chart was the result of a clerical error. Commerce's rationale ignores the most basic principles of the antidumping law: the primary purpose of antidumping duties is remedial, not punitive;<sup>24</sup> an overriding purpose of Commerce's administration of the antidumping laws is to calculate dumping margins as accurately as possible;<sup>25</sup> and draconian penalties are not appropriate for the making of clerical errors in

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<sup>24</sup> See PT/Pro-Team Case Brief, at 26 citing *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F. 3d 1194, 1205-1206 (Fed. Cir. Mar. 18, 2014) ("It is well established that antidumping and countervailing duty laws are remedial in nature. Both the courts and Congress have consistently confirmed this understanding. See *Nucor*, 414 F. 3d at 1336 ("The purpose of antidumping and countervailing duty laws is remedial, not punitive or retaliatory."); *Chaparral Steel v. United States*, 901 F. 2d at 1103-04 (clarifying that trade duties are intended to be 'solely remedial'); *Badger-Powhatan v. United States*, 608 F. Supp. 653, 656, 9 Ct. Int'l Trade 213 (Ct. Int'l Trade 1985). Thus, the primary purpose of antidumping and countervailing duties generally is remedial, not punitive.")

<sup>25</sup> See PT/Pro-Team Case Brief, at 27 citing *Albemarle Corp. v. United States*, 821 F. 3d 1345, 1354 (Fed. Cir. May 2, 2016) ("Finally, as our cases have explained, accuracy and fairness must be Commerce's primary objectives in calculating a separate rate for cooperating exporters. See *Bestpak*, 716 F. 3d at 1379 ("An overriding purpose of Commerce's administration of antidumping laws is to calculate dumping margins as accurately as possible."); *SNR*



order to insure submission of proper data. Clerical errors are, by their nature, not errors in judgment but merely inadvertencies. While the parties must exercise care in their submissions, it is unreasonable to require perfection.<sup>26</sup>

- Affirming Commerce's *Preliminary Results* would be especially egregious, and contrary to law, in the instant proceeding, since: (1) with the sole exception of the Q&V chart error, PT/Pro-Team's responses to Commerce questionnaires were complete, accurate and timely filed; (2) the Q&V chart error does not negate the inescapable fact that PT/Pro-Team's normal value should be based on CV rather than home market sales; (3) applying an AFA rate of 78.17 percent to a respondent is a draconian penalty for an unintentional clerical error, turning the antidumping law's remedial purpose on its head; and (4) PT/Pro-Team had absolutely no reason to conceal its home market sales and the information was already on the record, demonstrating the *de minimis* nature of those sales and their irrelevance to the calculation of normal value.
- The burden placed on Commerce by PT/Pro-Team's Q&V chart clerical error pales in comparison with the evidence of record supporting the fact that the reasons why Commerce decided to rely on AFA do not outweigh the reasons why AFA is not appropriate in this case.
- All six clerical error factors support relying on the summary worksheet submitted in PT/Pro-Team's Rebuttal Comments, which would result in Commerce calculating PT/Pro-Team's margin based on its data, rather than resorting to AFA.

The Petitioner's Rebuttal Comments:<sup>27</sup>

- Commerce should affirm its *Preliminary Results* and continue to reject PT/Pro-Team's data as unreliable and assign a final margin based on total AFA.
- PT/Pro-Team's repeated statements that it had no home market sales, despite evidence to the contrary, are not "clerical errors" as defined Commerce's regulation 19 CFR 351.224(f). PT/Pro-Team's statements in the narrative portion of its questionnaire responses are certified as accurate by both a company representative and counsel. It is not data entered by a consultant, bookkeeper, accountant, or computer programmer, which might have been considered a "clerical error."
- Even if PT/Pro-Team had claimed only a single time in its initial Section A questionnaire response that it had no home market sales, which is not the case, PT/Pro-Team's failure to immediately correct its reporting when it submitted its sales reconciliation two weeks later demonstrates, at the very least, carelessness and neglect of its reporting obligations. PT/Pro-Team failed to accurately report its home market sales for viability purposes, and did so in a manner that cannot be deemed "clerical."
- While PT/Pro-Team's failure to provide this necessary information in the form and manner requested, and within the deadline for responding, was one element of Commerce's analysis, it is not the "sole" reason for Commerce to not rely on the

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*Roulements v. United States*, 402 F. 3d 1358, 1363 (Fed. Cir. 2005) ("Antidumping laws intend to calculate antidumping duties on a fair and equitable basis."); *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1191 (Fed. Cir. 1990) (the "basic purpose of the statute" is to "determin[e] current margins as accurately as possible").

<sup>26</sup> *Id.*, citing *NTN*.

<sup>27</sup> See Petitioner Rebuttal Brief, at 2-21.

information contained in PT/Pro-Team's Rebuttal Comments. To the contrary, the respondent's certified claims of no home market sales, whatever the reason, evince a failure to cooperate to the best of its ability. In the end, PT/Pro-Team's repeated certified misstatements are more similar to a methodological choice than a clerical error.

- *Fine Furniture* is inapposite as it involved a situation in which Commerce had requested, and then ignored, record evidence. PT/Pro-Team's Rebuttal Comments were not solicited by Commerce, and to the extent these comments sought to cure a reporting failure in its June 6, 2017 supplemental questionnaire response, it was untimely presented (and indeed, PT/Pro-Team did not seek leave to make any untimely supplement to its June 6 response) and Commerce's determination not to consider it is entirely appropriate in light of its regulatory deadlines.
- *NTN*, *Timken*, and other related cases that PT/Pro-Team reference in arguing that Commerce must rely on PT/Pro-Team's Rebuttal Comments are meritless and should be disregarded. These court cases involve actual clerical errors, not statements that the respondent had no home market sales when it actually had home market sales.
- In *NTN*, NTN identified errors made when entering the control numbers (CONNUMs) into its U.S. sales database, and also identified certain sales that were misclassified as U.S. when they were Canadian. As a result of this discovery, NTN offered "corrective information" to Commerce to address these errors. The court faulted Commerce for rejecting NTN's request to correct these errors while at the same time Commerce corrected certain errors of its own doing.
- In *Timken*, the Court considered a challenge to Commerce's determination not to reclassify certain sales into different sales channels. The sales in question were reported, but had been inadvertently misclassified. The CIT ruled that Timken had failed to support its claim with substantial evidence and upheld Commerce's decision not to reclassify the sales.
- In both *NTN* and *Timken*, the sales at issue in were actually reported with clerical errors to Commerce. In contrast to the current proceeding, PT/Pro-Team affirmatively claimed that it had no home market sales and advised Commerce that it would, accordingly, not submit a section B response.
- PT/Pro-Team twice certifying that it had no home market sales, when in fact it did, is not an "inadvertent clerical error."
- PT/Pro-Team's failure to respond accurately to such a critical request speaks volumes of either the respondent's carelessness and neglect, or its strategy and efforts to avoid scrutiny of its home market. Either way, the record fully supports Commerce's determination that PT/Pro-Team's actions impeded the review and warrant resort to total AFA.
- Commerce's six-factor clerical error test does not apply to PT/Pro-Team in this situation because PT/Pro-Team repeatedly claimed that it had no home market sales, then submitted a conflicting sales reconciliation, and failed to respond to Commerce's very specific request for a revised Q&V chart.
- By describing PT/Pro-Team's Rebuttal Comments as "corrective information," PT/Pro-Team inherently asserts that it is new factual information, which is at odds with its characterization of this information in its brief. If PT/Pro-Team's Rebuttal Comments constitute new factual information, they should be rejected and removed from the record,

given that PT/Pro-Team did not seek or receive permission to add new information to the record.

### **Commerce's Position:**

We disagree with PT/Pro-Team and PrimeSource, and we have continued to apply total AFA to PT/Pro-Team for the final results, for the reasons discussed in detail below.

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by Commerce; 2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

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

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the 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 deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA,<sup>28</sup> Commerce is not

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<sup>28</sup> See TPEA. The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with Commerce's request for information.<sup>29</sup> In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>30</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>31</sup> It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>32</sup>

Pursuant to section 773 of the Act, in order to accurately calculate normal value, Commerce needs to know which methodology (*i.e.*, constructed value or comparison market) to apply in order to determine a fair comparison with export or constructed export price to calculate an accurate dumping margin. Therefore, it is absolutely critical for Commerce to be able to determine, early in the proceeding, which normal value methodology to use in an antidumping calculation.

In this proceeding, in PT/Pro-Team's section A response, PT/Pro-Team stated that PT/Pro-Team does not sell the merchandise under consideration for domestic consumption.<sup>33</sup> Additionally, in its chart summarizing its quantity and value of sales, included as an exhibit with its section A response, PT/Pro-Team did not report any sales in the home market.<sup>34</sup> However, in PT/Pro-Team's section C response, its sales reconciliation database indicated that Pro-Team did in fact have sales of subject merchandise in the home market.<sup>35</sup> In Commerce's first supplemental questionnaire, we asked if either PT or Pro-Team "sell the merchandise under review in the domestic market," and to "{p}lease identify all products Pro-team/PT, and each individually, sell in the domestic market."<sup>36</sup> As part of its response to Commerce's first supplemental questionnaire, PT/Pro-Team stated that Pro-Team, PT's affiliated producer, did have home market sales during the POR.<sup>37</sup> However, despite correcting its initial statement from its Section A response (in which it reported that neither PT nor Pro-Team had any home market sales during the POR),<sup>38</sup> PT/Pro-Team failed to provide previously requested information that was required of

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<sup>29</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>30</sup> See SAA, at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>31</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

<sup>32</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

<sup>33</sup> See PT/Pro-Team Section A Response, at 13.

<sup>34</sup> *Id.*, at Exhibit A-1.

<sup>35</sup> See PT/Pro-Team Section C Response, at Exhibit C-2.

<sup>36</sup> See First Supplemental Questionnaire, at 6, question 13.

<sup>37</sup> See PT/Pro-Team's first supplemental response, at 8-9.

<sup>38</sup> See PT/Pro-Team Section A Response, at 13.

parties that did have home market sales. For instance, PT/Pro-Team did not provide, *inter alia*, a revised quantity and value data chart showing the home market sales, as requested in the initial questionnaire.<sup>39</sup>

In its second supplemental questionnaire, Commerce specifically requested the information that was still missing for products PT/Pro-Team listed as sold in the domestic market in its first supplemental response, *i.e.*, Commerce requested that PT/Pro-Team: (1) provide a detailed description of each of the products listed; (2) explain for each product why the product is not subject merchandise; and (3) revise its quantity and value data chart for the home market if any products are subject merchandise.<sup>40</sup> In its response, PT/Pro-Team provided a description of the products sold in the domestic market and stated that all products sold by Pro-Team in the domestic market consisted of subject merchandise.<sup>41</sup> PT/Pro-Team, however, did not respond to Commerce's request for revised quantity and value data chart and did not provide an explanation as to why it did not provide the revised data.<sup>42</sup>

In PT/Pro-Team's Rebuttal Comments to the petitioner's June 9, 2017, comments, PT/Pro-Team submitted the relevant portion of the sales reconciliation with quantities converted to kilograms, and total quantities and values summed.<sup>43</sup> In addition, PT/Pro-Team argued that it provided all relevant home market sales information in its original section C sales reconciliation. However, this totaled home market sales quantity and value information was submitted seven days after the deadline for PT/Pro-Team's second supplemental response, and approximately six months after Commerce originally requested PT/Pro-Team's home market sales quantity and value. Additionally, as stated in the *Preliminary Results*, it was still not provided in the form or manner requested for submitting quantity and value data.<sup>44</sup>

We disagree with PT/Pro-Team and PrimeSource because we continue to find the record lacks the necessary information to determine the viability of PT/Pro-Team's home market or the accuracy of the reported data for purposes of section 773 of the Act. In addition, we find that PT/Pro-Team withheld certain home market sales data that was requested by Commerce, failed to provide such information within the deadlines established, or in the form or manner requested by Commerce. Moreover, as stated in the *Preliminary Results*, PT/Pro-Team significantly impeded the proceeding by requiring multiple questionnaires to address the basic threshold issue of whether PT/Pro-Team had home market sales, and if so, whether the home market was viable. It is crucial for Commerce to get accurate information early in the proceeding, in order to determine the appropriate comparison methodology and to have sufficient time to fully analyze the reported information. By initially stating that it had no home market sales, when it in fact did, and failing to provide relevant requested information despite multiple opportunities to do so, PT/Pro-Team significantly impeded Commerce's ability to accurately determine which method to use for calculation of normal value under section 773 of the Act. PT/Pro-Team's failure to

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<sup>39</sup> See AD Questionnaire, at A-1.

<sup>40</sup> See Second Supplemental Questionnaire, at 4, question 4.

<sup>41</sup> See PT/Pro-Team's second supplemental response, at 3 and Exhibit SS-5.

<sup>42</sup> *Id.*

<sup>43</sup> See PT/Pro-Team's Rebuttal Comments.

<sup>44</sup> See AD Questionnaire, at A-1 question 1a, *see also* Second Supplemental Questionnaire, at 4 question 4c.

respond to Commerce's repeated requests for accurate quantity and value data pertaining to its home market sales impeded Commerce's ability to fully analyze that information. Additionally, we find the application of total facts available is appropriate because "the missing information is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty."<sup>45</sup>

Additionally, as stated in the *Preliminary Results*, PT/Pro-Team participated in the original investigation and requested this review of itself. Therefore, it is reasonable to assume that it is knowledgeable of the process and understands what is required to be prepared to participate and provide complete and reliable responses in an antidumping duty proceeding. Commerce provided PT/Pro-Team with multiple opportunities to remedy and explain the deficiencies in its reporting. In response, PT/Pro-Team submitted conflicting and incomplete information regarding its home market sales. This, coupled with the fact that PT/Pro-Team did not respond to Commerce's multiple requests to revise its quantity and value data within the appropriate deadlines and never submitted such data in the form or manner requested, significantly impeded Commerce's ability to determine if there is a viable comparison market until well into the proceeding and 16 days before the first extended deadline for the preliminary results.<sup>46</sup> Furthermore, the deficiencies in PT/Pro-Team's questionnaire responses and home market sales reporting resulted in Commerce having to fully extend the deadline for the preliminary results.<sup>47</sup> For these reasons, we find that the requirements of sections 782(d) and (e) have been satisfied, and total AFA is warranted.

We find that these issues go far beyond mere clerical errors. Thus, we disagree that the cases raised by PT/Pro-Team and PrimeSource are applicable to the facts of this case. In *NTN*, respondent NTN identified errors with its CONNUMs in its U.S. sales database, and identified certain sales misclassified as U.S. sales when they were Canadian sales.<sup>48</sup> NTN offered "corrective information" to Commerce to address these errors. The Court faulted Commerce for rejecting NTN's request to correct these errors, which would have involved "{a} straight forward mathematical adjustment,"<sup>49</sup> when at the same time Commerce corrected certain errors of its own doing. The Court considered in *Timken* a challenge to Commerce's determination not to reclassify certain sales into different sales channels.<sup>50</sup> The sales in question were reported but Timken claimed that they had been inadvertently misclassified.<sup>51</sup> Finding that Timken had failed to support its claim with substantial evidence, the Court upheld Commerce's decision not to reclassify the sales.<sup>52</sup> For the reasons discussed above, we find these cases are not applicable to the instant situation, in which PT/Pro-Team failed to provide the requested information concerning its home market sales despite multiple opportunities to do so.<sup>53</sup>

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<sup>45</sup> See *Mukand Ltd. v. United States*, 767 F. 3d 1300, 1308 (Fed. Cir. 2014) (*Mukand*) (citing *Shanghai Taoen Int'l Co. v. United States*, 360 F. Supp. 2d 1339, 1348 n. 13 (Ct. Int'l Trade 2005)).

<sup>46</sup> See PT/Pro-Team's First Rebuttal Comments; see also First Prelim Extension.

<sup>47</sup> See Second Prelim Extension.

<sup>48</sup> See *NTN*, at 1205-1206.

<sup>49</sup> *Id.* at 1208.

<sup>50</sup> See *Timken*, at 1346.

<sup>51</sup> *Id.* at 1347-1348.

<sup>52</sup> *Id.*

<sup>53</sup> See PT/Pro-Team Section A Response, at 13 and Exhibit A-1; see also First Supplemental Questionnaire, at 6; see also PT/Pro-Team Section C Response.

In short, we disagree with PT/Pro-Team's arguments. Based on the above analysis, we continue determine that application of total facts available, pursuant to section 776(a)(1), (2)(A), (B), and (C) of the Act, is warranted for PT/Pro-Team. We also continue to find that PT/Pro-Team failed to participate to the best of its ability and, as a result, determine that an adverse inference, pursuant to section 776(b), is still warranted in selecting from the facts otherwise available.<sup>54</sup>

PT/Pro-Team raised no arguments concerning the selection of the rate from the petition as the AFA rate, nor the corroboration of the petition rate in the *Preliminary Results*.<sup>55</sup>

## **B. Unicatch Issues**

### Comment 2: Application of Adverse Facts Available to Unicatch

Petitioner's Argument:<sup>56</sup>

- Unicatch failed to properly reconcile its costs. Specifically, Unicatch failed to ensure that it started with the cost of sales per its audited financial statements and ended with the total extended total cost of manufacture (TOTCOM).
- Commerce should apply partial AFA to Unicatch's reported costs by assigning to each CONNUM the highest non-aberrational costs, *i.e.*, TOTCOM reported for any single CONNUM. At a minimum, Commerce should adjust Unicatch's reported TOTCOM for each CONNUM by applying a gap to account for the difference between the total extended TOTCOM derived from the cost database and the total cost of nails shown in the cost reconciliation.

Unicatch's Rebuttal:<sup>57</sup>

- Commerce should reject the Petitioner's claim that Unicatch's cost reconciliation was deficient.
- The fatal flaw in Petitioner's allegation is its failure to read the text of Unicatch's Section D second supplemental response, wherein Unicatch explained how Unicatch's Supplemental Response at exhibit SDD-3<sup>58</sup> links directly to Unicatch's Section D database. Unicatch linked the cost of sales per its audited financial statement to its Section D database through Unicatch's Supplemental Response at exhibit SSD-4, which includes the POR cost of production for all product codes produced by Unicatch.

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<sup>54</sup> See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003).

<sup>55</sup> See Preliminary Decision Memorandum, at 12-13; see also Memorandum: "Antidumping Duty Administrative Review of Certain Steel Nails from Taiwan: Corroboration," dated July 31, 2017.

<sup>56</sup> See Petitioner's Case Brief for Unicatch at 35-46.

<sup>57</sup> See Unicatch Rebuttal Brief, at 36-45.

<sup>58</sup> See Unicatch's June 7, 2017 Supplemental Questionnaire Response at Exhibit SSD-3 (Unicatch's Supplemental Response).

## Commerce's Position:

After reconsideration of the record evidence, and based on our analysis of the comments received, we have applied total AFA to Unicatch for purposes of this final determination in accordance with section 776 of the Act. As discussed below, we find that Unicatch did not cooperate to the best of its ability in responding to Commerce's requests for information concerning its cost of producing the merchandise under consideration. Specifically, we did not receive a complete cost reconciliation from Unicatch, which was necessary for Commerce to meaningfully analyze Unicatch's section D questionnaire cost response and calculate a reliable margin.

We issued an original cost questionnaire and two subsequent cost supplemental questionnaires to Unicatch, on November 29, 2016, March 27, 2017 and May 16, 2017, respectively, in which we requested that Unicatch submit a complete cost reconciliation of cost of sales to the antidumping cost database.<sup>59</sup> Although we calculated a margin for Unicatch in the *Preliminary Results*, in further evaluating the information on the record of this proceeding for these final results and in light of parties' case and rebuttal brief submissions, we find that Unicatch did not reconcile the difference between the total extended total cost of manufacture (TOTCOM) derived from the cost database to the total costs sales shown on their financial statements. We conclude that the necessary information for Unicatch is not available on the record, and that Unicatch failed to provide such information in the form or manner requested, and significantly impeded the proceeding.

### A. The Application of Total Facts Available

Section 776(a)(1) of the Act states, subject to section 782(d) of the Act, that Commerce shall use facts otherwise available if necessary information is not available on the record of a proceeding. In addition, section 776(a)(2) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use facts otherwise available if an interested party or any other person: (A) withholds information that has been requested by Commerce; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified, as provided in section 782(i). As discussed further below, Unicatch failed to provide the necessary reconciliation by the deadlines and in the form and manner requested. By failing to provide a reconciliation, Unicatch withheld requested information necessary to demonstrate that all costs were either appropriately included or excluded from the reported cost database. By repeatedly failing to correct their deficiency, Unicatch impeded the proceeding because reconciling items went unidentified and unsupported.

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 will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to

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<sup>59</sup> See Commerce's November 29, 2016, original section D questionnaire; March 27, 2017, supplemental questionnaire; and May 16, 2017, supplemental questionnaire to Unicatch.



remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, Commerce may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. In this case, as discussed further below, Commerce provided Unicatch with two opportunities to remedy or explain the deficiencies. Nevertheless, these deficiencies persisted and thus we find it is appropriate to disregard the entirety of Unicatch's reporting.

Section 782(c)(1) of the Act provides that if an interested party, promptly after receiving a request from Commerce, notifies Commerce that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, Commerce shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. As discussed further below, Unicatch does not claim that it is unable to submit the information requested in the form and manner requested in the section D questionnaire and two supplemental questionnaires. Instead, Unicatch simply failed to provide the requested reconciliation, preferring instead to merely indicate a method Commerce might use its cost submissions to link to the cost database.

Section 782(e) of the Act states further that Commerce 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 it acted to the best of its ability; and (5) the information can be used without undue difficulties.

We find that Unicatch failed to meet the deadlines of the three requests for a complete reconciliation, which leaves Commerce without the ability to establish whether all costs were either properly included or excluded. Unicatch's failure to provide supporting documentation for the reconciling items leaves Commerce without the ability to establish the starting point for the reported costs. In its case brief, the petitioner provided an attempt at a reconciliation based on the extended TOTCOM derived from the cost database to the total costs of nails shown in the Exhibit SSD-3, arguing that there is a gap between Unicatch's reported cost in its database to its reported cost reconciliation.<sup>60</sup> We agree with the petitioner that there is a gap in Unicatch's cost reconciliation, and that Unicatch did not provide a complete cost reconciliation. Furthermore, there are "reconciling items" within Unicatch's Supplemental Response at exhibit SSD-3 that Commerce does not have explanations of, or details relating to, despite specifically requesting explanations and details for all reconciling items.<sup>61</sup>

We provided Unicatch opportunities to remedy its cost reconciliation with two supplemental questionnaires, but it failed to completely reconcile its reported costs to its section D database. It impedes Commerce's ability to calculate a reliable margin for Unicatch when we do not have complete and reliable information on the record. The burden is not on Commerce to create an

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<sup>60</sup> See the petitioner's case brief at 35-37 (citing Unicatch's Supplemental Response at exhibit SSD-3).

<sup>61</sup> Due to the proprietary nature of these items, see the Final Results Analysis Memo for Unicatch.

adequate record, but, rather, is on interested parties.<sup>62</sup> This includes establishing the linkage among the various data submitted by respondents to demonstrate that the data they submit fully reconciles. It also impedes the review when Commerce unduly spends excessive amounts of time reviewing hundreds of pages of submissions to fill in the gaps in Unicatch's responses. Without the cost reconciliation, we find that the information that Unicatch provided is too incomplete to serve as a reliable basis for reaching a determination under section 782(e) of the Act. In particular, as explained above, Commerce has no reliable cost of production information with which to conduct an analysis.<sup>63</sup> The Court of International Trade (CIT) has recognized that, because cost information is essential for multiple calculations, "cost information is a vital part of {Commerce's} dumping analysis."<sup>64</sup> Additionally, Commerce has previously found that failure to provide a cost reconciliation warrants use of total AFA.<sup>65</sup>

The petitioner attempted to provide a gap-filling alternative adjustment, as opposed to applying AFA, but we find that this only leads to more questions regarding the completeness of the reconciliation, the reconciling items, and whether all costs were properly included or excluded. We note that an incomplete reconciliation is not a reconciliation, and incompleteness in the starting point for the reported cost database results in a failure to establish the reliability of the reported costs. Consequently, without the ability to reasonably establish that all costs were properly included or excluded, the entire cost response is called into question and leaves Commerce without the ability to use the per-unit costs in the cost database, as no adjustment to remedy the deficiency can be reasonably identified.

Unicatch argues in its rebuttal brief that Unicatch's Supplemental Response at exhibits SDD-2 through SSD-4 directly links from the cost of sales per its audited financial statement to Unicatch's Section D database.<sup>66</sup> Unicatch disagrees with petitioner's claim that Unicatch's total cost of various product types in Unicatch's Supplemental Response at exhibit SSD-3 fails to match with the total costs provided in Unicatch's third cost dataset (*i.e.*, UNICATCHCOP03). Unicatch contends that certain nails listed in Unicatch's Supplemental Response at exhibit SSD-4 are not scope merchandise and that the difference between the dollar value of these product categories and the data reported by Unicatch does not undermine the integrity of its cost reconciliation.

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<sup>62</sup> See, e.g., *Jinan Yipin Corp. v. United States*, 800 F. Supp. 2d 1226 (September 26, 2011); *NSK v. United States*, 28 CIT 1535 (August 20, 2004); and *Chia Far Indus. Factory Co. v. United States*, 28 CIT 1336 (August 2, 2004).

<sup>63</sup> See e.g., *Lined Paper Products from India*, 71 FR 45012 and accompanying Issues and Decision Memorandum at Comment 14 (stating that "without a reliable overall cost reconciliation, and a clear explanation of Navneet's product cost calculation method in the normal course of business and reported costs prior to verification, the Department is unable to proceed with the verification and, as a result, Navneet's submitted information was unverifiable").

<sup>64</sup> See *Finished Carbon Steel Flanges from Italy: Final Determination of Sales at Less Than Fair Value Steel*, 82 FR 29481 (June 29, 2017) and accompanying Issues and Decision Memorandum at comment 2 (*Steel Flanges from Italy*), citing to *Mukand, Ltd. v. United States*, Slip Op. 13-41 (March 23, 2013) at 15.

<sup>65</sup> *Id.*, citing to, e.g., *Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 68350 and accompanying Issues and Decision Memorandum at Comment 6 (noting that "the Department's practice has been to reject a respondent's submitted information in total when flawed and unreliable cost data renders any price-to-price comparison impossible").

<sup>66</sup> See Unicatch Rebuttal Brief at 36 (citing Unicatch's Supplemental Response).

Unicatch further argues that its first supplemental response<sup>67</sup> explained how the company reconciled the yearly costs of sales to the extended TOTCOM provided in Unicatch's section D response at exhibits 16 and 17.<sup>68</sup> Unicatch claims that it submitted a complete cost reconciliation from the total costs of sales which reflects the yearly income statement to the extended TOTCOM, and then the unit cost for each product is tied to the reported database in its section D response at exhibits 16-17. We disagree with Unicatch's argument that it provided a complete reconciliation. The schedule on which Unicatch relies<sup>69</sup> includes non-scope merchandise and dollar value differences of product categories that do not reconcile. Unicatch merely provided an assertion that the cost of sales might be linked through Unicatch's Supplemental Response at SSD-4 and section D response at exhibit D-17. Unicatch only indicated how a reconciliation might be completed, *via* a schedule with non-scope products, and failed to directly link to the antidumping cost database. The importance of this failure is illustrated by the fact that, in its case brief, the petitioner was able to show that a significant difference exists in Unicatch's "direct link."

Here, based on the facts on the record, applying AFA to Unicatch's costs for these final results is appropriate, based on Unicatch's failure to fully reconcile its costs which was raised in parties' case and rebuttal submissions.

Based on the foregoing, in the final results, we are relying on entirely upon facts otherwise available to determine the estimated weighted-average dumping margin for Unicatch in this administrative review.

#### B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.<sup>70</sup> In doing so, 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.<sup>71</sup> In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>72</sup> Furthermore, affirmative evidence of bad faith the part of a respondent is not required before Commerce may make an adverse inference.<sup>73</sup>

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<sup>67</sup> See Unicatch Rebuttal Brief at 37 (citing Unicatch's April 25, 2017, first supplemental questionnaire response (first supplemental response) at question 41).

<sup>68</sup> See Unicatch Rebuttal Brief at 37 (citing Unicatch's January 19, 2017, original section D questionnaire response (section D response)).

<sup>69</sup> See Unicatch Rebuttal Brief at 38-39.

<sup>70</sup> See also 19 CFR 351.308(a); see also *Stainless Steel Bar from India*, 70 FR at 54025-26; and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

<sup>71</sup> See section 776(b)(1)(B) of the Act.

<sup>72</sup> See SAA at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>74</sup>

The Courts have upheld that the best-of-its-ability standard involves the question of whether the respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in a proceeding.<sup>75</sup> In this administrative review, we find that Unicatch did not act to the best of its ability to comply with Commerce's requests for information because Unicatch failed to submit a complete cost reconciliation, as requested by Commerce. Specifically, between November 29, 2016 through May 16, 2017, Commerce issued questionnaires and supplemental questionnaires to Unicatch, requesting that it submit its complete cost reconciliation. However, even after multiple requests, Unicatch did not submit a complete cost reconciliation. Because Unicatch failed to submit a complete cost reconciliation, we find that Unicatch did not provide Commerce with full and complete answers to Commerce's inquiries in this proceeding. Furthermore, because Unicatch did not account for the difference between the TOTCOM derived from the cost database and the total costs of nails shown in the cost reconciliation, and did not, for example, alert Commerce that it would have had any difficulty doing so, we find that Unicatch did not act to the best of its ability to comply with a request for information. "While best-of-its-ability standard requires that Commerce examine respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information,"<sup>76</sup> we note that the Federal Circuit also stated that the standard "does not condone inattentiveness, carelessness, or inadequate record keeping."<sup>77</sup> Here, Unicatch had multiple chances to answer Commerce's questionnaires and simply did not answer the questions asked. It further instructed Commerce how to get the completed reconciliation without actually providing it. Accordingly, because we determine that Unicatch did not act to the best of its ability, we have applied an adverse inference, pursuant to section 776(b) of the Act, for these final results.

### C. Selection and Corroboration of AFA Rate

Section 776(b) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record.<sup>78</sup> In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to

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<sup>73</sup> See, e.g., *Nippon Steel Corp.*, 337 F.3d 1373 at (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000).

<sup>74</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

<sup>75</sup> See *Nippon Steel Corp.*, 337 F.3d at 1382.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> See also 19 CFR 351.308(c).

cooperate than if it had fully cooperated.<sup>79</sup> Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.<sup>80</sup>

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>81</sup> The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.<sup>82</sup> To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>83</sup> Further, under the TPEA, Commerce not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.<sup>84</sup>

For purposes of corroboration, we examined evidence supporting the calculations in the Petition<sup>85</sup> to determine the probative value of the dumping margins alleged in the Petition for use as AFA in this review. During our pre-initiation analysis, we examined the key elements of the export price and normal value calculations, and the alleged dumping margins.<sup>86</sup> During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the export price and normal value calculations used in the Petition to derive the dumping margins alleged in the Petition.<sup>87</sup> Our examination of the information is discussed in detail in the *Investigation Initiation Notice*, where we considered the petitioner's export price and normal value calculations to be reliable. We confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petition by

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<sup>79</sup> See SAA, at 870.

<sup>80</sup> See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>81</sup> See SAA, at 870.

<sup>82</sup> *Id.*; see also 19 CFR 351.308(d).

<sup>83</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>84</sup> See sections 776(d)(3)(A) and (B) of the Act.

<sup>85</sup> See Petition for the Imposition of Antidumping Duties on Certain Steel Nails from Taiwan, dated May 29, 2014 (the Petition).

<sup>86</sup> 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, 2015) (*Investigation Initiation Notice*).

<sup>87</sup> *Id.*, 79 FR at 36019-36020, 36022.

examining source documents and publicly available information. We obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the export price and normal value calculations provided in the Petition. Therefore, we determine that the dumping margin alleged in the Petition of 78.17 percent is reliable for purposes of this review.

The petitioner calculated normal value for the petition based on the experience of a surrogate producer of nails, adjusted for known differences between the surrogate producer and the industry of Taiwan, during the proposed POI. The petitioner relied on financial statements of a producer of comparable merchandise operating in Taiwan to determine depreciation, SG&A, financial expenses, and profit rates.<sup>88</sup> In calculating export price, the petitioner based U.S. price on a resale price from a distributor/trading company to its downstream customer in the U.S. during the period of investigation (POI).<sup>89</sup> Based on the price quote by an unaffiliated distributor, the petitioner deducted from these prices movement expenses consistent with the sales delivery terms and adjusted for mark-ups from the distributors/trading companies.<sup>90</sup> Based on this information, we determine that the dumping margin alleged in the Petition is relevant.

Based on the above, the Department determines that the dumping margin alleged in the Petition has probative value and has corroborated the AFA rate of 78.17 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of the investigation; and (2) is relevant based on information derived from the petition that gave rise to the investigation.

### Comment 3: Other Cost Issues

#### Petitioner's Argument:<sup>91</sup>

- Commerce should apply transactions disregarded analysis to raw materials Unicatch obtained from affiliated trading companies. Because the affiliated suppliers in question are trading companies, pursuant to Commerce's practice, purchases from these suppliers are subject to the transactions disregarded rule whereby Commerce compares transfer prices to market value. To calculate the affiliated suppliers' full purchase cost, selling and general & administrative (SG&A), and interest expenses must be added to the supplier's acquisition prices and costs.
- Commerce should deny Unicatch's claimed scrap offset made based on scrap revenue and on all production rather than the production of subject merchandise. Unicatch was unable to correctly identify the scrap specific to the production of nails and for the final results, Commerce should deny the offset.
- Commerce should deny Unicatch's claimed offset in its calculation of general and administrative (G&A) expense ratio. Unicatch's descriptions lack the substance and detail necessary to support the claimed offset. Commerce should deny the adjustment to G&A for the final results.

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<sup>88</sup> *Id.*, 79 FR at 36023.

<sup>89</sup> *Id.*, 79 FR at 36022.

<sup>90</sup> *Id.*

<sup>91</sup> See Petitioner's Case Brief for Unicatch, at 35-46.



- Commerce should include imputed interest expense on debt from affiliated parties in Unicatch's interest expense ratio. Unicatch's debt was mostly obtained from affiliated parties. Unicatch did not compensate its affiliated creditors for the zero interest loans making the transfer price between Unicatch and its affiliated creditors zero. In the final results, Commerce should apply partial AFA to the adjustment and impute interest for these zero-price loans based on the highest interest rate on the record.

Unicatch's Rebuttal:<sup>92</sup>

- Commerce should not adjust raw material costs to account for materials obtained from affiliated trading companies. Unicatch has established that the weighted average purchase price of wire purchased from unaffiliated companies was not substantially different than the weighted average price charged by the affiliated vendors. The market value of the affiliated company's resales fairly reflects the amount usually reflected in sales of merchandise under consideration in the market under consideration. Unicatch has provided Commerce with substantial evidence supporting a conclusion that wire rod should be valued based on the price paid by Unicatch to its affiliated and unaffiliated vendors. However, if Commerce believes that Unicatch's affiliates prices are for some reason skewed, Commerce should value wire rod based solely on the price paid by Unicatch to its unaffiliated vendors.
- Commerce should accept Unicatch's claimed scrap offset. Unicatch submitted a worksheet of scrap generated during production, together with supporting documents, which confirmed that scrap generated was the same as scrap sold, and explained the reasons why Unicatch could not calculate scrap generated solely on production of subject merchandise.
- Commerce should accept Unicatch's offset to G&A for certain income. This offset claimed by Unicatch is a normal part of a company's general operations; normally included as an offset to G&A in company accounting records maintained according to generally accepted accounting principles; and relates to costs incurred for producing merchandise that was ordered but not shipped because an order was cancelled.
- Commerce should reject Petitioner's claims that Unicatch's interest expense ratio should be increased and that Commerce apply AFA to certain loans. Unicatch fully responded to all Department questions regarding its loans, notes and interest payments. Unicatch submitted its audited financial statement for 2015. Unicatch provided Commerce with a complete schedule of "all of its loans, from affiliated as well as unaffiliated parties, specifying the terms . . . and related interest expenses reported in the income statement." Unicatch reconciled the totals on that schedule to the corresponding audited financial statements. Unicatch did not include the "notes payable" to its affiliated companies since these notes are categorized in its financial statement as "note and account payable" and Commerce had asked Unicatch to report "loans" and "related interest expenses." Unicatch reasonably interpreted this question to relate to items booked as loans.

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<sup>92</sup> See Unicatch Rebuttal Brief, at 36-45.

## Commerce's Position:

As Commerce is applying total AFA to Unicatch, these issues are rendered moot, and we have not addressed these comments.

### Comment 4: Unicatch's U.S. Sales Data

The Petitioner's Argument:<sup>93</sup>

- The revised U.S. sales database submitted in Unicatch's first supplemental response. (*i.e.* *unicatchsal02*), amounted to an entirely new database that could not be compared to its initial database, (*i.e.*, *unicatchal01*). The unrequested revision to sequence numbers (SEQU) rendered the database impossible to compare to the original database. Unicatch characterized its revisions as arising from "minor clerical errors", the nature of the changes made – affecting everything from product form, CONNUM, steel type, and SEQU number.
- The revisions to Unicatch's second revised database submitted by Unicatch made unsolicited changes to gross unit price 2 (GRSUPR2U). The unsolicited changes to numerous other fields render the second revised U.S. dataset fundamentally a new dataset. This systemic revision affected the entire database and crippled Commerce's ability to conduct meaningful comparisons.
- Significant and unexplained discrepancies in Unicatch's reported gross unit prices render the data submitted unusable for purposes for calculating an accurate and undistorted antidumping margin. Unicatch failed to explain its serious flawed reporting and identified additional error in its dataset.
- Unicatch made changes to its third U.S. sale database, (*i.e.*, *unicatchsal03*) and compared to *unicatchsal02*, Unicatch did not identify the revisions made from *unicatchal02* to *unicatchal03*. Unicatch failed to explain its serious flawed reporting and how it was able to identify additional errors in its data.
- Unicatch's pattern of submitting unsolicited and wholesale revisions of its U.S. sales datasets in a manner that prevents comparison renders Commerce to reject Unicatch's data and resort to adverse facts available (AFA) with inferences adverse to Unicatch. Unicatch impeded Commerce's ability to analyze the data and confirm the nature and accuracy of the reported changes.

Unicatch's Rebuttal:<sup>94</sup>

- Commerce should calculate Unicatch's dumping margin based on Unicatch's data and not on AFA. The primary purpose of the antidumping duty law is remedial, not punitive, and AFA penalties are not appropriate to insure submission of proper data by parties who have made clerical errors. Unicatch acted to the best of its abilities in this proceeding and timely filed responses to Commerce's questionnaires and supplemental questionnaires. The validity of the data reported in these fields has been supported by submission of

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<sup>93</sup> See Petitioner Case Brief, at 2-21.

<sup>94</sup> See Unicatch Rebuttal Brief, at 1-26.



source documents of multiple sales and supported by Unicatch and TC sales reconciliation.

- A review of the evidence of the record, changes in sequence numbers and data revisions were made by Unicatch, however, the application of judicial precedent and Commerce's practice to the record requires that Commerce reject the petitioner's total AFA claim. The three databases submitted by Unicatch can be easily compared, which confirms their essential similarity, and effectively rebuts the petitioner's claim. All revisions between the databases were made in direct response Commerce's directives or to correct non-systemic, ministerial errors in prior responses.
- Commerce's "six factor-clerical error test requires" that Commerce rely on Unicatch's submitted data.
  - A. Unicatch's revisions to the databases were clerical and not methodological in nature.
  - B. The corrective documentation provided in support of the clerical error allegation is reliable.
  - C. Unicatch availed itself of the earliest reasonable opportunity to correct the error.
  - D. The clerical error allegation and corrective documentation were submitted to Commerce no later than the due date for the respondent's administrative case brief.
  - E. The correcting of the clerical error entails a substantial revision of the response but with an explanation.
  - F. The corrective documentation can be verified for accuracy at verification.
- AFA is not appropriate in this case. Commerce's AFA decision cannot be based on a desire to punish Unicatch for making mistakes in its initial questionnaire responses. Unicatch's responses to Commerce questions have been complete, accurate and timely filed. Unicatch submitted its third, corrected database in a timely manner in direct response to a Department supplemental questionnaire, two months before the preliminary results, and 3 ½ months before filing its case brief. *Unicatchal03* is part of the administrative record in this administrative review, and Commerce has had 3 ½ months to examine the data submitted to confirm its veracity. Accordingly, application of Commerce's statutory mandate to administer the antidumping duty law in a remedial manner by calculating margins as accurately as possible, and to avoid imposing unfair penalties on otherwise co-operative respondents for making clerical errors and not achieving perfection, should result in Commerce calculating Unicatch margins relying on Unicatch data, as required by law.

### **Commerce's Position:**

The petitioner argued that Commerce should reject Unicatch's submitted sales data and apply AFA for its U.S. sales data. However, as Commerce is applying total AFA to Unicatch for cost issues, this issue is rendered moot, and we have not addressed this comment.

#### Comment 5: Middleman Dumping for Unicatch

The Petitioner's Argument:<sup>95</sup>

- Commerce should conduct a middle man dumping analysis for Unicatch for the final results. Commerce has the authority to initiate an investigation of a trading companies to which Unicatch has made sales during the POR, because these trading companies likely sold subject merchandise in the United States produced by Unicatch during the POR at prices below their cost of acquisition and related expenses.

Unicatch's Rebuttal:<sup>96</sup>

- Commerce should not conduct a middleman dumping analysis for the final results.
- When Unicatch's sales prices are analyzed in a correct product specific manner, the possibility that these companies resold subject nails at prices below their acquisition costs disappears.
- The petitioner did not provide a product specific analysis for Unicatch, presumably because the results reveal the absence of middleman dumping. A review of actual prices, as discussed below, confirms that middleman dumping was not taking place.
- While Commerce has not published middleman dumping regulations, in analogous situations it has adopted a five percent standard in deciding whether the burden of reporting certain information outweighs the potential accuracy of results which could be obtained if the data was submitted.

#### **Commerce's Position:**

As Commerce is applying total AFA to Unicatch, this issue is rendered moot, and we have not addressed this comment.

#### Comment 6: Constructed Value Profit and Selling Expenses

The Petitioner's Argument:<sup>97</sup>

- In the *Preliminary Results*, Commerce used the financial statements of three Taiwanese manufacturers of screws, bolts, and fasteners (Chun Yu Works & Co., Ltd. (Chun Yu), OFCO Industrial Corp. (OFCO), and Shen Fung Screw Co., Ltd. (Shen Fung)) to calculate the constructed value profit and selling expenses for Unicatch. Commerce should use the financial statements of Astrotech Steels Private Limited (Astrotech) to calculate the CV profit and selling expenses for the final results because it is a pure producer of identical merchandise, *i.e.*, steel nails.

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<sup>95</sup> See Petitioner Case Brief, at 26-35.

<sup>96</sup> See Unicatch Rebuttal Brief, at 31-35.

<sup>97</sup> See Petitioner Case Brief, at 48-50.

Unicatch's Argument:<sup>98</sup>

- Commerce should revise Unicatch's CEP calculation from the preliminary results by adding together Unicatch's profit ratio on its total sales of all products and TC International's profit ratio on its resales of subject merchandised in the United States.

Unicatch's Rebuttal:<sup>99</sup>

- Commerce should continue to rely on the financial statements in the preliminary results of Chun Yu, OFCO, and Sheh Fung to calculate CV profit rather than the financial statement of Astrotech. Astrotech's financial statements are not contemporaneous to the POR. The record did not contain financial statements from companies producing comparable merchandise in the country subject to investigation and Astrotech appears to sell virtually all of its nails to the United States.

The Petitioner's Rebuttal:<sup>100</sup>

- Commerce should continue to calculate CEP profit for Unicatch based on Unicatch's and TC International's financial statements for the final results. The majority of Unicatch's sales during the POR were U.S. sales and the majority of the sales to the U.S. were subject nails, its audited financial statements, as well as those of its U.S. affiliated reseller TC International.

### **Commerce's Position:**

As Commerce is applying total AFA to Unicatch, these issues are rendered moot, and we have not addressed these comments.

### **Comment 7: Correction of Clerical Errors**

The Petitioner's Argument:<sup>101</sup>

- Commerce should deduct COMM2U and COMM3U when deriving net U.S. price.
- Commerce should use STATEU for the purposes of the Cohen's D Test.
- Commerce should offset Chun Yu's total G&A and interest for these gains, reducing the total expense amount and COGS by NT\$1000 78,785. Commerce should offset and reduce Chun Yu's and OFCO's total G&A and interest expenses and COGs by the NT\$1000 3,141, and 4,330, respectively, that Chun Yu and OFCO's reported as income related to bad debt. Commerce should increase OFCO's profit and decrease its total G&A and interest amount and COGs by the reported NT\$1000 9,837 gain.

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<sup>98</sup> See Unicatch's Case Brief, at 11.

<sup>99</sup> See Unicatch Rebuttal Brief, at 26.

<sup>100</sup> See Petitioner's Rebuttal Brief, at 20-26.

<sup>101</sup> See Petitioner Case Brief, at 47-51.

- Commerce should correct a minor error in its CEP profit calculations by increasing its ratio for TC.

Unicatch's Argument:<sup>102</sup>

- Commerce incorrectly failed to convert currency for international freight, U.S. customs duty, and U.S. brokerage and handling from Taiwan dollars to U.S. dollars.
- Commerce incorrectly treated a quantity adjustment 2 as a price adjustment.
- Commerce incorrectly deducted freight revenue from U.S. price rather than adding freight revenue to U.S. price.
- Commerce incorrectly failed to add late payment fees to U.S. price.
- Commerce incorrectly used ZIP CODE (DESU) instead of destination – STATE (STATEU) - for the Cohen's D Test.

PrimeSource's Argument:<sup>103</sup>

- Commerce should correct the clerical errors from the preliminary results. Specifically, converting NTD to US dollars for Unicatch's reported international ocean freight, U.S. customs duty and U.S. brokerage & handling expenses.

Unicatch's Rebuttal:<sup>104</sup>

- Commerce should not deduct COMM2U and COMM3U in calculating its U.S. net price for Unicatch. In calculating margins, Commerce should not deduct any commission paid by Unicatch on its U.S. sales. Commerce should add the surrogate expenses for "direct selling," "indirect selling," and "commission," as reported in OFCO, Chun Yu, and Shen Fung's financial statement to CV, rather than deducting expenses incurred by Unicatch on its U.S. sales from U.S. Price.
- Commerce should not revise CV profit and selling expenses for Chun Yu, OFCO and Shen Fung. Chun Yu's financial statement supports the allocation of foreign exchange gain as an offset to Chun Yu's indirect selling expenses, as proposed in Unicatch's ratio computations for Chun Yu's financial. This foreign exchange gain is indirect income from sale of goods. Accordingly, in the final results, this line item should be allocated as an offset to the indirect selling expenses. For income related to bad debt, Unicatch properly allocated Chun Yu's and OFCO's bad debt under indirect selling expenses instead of G&A and interest. For gain on reversal of impairment loss, this amount should properly be offset from the overall profits of OFCO, so as to obtain an amount of profit that is representative of the actual profits earned by OFCO during the financial year. Commerce should continue to grant this offset for the final results.
- Commerce should not increase the CV profit ratio.

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<sup>102</sup> See Unicatch Case Brief, at 2-9.

<sup>103</sup> See PrimeSource Case Brief, at 5.

<sup>104</sup> See Unicatch Rebuttal Brief, at 48-53.

### Commerce's Position:

The petitioner, Unicatch, and PrimeSource argued that Commerce should correct clerical errors in the *Preliminary Results* margin calculation. However, as Commerce is applying total AFA to Unicatch, this issue is rendered moot, and we have not addressed this comment.

### VIII. RECOMMENDATION

We recommend following the above methodology for these final results.



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Agree

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Disagree

2/6/2018

X



Signed by: GARY TAVERMAN

Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance