



A-583-854
Administrative Review
POR: 7/1/18 - 6/30/19
Public Document
E&C/OVIII: IG

March 31, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain Steel Nails from Taiwan;
2018-2019

I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting this administrative review of the antidumping duty (AD) order¹ on certain steel nails from Taiwan for the period of review (POR) July 1, 2018 through June 30, 2019. This review covers 83 companies, which includes three companies selected for individual examination, five companies that certified that they had no shipments, and 75 companies not selected for individual examination.² The mandatory respondents in this review are producers/exporters of the subject merchandise, Bonuts Hardware Logistics Co., LLC (Bonuts), Create Trading Co., Ltd. (Create Trading), and Pro-Team Coil Nail Enterprise Inc. (collectively, PT).³ Commerce preliminarily determines that Bonuts and PT sold subject merchandise at prices below normal value during the POR. The dumping margins are shown in the “Preliminary Results” section of the accompanying *Federal Register* notice.

¹ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242 (September 9, 2019) (*Initiation Notice*). The number of companies initiated is actually 84, but two of those companies comprise a single entity as noted directly *infra*.

³ Commerce collapsed Pro-Team and PT Enterprise in a prior segment of the proceeding, and we find no new information in this segment that contradicts that finding. 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), and accompanying Preliminary Decision Memorandum (PDM), unchanged in *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016*, 83 FR 6163 (February 13, 2018). Accordingly, we continue to treat PT Enterprise and Pro-Team as a single entity.



II. BACKGROUND

On September 9, 2019, Commerce initiated an administrative review of certain steel nails from Taiwan covering all companies for which a review was requested.⁴ In the “Respondent Selection” section of the *Initiation Notice*, we stated that, if necessary, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of the subject merchandise during the POR.⁵ On September 10, 2019, Commerce released the CBP data to all interested parties under an administrative protective order, and invited interested parties to comments on the CBP data and respondent selection by September 16, 2019, which we extended to September 23, 2019, with rebuttal comments due by September 30, 2019.⁶ Mid Continent Steel & Wire, Inc. (the petitioner), was the only interested party to submit comments on respondent selection.⁷

Pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), we limited our examination of exporters or producers accounting for the largest volume of the subject merchandise, based on the CBP data we placed on the record.⁸ Commerce determined to limit the number of respondents selected for individual examination to the two largest companies by U.S. import entry volume for which a review was requested.⁹ Commerce selected Bonuts and Create Trading for individual examination and issued the AD questionnaire to both companies.

Bonuts did not respond to the AD questionnaire issued on October 23, 2019, nor did Bonuts request any extensions of time to file its responses. On October 28, 2019, we issued the AD questionnaire to Create Trading. Subsequently, on November 12, 2019, Create Trading filed a statement of no sales and requested to be excused from responding to Commerce’s AD questionnaire.¹⁰ In its letter, Create Trading stated that it had no reviewable U.S. sales or shipments during the POR.¹¹ On January 13, 2020, Commerce excused Create Trading from responding to the AD questionnaire, based on the representations made in Create Trading’s November 12, 2019, request.¹²

Because Commerce excused Create Trading from responding to the AD questionnaire, Commerce determined that it was, at that time, able to select an additional respondent to individually examine. Thus, on January 17, 2020, Commerce selected PT, which accounts for the next largest volume of subject merchandise entries during the POR, as an additional

⁴ See *Initiation Notice*.

⁵ *Id.*

⁶ See Memorandum, “Customs Data of U.S. Imports for the Period 7/1/2018 through 6/30/2019,” dated September 10, 2019; see also Commerce’s Letter to All Interested Parties, “Extension of Deadline to Submit Comments on CBP Data for Respondent Selection,” dated September 13, 2019.

⁷ See Petitioner’s Letter, “Comments on Respondent Selection,” dated September 23, 2019.

⁸ See Memorandum, “Administrative Review of Certain Steel Nails from Taiwan: Respondent Selection,” dated October 22, 2019 (Respondent Selection Memo).

⁹ *Id.*

¹⁰ See Create Trading’s Letter, “Statement of No Sales to the United States,” dated November 12, 2019 (Statement of No Sales).

¹¹ *Id.*, at 1-4 and Exhibits 1-2.

¹² See Commerce’s Letter, “No Requirement to Respond to Questionnaire at this Time,” dated January 13, 2020.

mandatory respondent.¹³ Commerce issued the AD questionnaire to PT on January 17, 2020. On January 31, 2020, PT notified Commerce of its intent not to respond to the AD questionnaire.¹⁴

On February 3, 2020, Liang Chyuan Industrial Co., Ltd. (LC), an exporter of subject merchandise under review, filed comments regarding the appropriate rate to apply to it in the preliminary results, arguing that the likely rate applied to Bonuts and PT should not be applied to LC as its review-specific dumping rate. LC noted that “it is willing and able to submit a response to {Commerce’s} antidumping duty questionnaire in this segment of the proceeding”...based on its “willingness and ability to respond in the previous segment of this proceeding, the 2017-2018 administrative review.”¹⁵ LC also argued that “it would be unreasonable to base the rate for unsampled respondents on total AFA. {Commerce} thus should calculate the rate for LC using data from LC. In the alternative, {Commerce} should use the rate from the 2017-2018 administrative review for LC, or use the all-others rate from the original less than fair value investigation of certain steel nails from Taiwan.”¹⁶

On February 5, 2020, the petitioner also filed comments requesting Commerce to appropriately apply adverse facts available (AFA) to PT and assign to it the AFA rate. Further, the petitioner also responded to LC’s comments, arguing that Commerce should not individually examine LC because LC was “effectively seeking status as a voluntary respondent...” However, the petitioner further argues that “in order to do so, LC should have responded to {Commerce’s} questionnaire first issued to the two mandatory respondents”¹⁷ by the deadline established for the first two mandatory respondents, which it did not do.¹⁸

As discussed above, consistent with section 777A(c)(2)(B) of the Act, Commerce selected two mandatory respondents, from the CBP data on the record, accounting for the largest volume of exports. Upon Bonuts’ failure to respond to the questionnaire and Create Trading’s notification of no sales, Commerce selected a replacement mandatory respondent. LC argues that Commerce ought to select LC as a mandatory respondent because it is willing and able to respond to Commerce’s questionnaire. However, even if Commerce did determine to replace PT with another mandatory respondent, LC would not be eligible for selection under the applied statutory method because it is not the next largest exporter of subject merchandise in the CBP data.¹⁹ Commerce selected mandatory respondents based on largest volume; thus, because LC is not the next largest exporter within the CBP data nor within the top five companies,²⁰ there is no circumstance under which LC would have been selected as a replacement mandatory respondent

¹³ See Memorandum, “Administrative Review of Certain Steel Nails from Taiwan: Selection of Additional Mandatory Respondent,” dated January 17, 2020.

¹⁴ See PT’s Letter, “PT Notification That it Will Not Respond to the Questionnaire,” dated January 31, 2020.

¹⁵ See LC’s Letter, “Comments on Sampling Determination,” dated February 3, 2020.

¹⁶ *Id.*

¹⁷ See Petitioner’s Letter, “Request for Application of Total Facts Available with Adverse Inferences to PT Enterprise Inc. and Pro-Team Coil Nail Enterprise, Inc. and Opposition to Liang Chyuan Industrial Co., Ltd.’s Request for Selection as a Respondent,” dated February 5, 2020.

¹⁸ The petitioner notes that “in order to be treated as a voluntary respondent, at the very latest, LC should have submitted its Section A response by November 18, 2019 and its Sections B-D response by December 4, 2019.” *Id.*

¹⁹ See Respondent Selection Memo at Attachment, wherein only the top five exporters, by volume, within the CBP data were listed. LC is not among the top five exporters, by volume.

²⁰ *Id.*

based on the method applied under section 777A(c)(2)(B) of the Act.²¹ Therefore, LC's "willingness" to submit questionnaire responses as a respondent in this case does not qualify it for individual examination; willingness is not a consideration under section 777A(c)(2)(B) of the Act, unless a company has requested status as a voluntary respondent under section 782(a) of the Act and fulfilled all the relevant statutory and regulatory criteria for consideration of such status.²² LC did not request voluntary status, nor did it file questionnaire responses, under a voluntary respondent status request, by the questionnaire response deadlines established for the initial mandatory respondents. Thus, LC has no basis to consider itself eligible for individual examination.

Further, LC's arguments that Commerce ought to "pull forward" LC's AD margin from the immediately preceding review (third administrative review), as an alternative to individual examination, is not a feasible or legally sanctioned methodology for assigning review-specific rates to non-individually examined respondents. Commerce discusses its legal obligations and practice with regard to section 735(c)(5) of the Act, below.

In consideration of the petitioner's February 5, 2020, comments, we note that the petitioner's rebuttal to LC's comments are addressed above and in section IV.D below, and the petitioner's arguments regarding treatment of PT are discussed in section IV.C below.

III. SCOPE OF THE ORDER

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches.²³ 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 this order 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

²¹ *Id.*

²² *See* section 782(a)(1)(A) of the Act.

²³ 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.

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

Also, excluded from the scope of this order 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 this order 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 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

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

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

Certain steel nails subject to this order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this order 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 this order is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

A. Preliminary Determination of No Shipments

Commerce received no shipment certifications from five companies, certifying that they had no exports, sales, or entries of subject merchandise to the United States during the POR.²⁴

Commerce issued an inquiry to CBP to confirm the certifications of no shipments from these five companies²⁵ and received no contradictory information. Based on the evidence on the record, we preliminarily determine that Astrotech Steels Private Limited, Jinhai Hardware Co., Ltd., Region International Co., Ltd., Region Industries Co., Ltd., and Region System Sdn Bhd had no shipments of subject merchandise to the United States during the POR. Consistent with our practice, we are not preliminarily rescinding the review with respect to these five companies. Instead, we will complete the review and issue appropriate instructions to CBP based on the final results of this review.²⁶

B. Preliminary Determination of No Reviewable Sales

Create Trading reported that it had no reviewable sales because its unaffiliated producers had knowledge of the final destination of the subject merchandise that they produced and sold to Create Trading, and which Create Trading resold to U.S. customers during the POR. Create Trading provided sales documentation such as invoices and packing lists from its unaffiliated producers as evidence in support of its claim.²⁷ Because the record demonstrates that Create Trading's unaffiliated suppliers had knowledge that the steel nails they produced and sold to Create Trading were destined for the United States, we preliminarily determine that Create Trading had no reviewable sales during the POR.

Commerce finds that it is more consistent with the clarification in the 2003 *Assessment of Antidumping Duties* not to rescind the review in these circumstances but, rather, to complete the review with respect to Create Trading and issue appropriate instructions to CBP based on the final results of the review.²⁸ Specifically, we find it appropriate in this case to instruct CBP at the final results to liquidate any existing entries of subject merchandise produced by Create Trading's unaffiliated producers and exported by Create Trading at the rate applicable to the unaffiliated producers, *i.e.*, the all-others rate.²⁹

²⁴ See certifications of no shipments filed by: (1) Astrotech Steels Private Limited, dated October 1, 2019; (2) Jinhai Hardware Co., Ltd., dated October 9, 2019; and (3) Region System Sdn Bhd; (4) Region Industries Co., Ltd.; and (5) Region International Co., Ltd., dated October 9, 2019.

²⁵ See No Shipment Inquiry, Message 9289301 (ACCESS Barcode 3900308-01).

²⁶ See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR 51306, 51307 (August 28, 2014).

²⁷ See Statement of No Sales at Exhibits 1 and 2.

²⁸ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954, 23954 (May 6, 2003) (*Assessment of Antidumping Duties*).

²⁹ See *Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 23974, 23977 (April 29, 2011), unchanged in *Pasta From Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review*, 76 FR 68399 (November 4, 2011).

C. Application of Facts Available and Use of Adverse Inference

1. Application of Facts Available (FA)

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

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, a full explanation for the difficulty, and a suggested alternative form in which the party is able to provide the information. 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 has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Finally, where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Bonuts

As noted above, Commerce issued an AD duty questionnaire to Bonuts on October 23, 2019.³⁰ Commerce received confirmation that the questionnaire was successfully delivered to Bonuts.³¹ Bonuts did not respond to any sections of the questionnaire, nor did Bonuts communicate with Commerce that it required more time or was having difficulty with providing responses. Consequently, we preliminarily find that necessary information is not available on the record of the review with respect to Bonuts; that the company withheld information requested by Commerce; that Bonuts failed to provide the information by the specified deadlines in the form and manner requested; and that, as a result, Bonuts significantly impeded the proceeding. Because information necessary to calculate a dumping margin for Bonuts is not on the record, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, we are relying upon facts available to determine the dumping margin for Bonuts.

³⁰ See AD Questionnaire dated October 23, 2019 (ACCESS Barcode: 3903506-01).

³¹ See Memorandum, "Antidumping Duty Questionnaire Delivery Confirmation," dated November 4, 2019, at Attachment 2.

PT

As discussed above, Commerce selected PT as an additional mandatory respondent on January 17, 2020, and issued the AD questionnaire to PT on the same day. On January 31, 2020, counsel for PT informed Commerce that it would not respond to Commerce's questionnaire, thus, effectively ceasing its participation in the review.³² PT did not respond to any portion of the AD questionnaire. Consequently, we preliminarily find that necessary information is not available on the record of the review with respect to PT; that the company withheld information requested by Commerce; that PT failed to provide the information by the specified deadlines in the form and manner requested; and that, as a result, PT significantly impeded the proceeding. Because information necessary to calculate a dumping margin for PT is not on the record, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, we are relying upon facts available to determine the dumping margin for PT.

2. Application of Adverse Facts Available (AFA)

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.³³ In doing so, Commerce is not required to determine, or make any adjustments to, estimated dumping margins based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³⁴ 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."³⁵ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁶ 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.³⁷

³² Commerce notes that PT requested a review of itself and subsequently timely withdrew its review request on December 6, 2019. However, because the petitioner also requested review of PT but did not withdraw its review request of PT, PT remained under review.

³³ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); 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).

³⁴ See section 776(b)(1)(B) of the Act.

³⁵ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1 (1994) (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).

³⁶ 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); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

³⁷ 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 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).

We preliminarily find that neither Bonuts nor PT have acted to the best of its ability to comply with Commerce's requests for information. Bonuts failed to file a response to any section of Commerce's AD questionnaire and PT informed Commerce that it had no intention of responding to the AD questionnaire. Accordingly, Commerce concludes that both respondents failed to cooperate to the best of their ability to comply with Commerce's requests for information. Therefore, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.³⁸

3. Selection of AFA Rate

In relying on AFA, Commerce may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.³⁹ In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴⁰ Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding when applying an adverse inference, including the highest of such margins. Therefore, we are assigning to Bonuts and PT a margin of 78.17 percent based on total AFA, which is the highest margin applied in any segment of the proceeding.⁴¹ Pursuant to section 776(c)(2) of the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁴²

D. Rate For Non-Selected Companies

This review covers 75 companies that Commerce did not select for individual examination. The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in calculating a rate for non-examined companies in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation.⁴³

³⁸ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying PDM, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the AD questionnaire).

³⁹ See section 776(d)(1)-(2) of the Act.

⁴⁰ See sections 776(d)(3)(A) and (B) of the Act.

⁴¹ 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), and accompanying PDM, unchanged in *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016*, 83 FR 6163 (February 13, 2018).

⁴² See section 776(c)(2) of the Act.

⁴³ See, e.g., *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (*Longkou Haimeng*).

Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of FA}.” Accordingly, Commerce’s usual practice in determining the rate for companies not selected for individual examination, has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on FA.⁴⁴ However, section 735(c)(5)(B) of the Act also provides that, where all weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis*, or based entirely on FA, Commerce may use “any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.” Further, Congress, in the SAA, stated that when “the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis* ... {t}he expected method in such cases will be to weight-average the zero and the *de minimis* margins and margins determined pursuant to the facts available.”⁴⁵

For the preliminary results of this review, we determined the estimated dumping margin for each of the individually examined respondents to be based entirely on AFA. Thus, in accordance with the expected method, and consistent with the Court of Appeals for the Federal Circuit’s decision in *Albemarle*,⁴⁶ in this review, we have preliminarily assigned the non-selected companies the rate assigned to Bonuts and PT, 78.17 percent, as listed in Appendix II of the accompanying *Federal Register* notice.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

3/31/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁴⁴ See *Longkou Haimeng*, 581 F. Supp. 2d 1344, 1357-60; see also *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).

⁴⁵ See SAA at 873.

⁴⁶ See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle*).