



A-580-874  
Investigation  
Public Document  
E&C/IV: KH/DJ/KC/JYO

DATE: May 13, 2015

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

FROM: Howard Smith *HS*  
Acting Office Director  
for AD/CVD Operations, Office IV

SUBJECT: Certain Steel Nails From the Republic of Korea: Issues and  
Decision Memorandum for the Final Determination of Sales at  
Less Than Fair Value

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## SUMMARY

The Department of Commerce ("the Department") finds that certain steel nails ("nails") from the Republic of Korea ("Korea") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is April 1, 2013, through March 31, 2014.

After analyzing the comments submitted by interested parties following publication of the *Preliminary Determination*,<sup>1</sup> and based on our findings at verification, we made certain changes to the preliminary margin calculations for the mandatory respondents, Jinheung Steel Corporation ("Jinheung Steel") and Daejin Steel ("Daejin"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

### Daejin

- Comment 1: Domestic Brokerage and Handling Charges Incurred in U.S. Dollars
- Comment 2: Daejin's Audited Financial Statements
- Comment 3: TOTCOM Calculation Error for Certain CONNUMs
- Comment 4: Constructed Value ("CV") Profit for Daejin

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<sup>1</sup> See *Certain Steel Nails From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 78051 (December 29, 2014) ("Preliminary Determination"), and accompanying Preliminary Decision Memorandum ("PDM").



## Jinheung Steel

- Comment 5: Cash Deposit Rate for Affiliated Companies
- Comment 6: Product Comparison Methodology
- Comment 7: Differential Pricing Analysis
- Comment 8: Steel Scrap Offset
- Comment 9: Change in Work-In-Process and Semi-Finished Goods Inventories

## **BACKGROUND**

The following events have taken place since the Department published the *Preliminary Determination* in this investigation on December 29, 2014. Between January 6, 2015, and February 13, 2015, the Department conducted sales and cost verifications of Jinheung Steel and Daejin, as well as the sales verification of Jinheung Steel's affiliate, Illinois Tool Works Inc. ("ITW").<sup>2</sup>

On March 27, 2015, Jinheung Steel, Daejin, ITW, and Mid Continent Steel & Wire, Inc. ("Petitioner") submitted case briefs.<sup>3</sup> On April 2, 2015, Daejin and Petitioner submitted rebuttal case briefs.<sup>4</sup> On January 28, 2015, Jinheung Steel requested a hearing.<sup>5</sup> On April 8, 2015, Jinheung Steel withdrew its hearing request.<sup>6</sup> No hearing was held in this investigation.

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<sup>2</sup> See Memorandum to the File from Robert Bolling and Drew Jackson, AD/CVD Operations, Office IV, through Charles Riggle, Senior International Trade Compliance Analyst, AD/CVD Operations, Office IV, regarding "Verification of the Sales Questionnaire Responses of Illinois Tool Works: Antidumping Duty Investigation of Certain Steel Nails from Korea" (March 10, 2015) ("ITW Verification Report"); see also Memorandum to the File from Drew Jackson and Krisha Hill, AD/CVD Operations, Office IV, through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, regarding "Verification of the Sales Questionnaire Responses of Daejin Steel: Antidumping Duty Investigation of Certain Steel Nails from the Republic of Korea" (March 11, 2015) ("Daejin Sales Verification Report"); see also Memorandum to the File from Ji Young Oh and Kristin Case, Senior Accountants, through Taija Slaughter, Lead Accountant, and Neal M. Halper, Office Director, regarding "Verification of the Cost Response of Daejin Steel Company in the Antidumping Duty Investigation of Certain Steel Nails from Korea" (March 12, 2015) ("Daejin Cost Verification Report"); see also Memorandum to the File from Ji Young Oh and Kristin Case, Senior Accountants, through Taija Slaughter, Lead Accountant, and Neal M. Halper, Office Director, regarding "Verification of the Cost Response of Jinheung Steel Corporation in the Antidumping Duty Investigation of Certain Steel Nails from the Republic of Korea" (March 12, 2015) ("Jinheung Steel Cost Verification Report"); see also Memorandum to the File from Drew Jackson and Krisha Hill, AD/CVD Operations, Office IV, through Robert Bolling, Program Manager, AD/CVD Operations, Office IV, regarding "Verification of the Sales Questionnaire Responses of Jinheung Steel Corporation: Antidumping Duty Investigation of Certain Steel Nails from the Republic of Korea" (March 19, 2015) ("Jinheung Steel Sales Verification Report").

<sup>3</sup> See Letter from Jinheung Steel to the Department, regarding "Antidumping Investigation of Certain Steel Nails from Korea - Case Brief," dated March 27, 2015 ("Jinheung Steel Case Brief"); see also Letter from Daejin Steel to the Department, regarding "Certain Steel Nails from the Republic of Korea; Submission of the Respondent's Case Brief," dated March 27, 2015 ("Daejin Steel Case Brief"); see also Letter from ITW to the Department, regarding "Steel Nails from the Republic of Korea: Case Brief of Illinois Tool Works Inc.," dated March 27, 2015 ("ITW Case Brief"); see also Letter from Petitioner to the Department, regarding "Antidumping Duty Investigation of Certain Steel Nails from the Republic of Korea: Petitioner's Case Brief," dated March 27, 2015 ("Petitioner Case Brief"); see also Letter from Target Corporation and The Home Depot to the Department, regarding "Certain Steel Nails from the Republic of Korea: Case Brief," dated March 27, 2015.

<sup>4</sup> See Letter from IKEA Supply AG to the Department, regarding "Certain Steel Nails from the Republic of Korea: Rebuttal Brief," dated March 31, 2015; see also Letter from Daejin Steel to the Department, regarding "Certain Steel Nails from Korea; Submission of Daejin Steel Company's Rebuttal Brief," dated April 2, 2015 ("Daejin Steel

#### IV. SCOPE OF THE INVESTIGATION

The final version of the scope, reflecting the changes referenced in the “SCOPE COMMENTS” section, below, appears in Appendix I of the *Final Determination*.

#### V. SCOPE COMMENTS<sup>7</sup>

On March 17, 2015, the Department invited interested parties to submit additional comments on certain scope issues that had been raised on the record of this and the concurrent antidumping and countervailing investigations of certain steel nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam (All Nails Investigations).

On March 23, 2015, two interested parties, The Home Depot (Home Depot) and Target Corporation (Target) requested in a joint submission that the Department exclude certain nails from the scope of All Nails Investigations. On that same day, another interested party, IKEA Supply AG (IKEA), made the very same request, using identical language to that in the Home Depot/Target submission. On March 26, 2015, Petitioner submitted a response that agreed with the exact scope exclusion language proposed by the aforementioned parties in their March 23, 2015 submissions. The exclusion language proposed by those parties and Petitioner is referenced below as “Interested Parties’ Proposed Exclusion.” That language reads as follows:

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 is described in one of the following current 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.

On April 10, 2015, the Department provided interested parties in All Nails Investigations the opportunity to comment on a proposed revised version of the scope. That Department proposal modified the language proposed in the Interested Parties’ Proposed Exclusion to include narrative from the Harmonized Tariff Schedule of the United States (HTSUS) describing the merchandise referenced in the HTSUS subheadings identified in Interested Parties’ Proposed Exclusion, and which altered the reference to “described in one of the following current HTSUS subheadings” to “currently classified under the following HTSUS subheadings.” The

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Rebuttal Brief”); *see also* Letter from Petitioner to the Department, regarding “Antidumping Duty Investigation of Certain Steel Nails from the Republic of Korea: Petitioner’s Rebuttal Brief,” dated April 2, 2015 (“Petitioner Rebuttal Brief”).

<sup>5</sup> *See* Letter from Jinheung Steel to the Department, regarding “Antidumping Investigation of Certain Steel Nails from Korea - Hearing Request,” dated January 28, 2015.

<sup>6</sup> *See* Letter from Jinheung Steel to the Department, regarding “Antidumping Investigation of Certain Steel Nails from Korea — Withdrawal of Hearing Request,” dated April 8, 2015.

<sup>7</sup> In several of the investigations of certain steel nails, The Home Depot and Target Corporation submitted a case brief and IKEA Supply AG submitted a rebuttal brief that reiterate those parties’ requests for an additional scope exclusion, which those parties requested in scope comments they made in separate submissions, as discussed below.

Department proposal also contained two other revisions.<sup>8</sup> In addition, the Department indicated it was considering including language in the scope to address mixed media and non-subject merchandise kit (“mixed media and kits”) analysis criteria.

On April 15, 2015, Home Depot, Target, IKEA, and Petitioner submitted comments objecting to the Department’s proposed modification to Interested Parties’ Proposed Exclusion. Those parties noted that it was unnecessary to attempt to incorporate language from the HTSUS into the scope itself because the HTSUS chapters in question are on the record and, therefore, can by reference be reflected in any interpretation of the desired scope exclusion.<sup>9</sup> Those parties also commented that language related to “mixed media and kits” analysis would be unnecessary and inappropriate, and would introduce ambiguity that would be burdensome for the Department, importers, and Petitioner. None of those parties commented on the two other minor revisions the Department had proposed.

No parties provided rebuttal comments to those submitted by Home Depot, Target, IKEA, and Petitioner.

The Department has determined that inclusion of language from the HTSUS for the additional exclusion is appropriate, as modified in the Department’s April 10, 2015 memorandum to incorporate narrative from the HTSUS. The Department notes it is important for such exclusions to include descriptions of the products in question, instead of relying only upon references to HTSUS subcategory numbers. The Department references HTSUS categories for convenience and customs purposes only, and such references are not intended to be dispositive of the scope. The Department’s preference to rely on the physical description of the merchandise to determine the scope of an investigation provides greater clarity should there be future HTSUS number or categorization changes, and allows better enforcement of any order.

As noted, the April 10, 2015 version proposed by the Department incorporates two other modifications. No parties have raised objections to those other modifications, and the Department determines they are appropriate for clarification purposes.

The Department also determines that it would not be appropriate to introduce language into the scope to address “mixed media and kits.” We note no interested parties have requested such language, and those that commented in fact opposed such language.

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<sup>8</sup> The other two other proposed revisions were: moving and altering a sentence that referred to an existing exclusion to account for the additional exclusion language, and an adding a reference noting subject merchandise may enter under HTSUS subheadings other than those listed with the scope.

<sup>9</sup> Home Depot and Target also noted that use of “described in one of the following current HTSUS subheadings” ties the complete language of the HTSUS regarding those subheadings to the scope, while use of “currently classified under the following HTSUS subheadings” fails to achieve that goal.

## DISCUSSION OF THE ISSUES

### Daejin

#### Comment 1: Domestic Brokerage and Handling Charges Incurred in U.S. Dollars

##### Petitioner's Arguments:

- The Department made no adjustment for Daejin's domestic brokerage and handling charges incurred in U.S. dollars, reported under the variable DBROK2U, in the *Preliminary Determination*.
- Because the Department has identified no issues with this adjustment in either the *Preliminary Determination* or during verification, the Department should adjust U.S. prices for DBROK2U in the final determination.

No other interested party commented on this issue.

**Department's Position:** We agree with Petitioner that the U.S. prices reported by Daejin should be adjusted for domestic brokerage and handling charges incurred in U.S. dollars, and confirm that there were no issues with this expense at the *Preliminary Determination* or during verification. We inadvertently overlooked this adjustment in the *Preliminary Determination*. Therefore, for the final determination, we have corrected this error and have adjusted Daejin's U.S. prices for domestic brokerage and handling charges incurred in U.S. dollars.<sup>10</sup>

#### Comment 2: Daejin's Audited Financial Statements

##### Petitioner's Arguments:

- Daejin had its fiscal year ("FY") 2013 financial statements audited only for the purpose of using it for this investigation. However, there were inconsistencies between the audited financial statements and Daejin's normal books and records as captured in the tax return. Because of these inconsistencies, Daejin's reported costs that are based on its audited financial statements are not reliable.
- Specifically, the raw material inventory valuation method used in the audited financial statements decreased the reported costs by revaluing the ending inventory balance while leaving the beginning inventory balance the same. Daejin also reclassified some inventory categories that resulted in a decrease to the reported costs. As such, Daejin's audited financial statements do not reasonably reflect the costs associated with the production and sale of the merchandise under consideration.<sup>11</sup>
- Further, Daejin's audited financial statements do not include a statement of changes in equity, a statement of cash flow, and a prior period comparative statement that are mandatory under Korean generally accepted accounting principles ("K-GAAP").

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<sup>10</sup> See Memorandum from Krisha Hill, International Trade Compliance Analyst, to Robert Bolling, Program Manager, regarding "Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Steel Nails from the Republic of Korea: Daejin Steel," dated May 13, 2015.

<sup>11</sup> See section 773b(f)(1)(A) of the Act.

- Daejin’s unaudited financial statements are unreliable for evaluating its production costs because there is no evidence that Daejin’s inventory valuation method prior to the audit was accurate and reasonable. As such, Daejin’s audited and unaudited financial statements do not provide a reliable basis for evaluating the reported costs.<sup>12</sup> Because Daejin did not act to the best of its ability to comply with the Department’s request, partial facts available with an adverse inference (“AFA”) should be applied to its reported costs.<sup>13</sup> As partial AFA, the Department should apply the highest cost of any control number (“CONNUM”) produced by Daejin to all CONNUMs that were produced by Daejin.
- If the Department determines not to apply partial AFA, at a minimum the Department should adjust Daejin’s costs to reflect costs as reported in its unaudited financial statements.

*Daejin’s Arguments:*

- Daejin’s financial statements have been audited by a third party in accordance with K-GAAP and the Department must rely on Daejin’s reported costs as verified.
- Daejin engaged the audit of its financial statements in order to enhance the reliability and accuracy of its financial statements, and to classify accounts where necessary to conform to K-GAAP. The auditors were an external party with no knowledge of the antidumping investigation. Their sole mandate was to audit and reclassify accounts where necessary to conform to K-GAAP.
- The Department verified all of the audit adjustments including the inventory balances and confirmed that these adjustments accurately reflect Daejin’s cost of production (“COP”). Further, the Department also verified the applicable statutory and regulatory provisions, *i.e.*, related to the exemptions of certain statements, which applied to Daejin because of its status as a small and medium sized company.

**Department’s Position:** We disagree with Petitioner that the costs in Daejin’s audited financial statements should be considered unreliable, and therefore, that partial AFA should be applied to Daejin’s reported costs. Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Record evidence shows that Daejin’s audited financial statements were audited by independent accountants, and were prepared in accordance with K-GAAP. Aside from the unsupported

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<sup>12</sup> See section 776(a)(1) of the Act.

<sup>13</sup> See section 776(b) of the Act.

speculation by Petitioner, there is no record evidence supporting the rejection of the costs contained within those statements. Thus, consistent with the *Preliminary Determination*, we continue to rely on Daejin's audited financial statements for the purpose of calculating the reported costs.

As noted in the Department's cost verification report, Daejin is a small company and does not have a regulatory obligation to prepare audited financial statements. Nevertheless, Daejin had its fiscal year 2013 financial statements audited in order to generate reliable financial data<sup>14</sup> that were consistent with K-GAAP<sup>15</sup>, and that could be used for this investigation. We note however that Daejin's claim that the auditor had no knowledge of the antidumping investigation is not relevant to the Department's analysis. Section 773(f)(1)(A) of the Act states that the COP and constructed value ("CV") shall normally be calculated based on the records of the exporter or producer of the merchandise if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. Daejin's reported costs were based on its financial statements that were audited by independent auditors in accordance with K-GAAP and the Department verified that its reported costs reasonably reflected the production cost of nails. *See* Daejin's Cost Verification Report. With respect to Petitioner's claim that there were inconsistencies between Daejin's audited financial statements and the tax return, the Department explained in Daejin's Sales Verification Report that the tax return was filed with the Korean government prior to the audit of the financial statements.<sup>16</sup> Thus, certain audit adjustments were not reflected in the tax return.

Further, with respect to Petitioner's argument that the inventory valuation methodology used in Daejin's audited financial statements manipulates the reported costs, we disagree. Daejin revalued and reclassified its inventory balance in order to conform to K-GAAP, and its inventory revaluation method and subsequent reclassification were attested to by its independent auditors and thoroughly examined by the Department at the verification.<sup>17</sup> The auditors gave Daejin an unqualified audit opinion and based on our examination, we did not find that Daejin's inventory valuation method used in the preparation of its audited financial statements was either unusual or unreasonably reflected the cost of producing nails. Likewise, we disagree with Petitioner that Daejin's audited financial statements are not reliable because certain financial statements were omitted. At verification, the Department reviewed an authoritative Korean pronouncement<sup>18</sup> which stated that the statement of changes in equity, statement of cash flow, and prior year comparative statements are not required for small companies the size of Daejin.<sup>19</sup>

Accordingly, for all the foregoing reasons, we have determined that it was appropriate for Daejin to base its reported production cost of nails on the costs reflected in its audited financial statements. For those same reasons, we find the use of partial AFA, as advocated by Petitioner, not warranted.

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<sup>14</sup> *See* Daejin Cost Verification Report at 4.

<sup>15</sup> *See* Daejin Sales Verification Report at 5.

<sup>16</sup> *See* Daejin Sales Verification Report at 5.

<sup>17</sup> *See* Daejin Cost Verification Report at 4-6.

<sup>18</sup> "Accounting Standards for Small and Medium Enterprise." *See* Daejin Cost Verification Report at Exhibit 1.

<sup>19</sup> *See* Daejin Cost Verification Report at 4.

### Comment 3: TOTCOM Calculation Error for Certain CONNUMs

#### Petitioner's Arguments:

- The Department should correct a programming error related to the calculation of total cost of manufacturing ("TOTCOM") for certain CONNUMs.

No other party commented on this issue.

**Department's Position:** We agree with Petitioner. In the *Preliminary Determination*, the Department recalculated TOTCOM for all products by summing each cost element within TOTCOM. By doing so, the TOTCOM for certain products was not correctly reflected in the margin calculation. For the final determination, we corrected this error and used the appropriate TOTCOM for the products in question.<sup>20</sup>

### Comment 4: Constructed Value ("CV") Profit for Daejin

#### Daejin's arguments:

- Subsequent to the preliminary determination, the other mandatory respondent in this proceeding (*i.e.*, Jinheung Steel) withdrew the business proprietary treatment for its 2013 audited financial statements. Jinheung Steel's overall profit rate, as reflected in its public financial statements, is the best surrogate for calculating constructed value ("CV") profit for Daejin under section 773(e)(2)(B)(iii) of the Act. Jinheung Steel is the largest nail producer in Korea and its profit experience closely resembles Daejin's business operations, product mix, and customer base.<sup>21</sup> Also, Jinheung Steel's financial statements are contemporaneous with the POI.
- Using Hitech's financial statements to calculate CV profit would be contrary to the Department's policy for calculating CV profit<sup>22</sup> because: 1) Hitech Fastener Manufacture (Thailand) Co., Ltd. ("Hitech") produces a different line of products than Daejin (*i.e.*, screw and rivets); 2) there is no evidence that Hitech is engaged in a similar market as Daejin; 3) Hitech's financial statements are not contemporaneous with the POI; and, 4) Hitech has no sales in Korea.
- Hitech's financial statements were not used as a source of CV profit in other proceedings because it has been found to benefit from the receipt of countervailable subsidies.<sup>23</sup>

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<sup>20</sup> See Memorandum to the File titled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Daejin Steel," dated May 13, 2015 ("Daejin Steel Cost Calculation Memorandum").

<sup>21</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001) and accompanying decision memorandum at Comment 8 ("*Magnesium from Israel*") and *Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004) and accompanying decision memorandum at Comment 26 ("*Color TV Receivers from Malaysia*").

<sup>22</sup> See *Magnesium from Israel, Thai I-Mei Frozen Food Co., v. United States*, 588 F. Supp. 2d 1332, 1350 (CIT 2007) ("*Thai I-Mei*"), and *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 19, 2012) and accompanying decision memorandum at Comments 2 and 3 ("*Stilbenic Optical Brightening Agent from Taiwan*").

<sup>23</sup> See *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65616, 65618 (November 5, 2014) ("*Steel Wire Garment Hangers from the PRC*").



- Petitioner did not provide any explanation as to how Hitech’s financial statements were obtained. Thus, it is not clear that Hitech’s financial statements are publicly available.
- Hitech and Jinheung Steel are in entirely different industries and sell different products to different markets. Also, there is no evidence that their business operations are similar. As such, the profit experience of these two companies should not be weight-averaged to derive a surrogate CV profit for Daejin.<sup>24</sup>
- Further, section 773(e)(2)(A) of the Act does not state that the home market must be “viable” in order to derive a respondent’s actual profit from that market. Also, the statute prescribes no minimum quantity threshold for home market sales to be used as a basis for a CV profit as long as those sales are made in the ordinary course of trade. Where the plain language of the statute is unambiguous, the Department lacks the authority to interpret the statute differently.<sup>25</sup> Therefore, as an alternative to using Jinheung Steel’s financial statements to calculate CV profit, the Department should use the actual profit Daejin realized on its home market sales of nails under section 773(e)(2)(A) of the Act.
- The Statement of Administrative Action (“SAA”) also confirms that section 773(e)(2)(A) of the Act applies without resorting to section 773(e)(2)(B) of Act so long as there is at least one sale above cost in the home market.<sup>26</sup>
- The Department’s interpretation of section 773(e)(2)(A) of Act, namely using home market sales to measure CV profit only when the home market itself is viable, is inconsistent with the overall statutory scheme of the antidumping law.<sup>27</sup> Specifically, the use of CV presupposes the lack of a viable home market. Nevertheless, it is incongruous to interpret the CV profit provision under section 773(e)(2)(A) of the Act as requiring a viable home market to calculate the profit component of CV, when the Department would not have based NV on CV if the home market had been viable.
- If the Department concludes that section 773(e)(2)(A) of the Act does not permit the use of Daejin’s POI home market sales as a measure of CV profit, those sales are still the best evidence of the experience of steel nail producers in the home market under sections 773(e)(2)(B)(i) and 773(e)(2)(B)(iii) of the Act. Specifically, under 773(e)(2)(B)(i) of the Act, the Department has found that a respondent’s home market sales of the foreign like product are a proper and lawful basis for CV profit even where the respondent was found to have no viable home market.<sup>28</sup> In the alternative, Daejin’s home market sales provide a “reasonable method” to calculate a CV profit under section 773(e)(2)(B)(iii) of the Act.

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<sup>24</sup> See *Stilbenic Optical Brightening Agent from Taiwan*.

<sup>25</sup> See *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984); *Demarest v. Manspeaker*, 498 U.S. 184 (1991); and *Gilda Industr. Inc. v. United States*, 625 F. Supp. 2d 1377 (CIT 2009).

<sup>26</sup> See SAA at 839-840, H.R. Doc. 103-316 (1994).

<sup>27</sup> See *USEC, Inc. v. United States*, 498 F. Supp. 2d 1337, 1349 (CIT 2007); *Int’l Union v. Bock*, 816 F. 2d 761, 765 (D.C. Cir 1987); *Luggage and Leather Goods Mfrs. of America, Inc. v. United States*, 588 F. Supp. 1413, 1426 (1984); and *Federal Election Comm’n. v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 31-32 (1981).

<sup>28</sup> See *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not less Than Fair Value*, 73 FR 33985 (June 16, 2008) and accompanying Issues and Decision Memorandum at Comment 16 (“Nails from the UAE 2008”).

Petitioner's Arguments:

- The Department should not use Jinheung Steel's fiscal year 2013 public financial statements to calculate CV profit but should continue to rely on the financial statements of Hitech for calculating CV profit for the final determination.
- The statute allows the Department to use "any other reasonable method" to select sources for CV profit and selling expenses when calculating normal value ("NV") using CV. While the goal in calculating CV is to approximate the home market profit and selling expenses, the statute contains no prohibition on doing so using a producer outside the country under investigation.
- The SAA clearly recognizes the need for flexibility when resorting to section 773(e)(2)(B) of the Act and specifically states that when using alternative (iii) under that section, it is not appropriate to establish particular methods and benchmarks.<sup>29</sup>
- The Department has refined its practice over time in order to use a source of CV profit that maximizes the ability to accurately model the respondent's experience with respect to the foreign like product.<sup>30</sup> The Department also possesses administrative discretion in selecting the most appropriate source of CV profit.
- Daejin failed to submit Jinheung Steel's fiscal year 2013 public financial statements within the time limits set by the Department for submission of new factual information on CV profit. Thus, Jinheung Steel's financial statements should not be considered for the final determination.
- Jinheung Steel's fiscal year 2013 public financial statements' overall profit rate does not reasonably reflect sales in Korea of the foreign like product or merchandise in the same general category. The record shows that Jinheung Steel realized much higher gross profits on its sales of nails than on its sales of non-comparable wire products. The lower profit margin on non-comparable wire products decreased the company's overall profit.
- Jinheung Steel's fiscal year 2013 public financial statements' overall profit rate is not only distorted by the sales of non-comparable wire products, but also includes significant sales of subject merchandise to the United States. As such, Jinheung Steel's fiscal year 2013 public financial statements should not be used to calculate CV profit for Daejin. Instead, if Jinheung Steel's financial data are a potential source of CV profit data, the Department's business proprietary information ("BPI") CV profit calculation for Jinheung Steel or Jinheung Steel's fiscal year 2013 public nail specific product-line gross profit information should be used.<sup>31</sup>
- Using Jinheung Steel's fiscal year 2013 public financial statements as the basis for calculating CV profit under sections 773(e)(2)(B)(ii) and 773(e)(2)(B)(iii) of the Act does not satisfy the requirement of the statute because non-subject wire is neither the foreign like product nor in the "same general category of products" as the subject merchandise.

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<sup>29</sup> See SAA at 840-841.

<sup>30</sup> See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41893 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 1 ("*OCTG from Korea*").

<sup>31</sup> In its rebuttal brief, petitioner requested that the Department ask Jinheung Steel to confirm for the record whether its profit and selling expense data related to the home market sales of steel nails are properly treated as BPI, or whether those data also can be treated as public given the public nature of its financial statements and of the data allowing the derivation of its profit and selling expenses on a product line basis.

Further, using Jinheung Steel's fiscal year 2013 public financial statements constitutes a methodological choice to calculate margins less accurately than possible, which would be contrary to law.<sup>32</sup>

- Jinheung Steel produces non-subject products (*i.e.*, wire, fencing, *etc.*) and using its fiscal year 2013 public financial statements' overall profit as Daejin's CV profit would project the experience of a company with significantly different products onto a company, *i.e.*, Daejin, which is purely a producer of steel nails.
- Hitech, on the other hand, is a comparable fastener producer and its profit rate is not distorted by sales of non-comparable products. As such, Hitech's fiscal year 2012 audited financial statements are the most appropriate source for calculating CV profit for Daejin. Nevertheless, if the Department decides to use any of Jinheung Steel's data to calculate CV profit, the Department should request that Jinheung Steel make its home market CV profit rate under the preferred method public. This rate can be used for calculating Daejin's CV profit under section 773(e)(2)(B)(ii) of the Act.
- If Jinheung Steel's profit rate for home market sales of nails under the preferred method is not made public, Daejin's CV profit rate should be calculated based on Jinheung Steel's fiscal year 2013 public nail specific product-line gross profit information under section 773(e)(2)(B)(iii) of the Act. Using Jinheung Steel's nails specific data would not run afoul of the Department's policy of not looking behind line items in surrogate financial statements when calculating CV profit using financial statements of a company that is not an interested party.<sup>33</sup>
- Comparing Jinheung Steel's CV profit rate (which was calculated by the Department at the preliminary determination) with Hitech's profit rate, Hitech's profit rate is reasonable and approximates the selling experience of a producer in the home market.
- Using Hitech's fiscal year 2012 financial statements for calculating CV profit for Daejin was consistent with the statute, decisions in the recent determinations,<sup>34</sup> and the companion antidumping investigation of Certain Steel Nails from Oman.<sup>35</sup>
- In calculating CV profit under section 773(e)(2)(B)(iii) of the Act, the Department weighs several criteria. Evaluating Hitech's fiscal year 2012 financial statements in the light of these criteria demonstrates that it is a better source of CV profit data than Jinheung Steel's fiscal year 2013 public financial statements.<sup>36</sup> Specifically, Hitech only

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<sup>32</sup> See *Lasko Metal Prods. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994) and *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

<sup>33</sup> See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40492 (July 15, 2008) and accompanying Issues and Decision Memorandum at comment 18 and *Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2001-2005 Semi-Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006) and accompanying Issues and Decision Memorandum at comment 5.

<sup>34</sup> See *OCTG from Korea and Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 3 ("OCTG from Turkey").

<sup>35</sup> See *Certain Steel Nails From the Sultanate of Oman: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 78034 (December 29, 2014) and accompanying Issues and Decision Memorandum at 10-11 ("Oman Preliminary Determination").

<sup>36</sup> See *OCTG from Korea; Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) and accompanying Issues and Decision Memorandum at Comment

produced comparable merchandise, whereas Jinheung Steel's financial statements include sales of non-comparable merchandise.<sup>37</sup> As such, Hitech's financial experience was more similar to Daejin's experience. Also, Hitech's profit experience is not negatively influenced by the dumped U.S. sales of subject merchandise.

- As for the contemporaneity of the surrogate data to the relevant period, the significant issues with using Jinheung Steel's fiscal year 2013 public financial statements outweigh the minor difference in the contemporaneity of Hitech's fiscal year 2012 financial statements.
- With respect to customer base, Hitech sold products to customers comparable to those of Daejin *i.e.*, manufacturers and builders who use fasteners, whether they are nails, screws, or bolts, to fasten materials together while manufacturing or constructing.<sup>38</sup>
- The Department properly disregarded Daejin's home market sales as the basis for CV profit under section 773(e)(2)(A) of the Act. The SAA provides the non-exclusive list of examples of sales that the Department could conclude were not made in the ordinary course of trade. Daejin's home market sales quantity and the per-unit sales value of foreign like product illustrate that they were aberrational and occurred outside the ordinary course of business.<sup>39</sup>
- Basing CV profit on Daejin's small volume of home market sales is inappropriate as the Department has recognized in other proceedings.<sup>40</sup>

**Department's Position:** For the *Preliminary Determination*, in calculating CV profit for Daejin under section 773(e)(2)(B)(iii) of the Act, the Department used Hitech's 2012 financial statements. Subsequent to the *Preliminary Determination*, Jinheung Steel (*i.e.*, the other mandatory respondent in this proceeding) withdrew its business proprietary treatment of its fiscal year 2013 audited financial statements and made them public. Further, Jinheung Steel provided its nail-specific product-line gross profit information as public data during its sales and cost verifications. As a result, these financial data are now also available on the record of this proceeding as additional options for calculating CV profit for Daejin. After considering the record evidence and the arguments raised in the parties' case and rebuttal briefs, we revised our *Preliminary Determination* regarding the calculation methodology for Daejin's CV profit and selling expenses. For the final determination, we used differing components of Jinheung Steel's business proprietary home market financial information as the data source to calculate Daejin's CV profit and selling expense.

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6 ("Nails from the UAE 2012"); see also *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 10876 (February 28, 2011) and accompanying Issues and Decision Memorandum at Comment 3; *Color TV Receivers from Malaysia*, and *Magnesium from Israel*.

<sup>37</sup> See *Certain Nails from the People's Republic of China: Final Results of the First New Shipper Review*, 75 FR 34425 (June 17, 2010) and accompanying Issues and Decision Memorandum at Comment 4 and *Certain Steel Nails from the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012) and accompanying Issues and Decision Memorandum at Comment 2 ("China Nails AR2").

<sup>38</sup> See *Certain Steel Nails from the UAE*, USITC Pub.4321 (May 2012) at 6 and *Certain Standard Steel Fasteners from China and Taiwan*, US ITC Pub. 4109 (November 2009) at 14.

<sup>39</sup> See SAA at 839-840.

<sup>40</sup> See *Nails from the UAE 2012*.

During the POI, Daejin did not have a viable home or third-country market. Thus, because it did not have home or third-country market sales to serve as a basis for normal value, normal value must be based on CV in accordance with section 773(a)(4) of the Act. Likewise, absent a viable home or third-country market, we are unable to calculate CV profit and selling expenses using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home market or third-country sales made in the ordinary course of trade. While we agree with Daejin that section 773(e)(2)(A) of the Act prescribes no minimum quantity threshold, neither that provision nor the corresponding language in the SAA precludes an interpretation requiring a sufficient volume of home market sales to derive a meaningful rate of home market profit. Similar to *Nails from the UAE 2012*, we find that Daejin's volume of home market sales during the POI is too insignificant to reflect a meaningful home market profit rate. We performed our viability test in order to ensure that there is a adequate population of sales to serve as the basis for normal value. It would be inconsistent and unreasonable for the Department to not use the insignificant number of home market sales for normal value because the market is not viable, but then use the profit on those same sales to calculate CV based normal value. In situations where we cannot calculate CV profit and selling expense under section 773(e)(2)(A) of the Act, section 773(e)(2)(B) of the Act establishes three alternatives:

(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review . . . for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise, (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) . . . for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or (iii) the amounts incurred and realized . . . for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise; (*i.e.*, the "profit cap").

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit and selling expenses.<sup>41</sup> Moreover, as noted in the SAA, "the selection of an alternative will be made on a case by-case basis, and will depend, to an extent, on available data."<sup>42</sup> Thus, the Department has discretion to select from any of the three alternative methods, depending on the information available on the record.

The specific language of both the preferred and alternative methods, appear to show a preference that the profit and selling expenses reflect: (1) production and sales in the foreign country; and (2) the foreign like product, *i.e.*, the merchandise under consideration. However, when selecting a profit from available record evidence, we may not be able to find a source that reflects both of

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<sup>41</sup> See SAA at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.")

<sup>42</sup> See SAA at 840.

these factors. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Consequently, we must weigh the quality of the data against these factors. For example, we may have profit information that reflects production and sales in the foreign country of merchandise that is similar to the foreign like product but also includes significant sales of completely different merchandise, or profit information that reflects production and sales of the merchandise under consideration but no sales in the foreign country. Determining how specialized the foreign like product is, what percentage of sales are of the foreign like product or general category of merchandise, what portion of sales are to which markets, *etc.*, judged against the above criteria, may help to determine what profit source to rely upon.

On the record of this proceeding, we are faced with various alternative sources for calculating CV profit and selling expenses under section 773(e)(2)(B)(ii) and (iii) of the Act: 1) business proprietary information (BPI) associated with Jinheung Steel's home market sales, costs, selling and general expenses; 2) the 2013 audited financial statements of Jinheung Steel<sup>43</sup>; 3) the 2013 nail specific product-line gross profit information for Jinheung Steel; 4) Daejin's home market sales of a limited quantity; and, 5) the 2012 audited financial statements of Hitech, a company that produces screws and rivets in Thailand.

In evaluating the different alternatives, for the final determination, we have determined that Jinheung Steel's BPI most closely simulates the statutory preference for calculating CV profit and selling expenses. The data represent information that reflects production and sales in the foreign country of the foreign like product; *i.e.*, the merchandise under consideration. More specifically, the data from Jinheung Steel reflect the experience of a company that is also subject to the investigation. Because these data require BPI treatment, *see*, Memorandum to Neal Halper from Ji Young Oh, Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Daejin Steel Co., dated May 13, 2015, for a more detailed discussion of the use of Jinheung's data to calculate CV profit and selling expenses.

With regard to Daejin's own home data under section 773(e)(2)(B)(iii) of the Act, as noted above, Daejin sold only a small amount of steel nails in the home market during the POI.<sup>44</sup> However, Daejin continues to argue that its own home market sales of steel nails constitutes one of the best sources of data from which to calculate CV profit and selling expenses if not under section 773(e)(2)(A) of the Act then under section 773(e)(2)(B)(iii) of the Act. We disagree with Daejin on both accounts. As noted above, we find that its volume of home market sales during the POI is too insignificant to reflect a meaningful home market profit and selling expense rate and thus, does not constitute a proper basis for CV profit and selling expenses.

We disagree with petitioner's argument that Jinheung Steel's 2013 financial statements were not submitted within the time limit set by the Department. Jinheung Steel submitted its fiscal year

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<sup>43</sup> Jinheung Steel's 2013 income statement was on the record of this case at the time of the *Preliminary Determination*. However, the Department was unable to consider Jinheung's 2013 income statement for CV calculation because it contained incomplete financial data, as well as due to the BPI nature of the information. Subsequent to the *Preliminary Determination*, Jinheung Steel withdrew its business proprietary treatment of its fiscal year 2013 audited financial statements and made them public.

<sup>44</sup> See Cost Verification Exhibits at CVE 12.

2013 financial statements and requested BPI treatment within the deadline specified by the Department in the initial questionnaire responses.<sup>45</sup> Subsequent to the *Preliminary Determination*, the Department requested that Jinheung Steel provide its rationale for treating its financial statements as BPI or withdraw its BPI treatment of its financial statements. Jinheung Steel provided a timely response to the request and publicly released its 2013 financial statements. As such, we do not find Jinheung Steel's 2013 financial statements to constitute untimely filed factual information.

In regard to the arguments for using Jinheung Steel's fiscal year 2013 financial statements or its fiscal year 2013 nail specific product-line gross profit information, although the two sources reflect the statutory preference of using information from a Korean nail producer, these alternatives include flaws not present in the selected BPI data, such as sales and cost data of products that are not considered comparable to the merchandise under investigation, information that reflects sales made outside the ordinary course of trade, and a significant amount of U.S. sales of the subject merchandise. Moreover, the results of the CV profit and selling expense calculations under these alternatives could result in the Department applying drastically different rates to the two respondents, although the information is sourced from only the one respondent. In other words, one respondent could benefit over the other respondent although the data used to calculate the CV profit and selling expense information for the two respondents originates from the same data source.<sup>46</sup>

With respect to Hitech's financial statements, although Hitech produces comparable merchandise, *i.e.*, screws and fasteners, Hitech does not produce the identical foreign like product (*i.e.*, nails) nor does it have production or sales activities in Korea. Therefore, because we have record information that allows us to calculate CV profit and selling expenses from a Korean producer of the foreign like product, *i.e.*, more precise information is available on the record, we do not have to resort to other alternatives.

### **Comment 5: Cash Deposit Rate for Affiliated Companies**

Background: In the *Preliminary Determination*, the Department calculated Jinheung Steel's preliminary dumping margin using cost data and sales data submitted by Jinheung Steel and its affiliates Duo-Fast Korea Co. Ltd. ("DFK") and Jinsco International Corporation ("Jinsco"), as well as sales data submitted by its U.S. affiliate, ITW.

#### *ITW's Arguments:*

- The Department should issue corrected, retroactive cash deposit instructions specifying that the preliminary cash deposit rate assigned to Jinheung Steel also applies to entries of subject merchandise from DFK.
- In using the cost and sales data of Jinheung Steel, DFK, and ITW to calculate the preliminary dumping margin, the Department collapsed these companies pursuant to

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<sup>45</sup> See Jinheung Steel's August 29, 2014 section A response, Appendix A-8-B.

<sup>46</sup> See *Thai I-Mei*, 616 F.3d at 1309 (maintaining consistency between the constructed value profit calculation and the profit calculations for the respondents underlying the constructed value profit calculation is a legitimate objective).

section 351.401(f)(2) of the Department's regulations; thus, the rate calculated for the collapsed entity must be assigned to DFK.

- The Department cannot combine cost and sales data of two affiliates without collapsing them.
- Even in the absence of a decision to collapse DFK and Jinheung Steel, section 733(d) of the Act requires the Department to order the posting of a cash deposit based on the dumping margin determined for DFK, a producer and exporter individually examined by the Department.
- Failure to issue revised cash deposit instructions would deny DFK the relief that it is entitled to pursuant to section 737(a)(1) of the Act, which establishes a ceiling at which duties can be assessed between the Department's preliminary determination and final determination of injury by the International Trade Commission.
- Denial of the requested relief may force importers to request administrative reviews to recover erroneously collected cash deposits, and the Department's practice of selecting a limited number of respondents may prevent importers from obtaining these refunds.

No other interested party commented on this issue.

**Department's Position:** While the Department did not preliminarily determine that Jinheung Steel, DFK, and Jinsco International Corporation ("Jinsco") should be treated as a single (or "collapsed") entity (*i.e.*, the "Jinheung Steel Single Entity"), the Department finds that record evidence supports treating these companies as a single entity for the final determination.

During the POI, respondent Jinheung Steel and its reported Korean affiliates were involved in the production and sale of merchandise under consideration. Jinheung Steel, one of the mandatory respondents selected by the Department for individual investigation, produced and exported bulk subject nails.<sup>47</sup> Jinheung Steel's affiliate, DFK, processed Jinheung Steel's bulk nails into collated nails, and exported collated nails.<sup>48</sup> Jinsco, an affiliated trading company, exported: (1) bulk nails produced by Jinheung Steel, and (2) collated nails processed by DFK.<sup>49</sup> For the reasons explained below, the Department finds that the treatment of these affiliated companies as a single entity is warranted.

Pursuant to 19 CFR 351.401(f)(1), the Department will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or

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<sup>47</sup> See Jinheung Steel's August 29, 2014 Section A Response at 7.

<sup>48</sup> *Id.* at 8.

<sup>49</sup> *Id.* at 7.



employees, or significant transactions between the affiliated producers.<sup>50</sup> The Department previously explained its practice of collapsing affiliated companies:

Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department examines the question of whether reviewed companies “constitute separate manufacturers or exporters for purposes of the dumping law.”<sup>51</sup>

The Court of International Trade (“CIT”) has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.<sup>52</sup> Also, while 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.<sup>53</sup>

A prerequisite to conducting a “collapsing” analysis starts with a determination as to whether two or more companies are affiliated. As explained in the *Preliminary Determination*, Jinheung Steel, DFK, and Jinsco are affiliated parties within the meaning of section 771(33)(F) of the Act.<sup>54</sup> We continue to find that these companies are affiliated.

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<sup>50</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

<sup>51</sup> See, e.g., *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996) (citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988) (“*Colombian Flowers*”)).

<sup>52</sup> See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007), *aff’d* 551 F.3d 1286 (CAFC December 16, 2008), citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 10.

<sup>53</sup> See, e.g., *Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 18, 2012) unchanged in *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5. The CIT has found that collapsing exporters is consistent with a “reasonable interpretation of the antidumping duty statute.” See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1338 (CIT 2003) (“*Hontex*”).

<sup>54</sup> The Department’s single entity analysis does not include ITW, a U.S. affiliate. For further information regarding the Department’s preliminary determination of affiliation, see *Preliminary Determination* and accompanying PDM at 11 (Based on our review of the ownership interest reported by Jinheung Steel, we agree with Jinheung Steel’s assertion that Jinheung Steel, Jinsco, DFK, and ITW are affiliated companies. Mr. Gu-Ya Park and his son Mr. Tae-Ho Park are expressly identified as affiliated persons pursuant to section 771(33)(A) of the Act. Consistent with this statutory provision and our findings above, we consider Mr. Gu-Ya Park and Mr. Tae-Ho Park to be affiliated parties. Because Jinheung Steel, Jinsco, and DFK are under the control of these family members, we find them to be affiliated parties within the meaning of section 771(33)(F) of the Act. Furthermore, because Mr. Gu-Ya Park and ITW control DFK, we find that ITW is affiliated with the Park family companies within the meaning of section 771(33)(F) of the Act.))

As noted above, the Department's practice with respect to determining whether to treat affiliated exporters and producers of subject merchandise as a single entity is to examine whether the potential for manipulation of price or production exists using the regulatory criteria set forth in 19 CFR 351.401(f)(2). With respect to the first criteria, we find that the level of common ownership among Jinheung Steel, DFK, and Jinsco is significant based on the percentage of each company's shares owned directly or indirectly by members of the Park family during the POI.<sup>55</sup> With respect to the second criterion, we find that there is significant overlap among the board members and managers of these companies.<sup>56</sup> With respect to the third criterion, we find that these companies' operations are intertwined. Jinheung Steel reported that significant transactions occurred among affiliates during the POI. For example, Jinheung Steel: (1) sold subject nails to Jinsco for export to Jinsco's customers; (2) sold subject bulk nails to DFK that were processed into subject collated nails; and (3) purchased collated nails from DFK for export.<sup>57</sup> Jinsco purchased subject nails from Jinheung Steel and DFK for export.<sup>58</sup> DFK: (1) purchased subject bulk nails from Jinheung Steel and processed them into subject collated nails; and (2) sold subject collated nails to Jinheung Steel and Jinsco.<sup>59</sup> Moreover, during the POI, Jinheung Steel and Jinsco personnel shared access to the enterprise resource planning and accounting systems of each company.<sup>60</sup> This common access permitted sharing of sales information including sales prices, quantities, customer information and destinations.

In consideration of the information on the record, and in accordance with 19 CFR 351.401(f) and the Department's practice, we find that treatment of Jinheung Steel, DFK and Jinsco as a single entity for the final determination is warranted. The Department notes that no party has argued that the treatment of these companies as a single entity is improper or unsupported by the record established in the instant investigation.

However, consistent with the Department's practice, which has been upheld by the CIT, the Department will not issue retroactive, revised cash deposit instructions.<sup>61</sup> ITW's argument is premised on the assumption that the Department collapsed Jinheung Steel and DFK in the *Preliminary Determination*. However, as explained above, the Department did not treat Jinheung Steel, DFK and Jinsco as a single entity in the *Preliminary Determination*. Rather, the Department calculated a preliminary dumping margin for Jinheung Steel using the processing

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<sup>55</sup> See Jinheung Steel's August 29, 2014 Section A Response at 8-9. While Jinheung Steel has publically disclosed that members of the Park family owned the majority of shares of Jinheung Steel, DFK, and Jinsco during the POI, the specific percentage of outstanding shares that members of the Park family held in these companies may not be publically disclosed. For further discussion of the proprietary information considered in the Department's single-entity analysis *see*, the memorandum from Drew Jackson, International Trade Analyst, AD/CVD Operations Office IV to Howard Smith, Acting Director, Office IV, AD/CVD Operations regarding "Certain Steel Nails from the Republic of Korea: Affiliation and Single Entity Status of Jinheung Steel Corporation, Duo-Fast Korea Co., Ltd., and Jinsco International Corporation" ("Jinheung Steel Single-Entity Memorandum") dated concurrently with this memorandum.

<sup>56</sup> See Jinheung Steel Single-Entity Memorandum for the Department's proprietary discussion of this criterion.

<sup>57</sup> See Jinheung Steel's August 29, 2014 Section A Response at Appendix A-2-F.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See Jinheung Steel Sales Verification Report (public version) at 5.

<sup>61</sup> See *Universal Polybag Co., Ltd. v. United States*, 577 F. Supp. 2d 1284, 1302-03 (Ct. Int'l Trade 2008) (recognizing that the "provisional measures cap" described by section 737(a) of the Act is established by a completed past event and need not be revisited).

costs and downstream sales information of its affiliates, and issued preliminary cash deposit instructions in accordance with this preliminary determination. The Department's final determination to treat Jinheung Steel, DFK, and Jinsco as a single entity does not require the Department to revisit the cash deposit rate assigned to Jinheung Steel in the *Preliminary Determination*, nor does it deny relief to DFK to which it was entitled under section 737(a) of the Act, which describes the "provisional measures cap." In sum, if the "amount of a cash deposit, or the amount of any bond or other security" determined at the preliminary determination is different from that determined under an antidumping duty order, the difference is disregarded if the security was lower than the duty or refunded if the security was higher.<sup>62</sup> From December 29, 2014, the date of the *Preliminary Determination*, until the date of the final determination, the provisional measures cap was set at 2.13 percent for Jinheung Steel, and the Department's determination to treat Jinheung Steel, DFK, and Jinsco as single entity in the final determination does not change the provisional measures cap in effect during this time, or require the Department to retroactively assign the cap to each member of the single entity.

### **Comment 6: Product Comparison Methodology**

#### *Jinheung Steel's Arguments:*

- If the Department continues to treat Jinheung Steel and DFK as a single entity, it should modify its margin calculation program to treat Jinheung Steel and DFK as a single manufacturer for purposes of its comparisons of U.S. and home-market sales prices.
- Alternatively, if the Department treats Jinheung Steel and DFK as distinct entities, it should calculate separate costs, dumping margins, and cash deposit rates for each company.

#### *Petitioner's Arguments:*

- While the Department properly collapsed Jinheung Steel and DFK in the *Preliminary Determination*, and calculated a single dumping margin for these companies, the Department's regulations do not require it to treat two collapsed producers as the same manufacturer by assigning the same manufacturer code to all U.S. and home-market sales when determining the dumping margin.
- Assigning a single manufacturer code to all home-market and U.S. sales would force highly irregular comparisons of U.S. sales of collated nails produced by DFK to home-market sales of bulk nails produced by Jinheung Steel. This could allow Jinheung Steel to receive a *de minimis* dumping margin.
- The comparison of collated nails to bulk nails has no basis in commercial reality because the two products are defined by important physical, cost, and market distinctions.
- Section 771(16) of the Act, which defines "foreign like product," reflects a clear focus on the centrality of individual manufacturers, and the Department's antidumping questionnaire reflects its preference for preserving existing manufacturer distinctions.<sup>63</sup>

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<sup>62</sup> See section 737(a) of the Act.

<sup>63</sup> See Petitioner's Case Brief at 34-37 (citing, *inter alia*, the Department's Antidumping Questionnaire at Appendix I, "The Department prefers to compare U.S. sales to foreign market sales of identical merchandise. The identical merchandise is merchandise that is produced by the same manufacturer in the same country as the subject

- The use of unique manufacturer codes enables the Department to satisfy its legal obligation to determine dumping margins as accurately as possible. The Department should not assign a single manufacturer code to all collapsed producers when the preservation of manufacturer distinctions is warranted.
- Alternatively, if the Department assigns a single manufacturer code to all sales, it should ensure sales of bulk nails are not compared to sales of collated nails, or that sales of nails drawn from wire are not compared to sales of nails that were not drawn from wire. This approach is consistent with *Antifriction Bearings from Japan* and *Softwood Lumber from Canada*.<sup>64</sup>
- *Stainless Steel Sheet and Strip in Coils from Mexico* demonstrates that the Department will preserve manufacturer distinctions where appropriate.<sup>65</sup>

**Department's Position:** The Department determines that assigning a single manufacturer code to all home-market and U.S. sales reported by the Jinheung Steel is appropriate because such treatment is consistent with our determination to treat Jinheung Steel, DFK, and Jinsco as a single entity. Furthermore, the Department finds that it is not appropriate to alter its sales comparison methodology to prevent U.S. sales from being matched to comparable products in the comparison market.

The Act and the Department's regulations are silent as to whether the Department must assign a single manufacturer code to the constituent companies within a single entity; however, the Department finds that assigning a single manufacturer code to all home-market and U.S. sales reported by the companies that comprise the single entity is a reasonable interpretation of the law in light of the facts on the record of this investigation. As explained above, 19 CFR 351.401(f) requires the Department to treat companies as a single entity when certain regulatory criteria have been met. The Department has explained that it conducts its single-entity analysis to determine whether examined companies "constitute separate manufacturers or exporters for purposes of the dumping law."<sup>66</sup> It follows, therefore, that affiliated companies found to be part of a single entity do not constitute separate manufacturers (or exporters) for the purposes of dumping law. As discussed in Comment 5, above, in the instant investigation, the Department applied its single-entity analysis and determined that Jinheung Steel, DFK, and Jinsco constitute a single manufacturer/exporter. In light of this determination, the Department finds that preserving manufacturer distinctions would be inconsistent with its finding that these companies

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merchandise, and which the Department determines is identical or virtually identical in all physical characteristics with the subject merchandise, as imported into the United States", and Appendix VI (Arm's-Length Sales to Affiliated Parties): "Comparisons are not allowed across levels of trade, or of prime merchandise to non-prime merchandise, or across manufacturers (MFRH)".

<sup>64</sup> *Id.* at 42-43 (citing *Final Results of Redetermination Pursuant To Court Remand: Administrative Review Of The Antidumping Duty Orders On Antifriction Bearings (Other Than Tapered Roller Bearings) And Parts Thereof From Japan* (Sept. 4, 2001) (available at <http://enforcement.trade.gov/remands/01-69.htm>) ("*Antifriction Bearings from Japan*"); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) ("*Softwood Lumber from Canada*") and accompanying Issues and Decision Memorandum at Comment 7.

<sup>65</sup> See Petitioner's Case Brief at 37 (citing *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 6259 (February 10, 2004) ("*Stainless Steel Sheet and Strip in Coils from Mexico*") and accompanying Issues and Decision Memorandum at Comment 13.

<sup>66</sup> See *Columbian Flowers* at 42853.

constitute a single manufacturer/exporter. Consequently, the Department has assigned a single manufacturer code to all home-market and U.S. sales reported by the Jinheung Steel Single Entity which is consistent with the implementation of 19 C.F.R. 401(f).

Furthermore, while the Department agrees with Petitioner's assertion that section 771(16) of the Act, which defines the term "foreign like product," and the antidumping questionnaire may reflect the centrality of individual manufacturers, it does not follow that the Department must preserve manufacturer distinctions when it has decided to treat companies as a single entity pursuant to 19 CFR 351.401(f). As explained above, the Department's determination to treat two or more companies as single entity reflects a finding that the companies involved in the production of foreign like product do not constitute separate manufacturers. Consequently, the companies that make up the Jinheung Steel Single Entity do not constitute separate manufacturers.

Petitioner's reliance on *Stainless Steel Sheet and Strip in Coils from Mexico* in support of its argument that the Department should preserve manufacturer distinctions is misplaced.<sup>67</sup> In *Stainless Steel Sheet and Strip in Coils from Mexico*, the Department relied on the reported manufacturer codes to distinguish foreign-like product from non-foreign-like product that was produced in a third country, and to exclude merchandise produced in a third country from its calculation of the cost of production.<sup>68</sup> There is no argument or evidence to support a determination that the sales and cost data reported to the Department by the Jinheung Steel Single Entity includes non-foreign-like product. The Department's decision to preserve distinct manufacturer codes in *Stainless Steel Sheet and Strip in Coils from Mexico* was based on the unique facts in that proceeding, and does not establish a general preference for the preservation of distinct manufacturer codes. Also, *Stainless Steel Sheet and Strip in Coils from Mexico* did not involve companies that were treated as a single entity.

Additionally, the record does not support modifying the Department's normal comparison methodology in a manner that forces comparisons of U.S. sales to CV before determining whether a U.S. sale may be appropriately compared to home-market sales of comparable merchandise. The comparison methodology employed in the instant investigation implements the practice adopted by the Department pursuant to *Policy Bulletin 98.1*, where the Department stated that it "will use constructed value as the basis for normal value only when there are no above-cost sales that are otherwise suitable for comparison."<sup>69</sup> The Department further explained that "sales suitable for comparison are, generally, contemporaneous sales otherwise within the ordinary course of trade consisting of models whose variable manufacturing cost differences do not exceed 20 percent of the total cost of manufacture of the model exported to the United States."<sup>70</sup> The methodology proposed by Petitioner would prevent the Department

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<sup>67</sup> See Petitioner's Case Brief at 37 (citing *Stainless Steel Sheet and Strip in Coils from Mexico* and accompanying Issues and Decision Memorandum at Comment 13).

<sup>68</sup> See *Stainless Steel Sheet and Strip in Coils from Mexico* and accompanying Issues and Decision Memorandum at Comment 13. ("Since the CONNUMs designated as MFR 2 in Mexinox's COP database do not consist of foreign-like product, it is not appropriate to include these CONNUMs in the calculation of COP.")

<sup>69</sup> See *Policy Bulletin 98.1, Basis for Normal Value When Foreign Market Sales Are Below Cost* (February 23, 1998).

<sup>70</sup> *Id.* fn 6 (citations omitted).

from implementing its longstanding practice of basing normal value on above-cost sales of comparable merchandise that meet the definition of “sales suitable for comparison.”<sup>71</sup>

Further, the Department finds its comparison methodology, which employs the 20 percent difference-in-merchandise (or “DIFMER”) test, adequately selects home-market sales of meaningfully comparable merchandise to compare with U.S. sales, and does not, as Petitioner claims, result in “highly irregular” matches. The results of the DIFMER test assess whether there is a reasonable basis for comparing merchandise.<sup>72</sup> Sales of products in the comparison market with a DIFMER exceeding 20 percent of the total cost of manufacture of the product exported to the United States will normally not be used in determining normal value.<sup>73</sup> The Department has long held that U.S. and home-market models are similar where the difference between the U.S. and home-market models’ variable cost of manufacturing is less than 20 percent of the U.S. model’s cost of manufacturing.<sup>74</sup> Accordingly, the DIFMER test adequately takes into account whether U.S. sales of collated nails may reasonably be compared to home-market sales of bulk nails, and *vice versa*. That is, home-market sales of collated nails or bulk nails will only be found to be meaningfully comparable to U.S. sales of non-identical merchandise when they pass the DIFMER test. Moreover, the Department has verified the cost data used in the DIFMER test, and finds no reason to doubt the accuracy of the DIFMER test results.

With respect to Petitioner’s request that the Department modify its comparison methodology to prevent nails drawn from wire matching with nails that were not drawn from wire, the Department finds that such a modification is unwarranted. As Petitioner notes, “nail form is not at issue in this instant case.”<sup>75</sup> All sales reported to the Department by the Jinheung Steel Single Entity were drawn from wire.<sup>76</sup> Although Petitioner requests that the Department make a determination with respect to the appropriateness of, in the future, matching nails drawn from wire with nails not drawn from wire, we are not facing that situation here and thus, there is no basis for determining that Petitioner’s requested methodological change is supported by record evidence. In any event, Petitioner’s suggested modification would have no impact on the accuracy of the Department’s dumping margin calculation. Because, as noted above, all reported sales of nails were drawn from wire, there is no possibility that a sale of nails drawn from wire would match to a sale of nails not drawn from wire. Accordingly, the Department has not modified its comparison methodology in the manner requested by Petitioner.

Petitioner’s reliance on *Antifriction Bearings from Japan* and *Softwood Lumber from Canada* is also misplaced. Unlike the instant investigation, *Antifriction Bearings from Japan* and *Softwood Lumber from Canada* were cases in which the Department modified its reporting requirements to deal with a complex set of issues that arose because of the volume and complexity of the

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<sup>71</sup> *Id.* fn 6 (citations omitted).

<sup>72</sup> See AD Manual, Chapter 8, page at 65, available online at (<http://enforcement.trade.gov/admanual/index.html>).

<sup>73</sup> *Id.* at 63.

<sup>74</sup> See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081 (January 15, 1997).

<sup>75</sup> See Petitioner Rebuttal Brief at 43.

<sup>76</sup> See Jinheung Steel’s Section B Response, dated September 15, 2015, at 3. See, also, Jinheung Steel’s Section C Response, dated September 15, 2015, at 4.

products sold by respondents. In *Antifriction Bearings from Japan*, the Department instructed parties to report product “families,” which included all products within a certain class or kind of merchandise, and limited comparisons across these product families.<sup>77</sup> Unlike *Antifriction Bearings from Japan*, the scope of the instant investigation does not involve separate and distinct classes or kinds of merchandise. In *Softwood Lumber from Canada*, the Department limited product reporting requirements in order to ease the administrative burden and complexity associated with the “sheer number of different products sold by respondents,”<sup>78</sup> which is not the case in this investigation.

## **Comment 7: Differential Pricing Analysis**

### *Jinheung Steel’s Arguments:*

- The “differential analysis” utilized by the Department in the preliminary determination is statistically invalid.
  - The Cohen’s *d* test can appropriately be used only when the two data sets being compared are approximately “normal.”
  - If the data do not follow a normal distribution, the results of any analysis based on means and standard deviations (such as the Cohen’s *d* test) are “meaningless” and “invalid.”
  - Analysis of the reported data confirms that Jinheung Steel’s U.S. sales did not follow a “normal distribution.”
  - The justifications previously offered by the Department for failing to consider whether the data followed a “normal” distribution are invalid.
- The numerical cut-offs utilized in the Department’s “differential analysis” are arbitrary and improper.
  - The thresholds proposed by Professor Cohen for identifying “small,” “medium,” and “large” differences between data sets are inherently arbitrary and cannot properly be applied as bright-line tests.
  - The Department has not offered any justification for the 33- and 66-percent thresholds employed in the “ratio test” portion of the “differential analysis.”
- The differential analysis fails to explain why any patterns of price differences were not, or could not be, taken into account using an average-to-average comparison.
- Under the relevant provisions of the statute, the Department is not permitted to utilize an average-to-transaction comparison methodology for any of Jinheung Steel’s U.S. sales.

### *Petitioner’s Arguments:*

- Jinheung Steel’s argument improperly relies on new factual information.
- The Act specifically authorizes the use of average-to-transaction comparisons that involve the use of the zeroing methodology.

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<sup>77</sup> See *Antifriction Bearings from Japan*, section entitled, “Foreign Like Product” available online at <http://enforcement.trade.gov/remands/01-69.htm>.

<sup>78</sup> See *Softwood Lumber from Canada*, and accompanying Issues and Decision Memorandum at Comment 7.

- The CIT has recognized that the Department is afforded discretion in detecting and counteracting targeted dumping.<sup>79</sup>
- The Department's differential pricing analysis was developed over time with extensive comments from interested parties.
- In *Copper Pipe and Tube from Mexico*, the Department rejected the argument that the Cohen's *d* test is not designed for instances where the data do not follow a "normal" distribution, because the Department's analysis includes all data in the statistical population of the respondent's sales in the U.S. market.<sup>80</sup>
- The CIT upheld the Department's use of average-to-transaction comparisons when it finds that more than 66 percent of a respondent's sales pass the Cohen's *d* test.<sup>81</sup>

**Department's Position:** In this final determination, we did not apply an alternative comparison methodology in our margin calculations for the Jinheung Steel Single Entity. Accordingly, this issue is moot.

### Comment 8: Steel Scrap Offset

#### Jinheung Steel's Arguments:

- Because Jinheung Steel demonstrated during the cost verification that the quantity of scrap sold during the POI necessarily corresponds to the amount of scrap generated during the POI, the Department should reverse its decision in the preliminary determination to limit the reported scrap offset to the theoretical recovery quantity.
- Jinheung Steel demonstrated that its steel scrap sales were not limited to steel trimmings generated during the process of converting wire rod to nails and included items such as the steel bands used by suppliers to pack wire rod for shipment, discarded factory tools, and miscellaneous factory wastes.
- Because the scrap is accumulated in a single area and is cleared by the scrap purchaser several times each month, it follows that scrap generated prior to the POI would have been removed prior to the POI and that all scrap sold during the POI would have had to have been generated during the POI.

#### Petitioner's Arguments:

- The Department should either deny Jinheung Steel's scrap offset in its entirety or, at a minimum, limit Jinheung Steel's scrap offset to the theoretical recovery quantity based on Jinheung Steel's reported yield rate.
- Because Jinheung Steel does not record the amount of scrap generated during the production process, the Department's decision to limit Jinheung Steel's scrap offset in the

<sup>79</sup> See Petitioner Rebuttal Brief at 45, and fn 133 (citing, *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1295-96, 1302 (CIT 2014) (citing *Chevron U.S.A., Inc. v. Nat. Res. Defense Council*, 467 U.S. 837, 843-44 (1984)); and *CP Kelco Oy v. United States*, 978 F. Supp. 2d 1315, 1322-24 (CIT 2014)).

<sup>80</sup> See Petitioner Rebuttal Brief at 45-46, and fn 136 (citing *Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36719 (June 30, 2014) ("*Copper Pipe and Tube from Mexico*"), and accompanying Issues and Decision Memorandum at Comment 4.

<sup>81</sup> See Petitioner Rebuttal Brief at 47-48 (citing *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014)).



preliminary determination to the theoretical recovery quantity was generous because it presumes that every bit of scrap was recoverable and that there was no waste or loss.

- Even if the Department grants Jinheung Steel a portion of its reported scrap offset, there is no basis to grant an offset that exceeds the amount which could have been generated based on the reported yield loss because Jinheung Steel's arguments concerning steel bands, discarded tools, and other factory wastes were based on estimates.

**Department's Position:** We have continued to limit Jinheung Steel's reported scrap offset. The Department's practice is to allow a scrap offset related to the quantity of scrap generated during the period.<sup>82</sup> In the normal course of business, Jinheung Steel does not track the quantity of steel scrap generated and only records the quantity of steel scrap sold. Although Jinheung Steel asserts that all steel scrap generated during the month is sold during the month, such that the quantity of steel scrap sold necessarily represents the quantity of steel scrap generated during the month, we do not find this assertion conclusive absent record evidence documenting the monthly scrap generation. Because Jinheung Steel does not track its scrap generation, we looked to record evidence to determine the amount of scrap which could have been generated during the production process. Specifically, we calculated the amount of steel scrap which could have been generated during the production process by first calculating a steel scrap generation rate using the FY 2013 totals and then applying the rate to the monthly POI consumption of raw materials. We then adjusted Jinheung Steel's reported scrap offset to disallow the portion of the reported scrap offset which exceeded the amount which could have been generated during the production process.<sup>83</sup> While we acknowledge Petitioner's concern that implicit in our calculation is the assumption that Jinheung Steel experienced no loss or waste, we determine that since Jinheung Steel did scrap a sufficient quantity of steel bands used as packing materials by a certain supplier of steel wire rod,<sup>84</sup> it is reasonable to conclude such steel bands offset any unrecovered loss or waste generated during the production process.

## **Comment 9: Change in Work-In-Process and Semi-Finished Goods Inventories**

### *Jinheung Steel's Arguments:*

- The Department should not have adjusted reported costs to include a portion of the FY 2013 decrease in work-in-process ("WIP") inventory attributable to steel nails.
- There is no reason to believe that the beginning and ending FY 2013 WIP inventory balances correspond to the POI beginning and ending WIP inventory balances.
- Even though Jinheung Steel only records the balance of WIP inventory at the end of the year, it presented an analysis during the cost verification which demonstrated that its WIP inventory had in fact increased during the POI.

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<sup>82</sup> See *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 78 FR 65272 (October 31, 2013) and accompanying Issues and Decision Memorandum at Comment 11.

<sup>83</sup> See Memorandum to the File titled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Jinheung Steel Corporation," dated May 13, 2015 ("Jinheung Steel Cost Calculation Memorandum").

<sup>84</sup> See Daejin Cost Verification Report at Exhibit 11.

Petitioner's Arguments:

- Because Jinheung Steel does not maintain records which would demonstrate the actual POI change in WIP, the Department should, as facts available, presume that the WIP inventory balances at the beginning and end of FY 2013 correspond to the POI beginning and ending WIP inventory balances and ensure that the decrease in WIP inventory is included in Jinheung Steel's total cost of manufacturing.
- It would be inappropriate for the Department to reject actual verified WIP balances and rely on Jinheung Steel's analysis of the estimated WIP balances at the beginning and end of the POI.

**Department's Position:** We believe the changes in WIP must be considered in order to ensure that Jinheung Steel's costs reflect its cost of manufacturing ("COM") the merchandise under consideration during the POI. The Department has explained previously that costs may be understated when a respondent calculates its submitted per-unit costs by allocating the total costs incurred (without considering changes in WIP inventory balances) over the total quantity of finished goods produced during the period.<sup>85</sup>

In examining this issue, it is important to understand the relationship between a company's COM and its cost of goods sold ("COGS"), as well as its WIP and finished goods inventory. COM is the sum of the total production costs incurred during a given period, plus the change in WIP inventory from the beginning of the period to the end. COGS is the sum of the total COM for a given period, plus the change in finished goods inventory from the beginning of the period to the end. As such, in reconciling from a company's COGS to COM, an adjustment is needed only for the change in finished goods inventory. Jinheung Steel's submitted cost reconciliation, however, involved adjusting its FY 2013 COGS from its audited financial statements by the changes in both finished goods and WIP inventories. By adjusting the COGS in the cost reconciliation for the change in WIP inventory, Jinheung Steel, in effect, eliminated the change in WIP from the COM calculation resulting in total costs incurred, and not COM. As the Department has explained previously, the reported costs, which are allocated over the total quantity of finished goods manufactured, should reflect the COM of finished goods manufactured, not the total costs incurred.<sup>86</sup> Accordingly, the only change in inventory that should be included in calculating COM from COGS is the change in finished goods inventory.

We agree with Jinheung Steel that the FY 2013 decrease in WIP does not necessarily correspond to the changes in WIP that Jinheung Steel experienced during the POI. Accordingly, because Jinheung Steel does not record changes in WIP throughout the year, we have looked to available record evidence to estimate the change in Jinheung Steel's WIP during the POI. Jinheung Steel reported its monthly production quantities, raw materials consumption, and zinc scrap generation for the period from January 1, 2013, through March 31, 2014. Additionally, as discussed in Comment 8, we calculated the amount of steel scrap which could have been generated during each month of the POI. Because necessary information is not on the record, application of facts

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<sup>85</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Indonesia*, 62 FR 1719 (January 13, 1997) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>86</sup> Accounting for the effect of the change in WIP recognizes that some of the total costs incurred relate to production of products that are not yet completed.

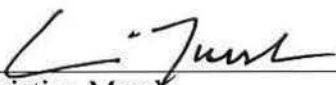
available is warranted pursuant to section 776(a)(1) of the Act. As facts available, we estimated the monthly ending WIP amounts using the FY beginning and ending WIP amounts which we tied to the audited financial statements, the monthly raw material consumption, the monthly production of finished goods, and the estimated monthly scrap recovery. Next, because Jinheung Steel's cost reconciliation involved calculating the FY 2013 cost incurred (*i.e.*, calculated without consideration of the change in WIP) as well as the costs incurred for the first quarters of FY 2013 and FY 2014, we have calculated Jinheung Steel's POI COM by adjusting the total cost incurred for the POI, based on information from the cost reconciliation, by the estimated POI beginning and ending WIP balances. Finally, we compared our calculated Jinheung Steel POI COM with Jinheung Steel's reported POI costs incurred.<sup>87</sup> As a result of this analysis, it appears that Jinheung Steel's POI costs incurred exceeded Jinheung Steel's POI COM. Accordingly, we determine that Jinheung did not understate its submitted costs and that no adjustment to Jinheung Steel's submitted costs is necessary or appropriate.

## RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

5/13/15  
\_\_\_\_\_  
Date

<sup>87</sup> See Jinheung Steel Cost Calculation Memorandum.