A-557-816
Investigation
Public Document
E&C/Office VI: SB/EU

DATE: December 17, 2014

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

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

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

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain steel nails from Malaysia are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV for Inmax Sdn. Bhd. (Inmax), Region International Co., Ltd. (Region International) and Region System Sdn. Bhd. (Region System) (collectively, Region), and Tag Fasteners Sdn. Bhd. (Tag) are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On May 29, 2014, the Department received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of certain steel nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam,[1] which were filed in the proper form by Mid Continent Steel & Wire, Inc. (Petitioner). On June 25, 2014, the Department published its notice of the initiation of the AD investigation of certain steel nails from various countries, including Malaysia, in the *Federal Register*.[2] The

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

[2] *See Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 79 FR 36019 (June 25, 2014) (*Initiation Notice*). With regard to the AD investigations, supplements to the petitions are described in the *Initiation Notice* and the accompanying Initiation Checklists, including that for Malaysia. Henceforward, the petition for Malaysia is referenced as "Petition".

Department subsequently postponed the deadline for issuing the preliminary determination in this investigation to no later than 182 days after the date on which it initiated this investigation.[3]

As stated in the Respondent Selection Memorandum, the Department based its selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.[4] The Department released the CBP entry data under administrative protective order (APO) on June 25, 2014.[5] Subsequently, Petitioner filed comments regarding the CBP entry data and the respondent selection methodology.[6]

On July 29, 2014, the Department selected Inmax and Tag as mandatory respondents.[7] On the same day, the Department issued initial questionnaires to Inmax and Tag.[8]

On August 1, 2014, Petitioner and Tag each submitted letters requesting that the Department reconsider its decision to select Tag as a mandatory respondent.[9] On August 15, 2014, the Department rejected the requests by Petitioner and Tag that the Department reverse its decision to select Tag as a mandatory respondent.[10] On August 18, 2014, Tag informed the Department it would not respond to the Initial Questionnaire.[11] On August 20, 2014, Petitioner submitted a letter requesting that the Department apply adverse facts available to Tag, and that the Department select an additional mandatory respondent. On August 27, 2014, the Department selected Region International as an additional mandatory respondent.[12] On September 2, 2014, the Department issued an initial questionnaire to Region International.[13]

On August 11, 2014, Petitioner submitted a country-wide cost allegation.[14] On August 29, 2014, the Department initiated a country-wide cost investigation.[15] On September 4, 2014, the

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

[4] *See* Memorandum from Richard O. Weible to Christian Marsh, "Antidumping Duty Investigation of Certain Steel Nails from Malaysia: Respondent Selection Memorandum," July 29, 2014 (Respondent Selection Memorandum), at 3, 5 and Attachment 1.

[5] *See* Letter from Angelica L. Mendoza to All Interested Parties, dated June 25, 2014.

[6] *See* Letter from Petitioner, "Certain Steel Nails from Malaysia: Comments on Respondent Selection," July 2, 2014.

[7] *See* Respondent Selection Memorandum.

[8] *See* Letters to Inmax and Tag, "Antidumping Duty Questionnaire," July 29, 2014 (Initial Questionnaire).

[9] *See* Letter from Petitioner, "Antidumping Duty Investigation of Certain Steel Nails from Malaysia: Petitioner's Request that the Department Reconsider Respondent Selection," dated August 1, 2014, and Letter from TAG, "Steel Nails from Malaysia: Tag Fasteners' and ITW's Request for Reconsideration of Tag Fasteners' Selection as a Mandatory Respondent," dated August 1, 2014.

[10] *See* Memorandum to Richard O. Weible, "Antidumping Duty Investigation of Certain Steel Nails from Malaysia: Requests that the Department Reconsider Respondent Selection," August 15, 2014.

[11] *See* Letter from Tag, "Steel Nails from Malaysia: Notice of Determination of Tag Fasteners to Decline to Respond to the Antidumping Questionnaire," August 18, 2014 (Tag Refusal to Respond Letter).

[12] *See* Memorandum to Gary Taverman, "Antidumping Duty Investigation of Certain Steel Nails from Malaysia: Selection of Additional Mandatory Respondent," August 27, 2014 (Additional Respondent Selection Memorandum).

[13] See Letter to Region International, "Antidumping Duty Questionnaire," September 2, 2014 (Additional Initial Questionnaire).

[14] *See* Letter from Petitioner, "Certain Steel Nails from Malaysia: Country-Wide Below Cost Allegation," August

Department notified Inmax that it should respond to Section D of the Department's Initial Questionnaire, and on September 5, 2014, the Department notified Region International that it should respond to Section D of the Department's Additional Initial Questionnaire.[16]

In response to Department questionnaires, Inmax submitted responses between September 2, 2014, through December 2, 2014, and Region submitted responses between October 6, 2014, through December 3, 2014. On December 9, 2014, Region submitted database corrections and clarifications.

Petitioner submitted comments on Inmax questionnaire responses between September 12, 2014, and October 9, 2014. Petitioner submitted comments on Region questionnaire responses between October 17, 2014, and November 4, 2014. On December 4, 2014, Petitioner filed comments for the Department to consider in its preliminary determination for Inmax and Region.[17]

On December 9, 2014, Inmax and Region requested a postponement of the final determination and an extension of provisional measures in the event of an affirmative preliminary determination.[18] On December 10, 2014, Petitioner requested a postponement of the final determination in the event of a negative preliminary determination.[19]

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2013, through March 31, 2014. This period corresponds to the four most recent fiscal quarters prior to the month in which the Petition was filed.[20]

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on December 9, 2014, as noted above, Inmax and Region requested that the Department postpone the final determination and extend the provisional measures from four months to no more than six months in the event that the Department makes an affirmative determination. On December 10, 2014, also as noted above, Petitioner requested that the Department postpone the final determination in the event that the

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11, 2014, as amended by Letter from petitioner, "Antidumping Duty Investigation of Certain Steel Nails from Malaysia: Declaration for Country-Wide Below Cost Allegation," August 20, 2014 (Cost Allegation).

[15] *See* Memorandum to Richard O. Weible, dated August 29, 2014.

[16] *See* Letter to Inmax, September 4, 2014, and Letter to Region International, September 5, 2014, respectively.

[17] *See* Letters from Petitioner, "Certain Steel Nails from Malaysia: Petitioner's Comments in Advance of the Preliminary Determination for Inmax Sdn. Bhd.," dated December 4, 2014, and Certain Steel Nails from Malaysia: Petitioner's Comments in Advance of the Preliminary Determination for Region International Co., Ltd.," dated December 4, 2014, respectively.

[18] *See* Letter from Inmax and Region International, "Certain Steel Nails from Malaysia; Extension Request for Final Results," dated December 9, 2014.

[19] *See* Letter from Petitioner, "Certain Steel Nails from Malaysia: Extension Request of Final Determination," dated December 10, 2014.

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

Department makes a negative preliminary determination. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporters and producers account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the accompanying preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is certain steel nails having a nominal shaft length not exceeding 12 inches.[21] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25.

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

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

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

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

[21] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

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

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

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

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

VI. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period for interested parties to raise issues regarding product coverage.[22] The Department specified that any such comments were due by July 8, 2014, which was 20 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by July 18, 2014.[23]

On July 8, 2014, IKEA Supply AG and IKEA Distributions Services Inc. (collectively IKEA), Target Corporation, and The Home Depot, interested parties in the investigation, each submitted comments to the Department, expressing concern that the scope would cover nails that were packaged with other types of merchandise (*e.g.*, ready-to-assemble furniture, *etc*.) for use with such other merchandise. These parties believe the existing scope exclusion for nails numbering less than 25 is inadequate, and urge that the language of the scope be modified to broaden the exclusion of nails packaged with non-subject merchandise. On July 18, 2014, Petitioner submitted rebuttal comments, noting the language of the scope as written is clear, and rejecting the aforementioned parties' proposed changes. On October 17, 2014, Target Corporation and The Home Depot submitted additional comments, reiterating their concerns regarding the coverage of nails packaged with non-subject merchandise. On October 24, 2014, Petitioner submitted additional comments, again advocating that the Department reject the arguments of Target Corporation and The Home Depot. On November 3, 2014, IKEA also submitted additional comments, reiterating the concerns it had expressed in its earlier submission. We are now evaluating the comments received but, for purposes of this preliminary determination, no change to the scope is being made at this time.

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

VII. RESPONDENT SELECTION

Section 777A(c)(1) of the Act directs the Department to determine an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters or producers under section 777A(c)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual weighted average dumping margins because of the large number of exporters and producers involved in the investigation.

After careful consideration, the Department determined that it was not practicable to examine the large number of exporters and producers involved in the investigation and to limit its examination to two respondents.[24] Based upon CBP data, the Department selected the producers/exporters accounting for the largest volume of subject merchandise exported from Malaysia during the POI: Inmax and Tag.[25] After Tag informed the Department it would not respond to the Department's questionnaire, the Department selected Region International as a mandatory respondent because it was the producer/exporter accounting for the next largest volume of subject merchandise exported from Malaysia.[26]

VIII. FACTS AVAILABLE (FA)

Tag notified the Department that it would not participate in the Department's investigation. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Tag.

A. Application of Facts Available and Use of Adverse Inference

As noted above, Tag received, but did not respond to, the Department's questionnaire and otherwise declined to participate in the proceeding. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Tag.

Application of Facts Available

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

[24] *See* Respondent Selection Memorandum.
[25] *Id.*
[26] *See* Additional Respondent Selection Memorandum

consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, Tag did not provide any of the information necessary to calculate an AD margin for the preliminary determination. Specifically, Tag failed to respond to our questionnaire,[27] thereby withholding, under section 776(a)(2)(A) of the Act, among other things, home-market and U.S. sales data that are necessary for preliminarily determining whether Tag is selling subject merchandise into the United States at LTFV, pursuant to section 733 of the Act. Tag's failure to provide this necessary information has significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act. Furthermore, because Tag did not submit any response to our requests for information and did not suggest alternative forms in which it could submit such responses, sections 782(c)(1), (d), and (e) of the Act do not apply. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available for Tag's preliminary dumping margin.

Use of Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.[28] In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[29] Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[30] It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.[31]

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[27] *See* Tag Refusal to Respond Letter.

[28] *See also* 19 CFR 351.308(a); *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

[29] *See* H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

[30] *See, e.g., Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

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

Although the Department put Tag on notice as to the consequences of its failure to respond adequately to the questionnaire in this investigation, Tag did not respond to the questionnaire and stated that it did not intend to do so.[32] This constitutes a failure on the part of Tag to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Based on the above, the Department preliminarily determined that Tag failed to cooperate to the best of its ability and, therefore, an adverse inference is warranted in selecting from among the facts otherwise available.[33]

B. Adverse Facts Available (AFA) Rate and Corroboration of Secondary Information

AFA Rate for Tag

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.[34] In selecting a rate based on adverse facts available (AFA), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[35] In this investigation, we have selected the rate of 39.35 percent as the AFA rate applicable to Tag, the highest margin identified in the underlying petition, as referenced in the *Initiation Notice*.

Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.[36] Secondary information is defined as "information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."[37] Thus, because the 39.35 percent AFA rate applied to Tag is derived from the Petition and, consequently, is based upon secondary information, the Department must corroborate it to the extent practicable.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.[38] The SAA and the Department's regulations explain that independent sources used to corroborate such evidence may include, for

[32] *See* Tag Refusal to Respond Letter.
[33] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).
[34] *See also* 19 CFR 351.308(c).
[35] *See* SAA at 870.
[36] *See also* 19 CFR 351.308(d).
[37] *See* SAA at 870; *see also* 19 CFR 351.308(c)(1).
[38] *See* SAA at 870; *see also* 19 CFR 351.308(d).

example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[39] To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.[40]

We determined that the Petition margin of 39.35 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.[41] We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations used in the Petition to derive an estimated margin. During our pre-initiation analysis, we also examined information (to the extent that such information was reasonably available) from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates some of the elements of the EP and NV calculations used in the Petition to derive estimated margins.

Based on our examination of the information, and because we confirmed the accuracy and validity of the information underlying the derivation of the margins in the Petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation..[42] Further, because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petition to be reliable.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.[43]

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[39] *See* SAA at 870; *see also* 19 CFR 351.308(d).

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

[41] *See* AD Investigation Initiation Checklist regarding, "Certain Steel Nails from Malaysia," dated June 18, 2014 ("Initiation Checklist").

[42] *See* Initiation Checklist.

[43] *See, e.g., Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

To corroborate the AFA margin assigned to Tag, we compared the aforementioned Petition margin rate to the margins we found for Inmax and Region. We found that the margin of 39.35 percent is relevant and has probative value because it is in the range of the transaction-specific margins that we found for those respondents.[44] Accordingly, we find that the rate of 39.35 percent is corroborated within the meaning of section 776(c) of the Act.

IX. ALL OTHERS RATE

Section 733(d)(1)(A)(ii) of the Act provides that a preliminary all others rate be determined for all exporters and producers not individually investigated in accordance with 735(c)(5). Section 735(c)(5) of the Act provides that the estimated "all others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding all zero or *de minimis* rates, and all rates determined entirely under section 776 of the Act. As noted above, Tag did not respond to the questionnaire. Inmax and Region are the other respondents in this investigation, and the Department calculated a company-specific rate for each of these other respondents that are not zero, *de minimis* or based entirely on facts available. Accordingly, for purposes of determining the "all others" rate and pursuant to section 733(d)(1)(A)(ii) of the Act, we are using the weighted-averages of the dumping margins calculated for Inmax and Region, based on publicly-ranged data, as the estimated weighted-average dumping margin assigned to all other producers and exporters of the merchandise under consideration.[45]

X. AFFILATION AND COLLAPSING

A. Legal Standard

Affiliation

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

> The following persons shall be considered to be "affiliated" or "affiliated persons":
>
> (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
> (B) Any officer or director of an organization and such organization.
> (C) Partners.
> (D) Employer and employee.

[44] *See* Memorandum to the File from Steve Bezirganian, "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Certain Steel Nails from Malaysia: Inmax Sdn. Bhd.," dated December 17, 2014 (Inmax Preliminary Analysis Memorandum) and Memorandum to the File from Ericka Ukrow, "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Certain Steel Nails from Malaysia: Region International Co., Ltd.," dated December 17, 2014 (Region Preliminary Analysis Memorandum).
[45] *See* Memorandum to the File entitled "Antidumping Duty Investigation of Certain Steel Nails from Malaysia; Preliminary Determination Calculation for the All Others Rate" dated December 17, 2014 for the calculation of the All Others rate in this investigation.

> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
> (G) Any person who controls any other person and such other person.

Regarding control, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The SAA further explains that control may be found to exist within corporate groupings.[46] The Department's regulations at 19 CFR 351.102(b)(3) state that, in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.

Collapsing

The Department's regulations at 19 CFR 351.401(f) state that the Department will treat affiliated producers as a single entity where producers have production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities and there is a significant potential for manipulation of price or production.[47] The regulation at 19 CFR 351.401(f) further states that, in identifying a significant potential for manipulation, the Department may consider 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 operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. The Department also 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 normally examines the question of whether reviewed companies "constitute separate manufacturers or exporters for purposes of the dumping law."[48]

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

[47] While 19 CFR 351.401(f) uses the term "producers," the Department's practice is to apply this regulation to resellers and other affiliated companies as well. *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*)).

[48] *See Colombian Flowers*, 53 FR at 24337.

The court 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.[49]

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.[50]

We examined the record evidence to determine whether the mandatory respondents, Inmax and Region International, were affiliated with any of the following entities during the POI: (1) other producers or exporters of subject merchandise, (2) suppliers of inputs used to produce the subject merchandise, (3) reported home market customers, and (4) reported U.S. customers. As explained below, we preliminarily determine that Inmax and Region International were each affiliated with certain entities. We also examined all three factors contained in 19 CFR 351.401(f)(2) with respect to the significant potential for manipulation and preliminarily determine to collapse and treat as a single entity Region International and one of its affiliates, Region System, for AD purposes. *See* below for a complete discussion.

B. Inmax

Affiliation

Inmax, identified as the producer and exporter for all sales it reported, was wholly-owned by Inmax Holding Company, Ltd. Inmax Industries Sdn. Bhd. (Inmax Industries) was also wholly-owned by Inmax Holding Company, Ltd.[51] Because both Inmax and Inmax Industries are owned by a common owner, we find they are affiliated with each other under section 771(33)(F) of the Act.

Collapsing

Inmax asked the Department to collapse Inmax and Inmax Industries because they are affiliated with each other and the latter will soon be able to produce subject merchandise.[52] However, the

[49] *See Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007), 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.
[50] *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 10, 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 U.S. Court of International Trade (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).
[51] *See* Inmax's Section A questionnaire response dated September 2, 2014 (Inmax Section A response) at 5.
[52] *Id.* at 7.

record indicates Inmax Industries is not yet able to produce subject merchandise, and did not make any sales during the POI.[53] Therefore, we preliminarily find that these companies should not be collapsed. However, we intend to continue to evaluate this issue.

C. Region International

Affiliation

Region has stated that Region International and Region System are affiliated. Section 771(33)(F) of the Act, provides that two companies shall be considered to be affiliated if they are "controlled by" or "under common control" of any person. Region International exports the subject merchandise produced by Region System. Both companies are owned by certain individuals.[54] These individuals coordinate all the activities of the two companies.[55] Because both Region International and Region System share significant common ownership by these individuals, who are in control of and coordinate the operations of both companies, we find they are affiliated with each other under section 771(33)(F) of the Act.

Collapsing

Region System produced all of the subject merchandise Region International exported to the United States during the POI.[56] Also, none of Region System's subject merchandise was exported to the United States by any other parties.[57] While 19 CFR 351.401(f) applies only to producers, as noted above, 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.[58]

As explained above, we have preliminarily determined that Region International and Region System are affiliated; consequently, the first collapsing criterion has been satisfied. As noted

[53] *See* Inmax's Supplemental Section A questionnaire response dated November 25, 2014 (Inmax Supplemental Section A response) at 12-13.
[54] *See R*egion Preliminary Analysis Memorandum.
[55] *See* Region's Supplemental Section A questionnaire response dated December 2, 2014 (Region Supplemental Section A response) at 7-8, 12-13, and exhibit AS-2(b).
[56] *See* Region Section A response at 2.
[57] *See* Region Supplemental Section A response at 4, and 7-8. *See also* Region's Supplemental Sections B&C questionnaire response dated December 3, 2014 (Region Supplemental Sections B&C response) at 18.
[58] *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 10, 2012), unchanged in *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); *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; and *Certain Oil Country Tubular Goods From the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 10484 (February 25, 2014), and accompanying Decision Memorandum under "Affiliation and Single Entity" section, unchanged at *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). The U.S. Court of International Trade (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).

above, the Department's practice with respect to affiliated exporters and producers of subject merchandise is also to examine whether the potential for manipulation of price or production exists using the regulatory criteria. With respect to the first criterion, level of ownership, we find that the level is significant.[59] As noted, both Region International and Region System are owned by the same parties. With respect to the second criterion, overlapping board members, we find that there is substantial overlap of both board members and managers between Region International and Region System. Primarily, both companies share the same Managing Director and Executive Director. These two individuals control the overall operations of Region International and Region System.[60] With respect to the third criterion, intertwined operations, record evidence demonstrates that Region International's and Region System's operations are closely intertwined. Region System produces the subject merchandise and makes the EP sales through Region International. With respect to sales to the U.S. market during the POI, Region International handled the sales negotiations and pricing of subject merchandise, whereas Region System's responsibility was to produce and ship the order directly to the U.S. customer.[61] Furthermore, Region Systems handled most activities with respect to Region International's sales to the U.S. customers. For example, raw material procurement, production, packing, and logistics responsibilities were handled by Region System's Accounts Department.[62] Region System's employees also performed accounting functions for both Region International and Region System, and accounted in their books for Region International's employees' salaries.[63]

In consideration of the above, and in accordance with 19 CFR 351.401(f) and the Department's practice,[64] we are thus treating Region International and Region System as a single entity (collectively, Region) for purposes of this preliminary determination.

XI. DISCUSSION OF METHODOLOGY

A. Fair Value Comparisons

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

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Inmax and Region in the home market during the POI that fit the description in the "Scope of the

[59] *See* Region's Section A at exhibit A-5.
[60] *See* Region Supplemental Section A response at 12 and exhibits AS-2(a) and AS-2(b).
[61] *Id*., at 13.
[62] *Id*., at 7-8.
[63] *Id*.
[64] *See Flowers from Colombia* (*citing Granite Products from Spain*), *see also Queen's Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (1997) (in which the CIT expressly affirmed the Department's authority to collapse affiliated parties for purposes of antidumping analysis).

Investigation" section of this memorandum to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

The Department gave interested parties an opportunity to comment on the physical characteristics that should be used to identify specific models of foreign like products and subject merchandise.[65] Comments were filed by Petitioner and by Overseas International Steel Industry, LLC (OISI), an interested party in the concurrent less-than-fair-value investigation of certain steel nails from the Sultanate of Oman.[66] No parties submitted rebuttal comments in response to those submissions of Petitioner and OISI.

In making product comparisons, we compared products based on the physical characteristics established by the Department and reported by the respondents in the following order of importance: nail form, product form, steel type, surface finish, diameter, shank length, collation material, head style, shank style, heat treatment.[67] The goal of the product characteristic hierarchy is to identify the best possible matches with respect to the characteristics of the merchandise. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in products in and of themselves. As the Department has noted, ". . . selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess" and "differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department's model-match of characteristics which a respondent claims to be the cause of such differences."[68]

C. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. The Department's regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to EPs (or CEPs) of individual transactions (average-to-transaction or A-to-T method).[69] In recent AD investigations, the Department applied a "differential pricing" (DP) analysis for determining whether application of the A-to-A comparison method is

[65] *See Initiation Notice* at 36020-21.
[66] *See* Letter from Petitioner, "Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Republic of Turkey: Model Match Comments," dated July 8, 2014, and Letter from OISI, "Comments Regarding Product Characteristics: Overseas International Steel Industry, LLC," dated July 8, 2014, respectively.
[67] *See e.g.*, Initial Questionnaire at Section B.
[68] *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum, at Model Match Comment 1.
[69] *See* 19 CFR 351.414(b)(1)-(2).

appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).[70] The Department may determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the A-to-T method. The Department will continue to develop its approach in this area based on comments received in this investigation and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

The DP analysis used in this preliminary determination requires a finding of a pattern of EPs for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes reported by Inmax and Region. Regions are defined using the reported destination codes (*e.g.,* zip codes, states, *etc.*) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP and NV for the individual AD margins.

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

[70] *See, e.g., Xanthan Gum From Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2251 (January 10, 2013), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) (*Xanthan Gum From Austria*), and accompanying Issues and Decision Memorandum at 2.

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

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

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

Results of the DP Analysis

Based on the results of the DP analysis, the Department finds that more than 66 percent of Inmax's and Region's U.S. sales pass the Cohen's *d* test, and confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers or time periods.

For Inmax and Region, the Department finds that the A-to-A method cannot appropriately account for such differences. This is because there is a meaningful difference in the weighted-average dumping margins calculated for Inmax and Region when calculated using the A-to-A method and an alternative method based on the A-to-T method, as the resulting rate under the A-to-T method moves across the *de minimis* threshold. Accordingly, the Department has

determined to use the A-to-T method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Inmax and Region.[71]

D. Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the U.S. to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the U.S., as adjusted under subsection (c)." In accordance with section 772(a) of the Act, we used the EP methodology for both Inmax and Region because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted.

For Inmax, we calculated EP based on the sales price to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for movement expenses (*e.g.*, foreign inland freight, bank charges, and domestic brokerage and handling), in accordance with section 772(c)(2)(A) of the Act.[72]

For Region, we calculated EP based on the sales price to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for billing adjustments. We also made deductions, where applicable, for any movement expenses (*e.g.*, foreign inland freight, domestic brokerage and handling, marine insurance), in accordance with section 772(c)(2)(A) of the Act.[73]

E. Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales),[74] we compared Inmax's and Region's home market sales to the volume of each respondents' respective U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that both Inmax's and Region's aggregate volume of home market sales of the foreign-like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise for each of those respondents.[75] Therefore, we used home market sales as the basis for NV for both Inmax and Region, in accordance with section 773(a)(1)(B) of the Act.

[71] *See* Inmax Preliminary Analysis Memorandum and Region Preliminary Analysis Memorandum, respectively.
[72] *See* Inmax Preliminary Analysis Memorandum.
[73] *See* Region Preliminary Analysis Memorandum.
[74] *See* 19 CFR 351.404(b)(2).
[75] *See* Inmax Preliminary Analysis Memorandum and Region Preliminary Analysis Memorandum, respectively.

2. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the SAA,[76] to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP sales. Pursuant to 19 CFR 351.412(c)(l)(iii), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value (CV), the starting price of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[77] we consider the starting prices before any adjustments. For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.[78]

To determine whether comparison market sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.[79] If the comparison market sales are at a different LOT and the difference affects price comparability, as described in 19 CFR 351.412(d) and as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Inmax did not request an LOT adjustment. It made no distinction in selling functions provided based on channels of trade or customer categories, and stated there is only one channel of trade applicable to both the home market and the U.S. market.[80] Inmax only identified three selling functions: arrangement of packing, performed at a "high" intensity level for both home market and U.S. sales; payment of commissions, performed at a "low" intensity level for U.S. sales, but not performed for home market sales; and provision of freight and delivery services, performed at a "high" intensity level for home market sales, but not performed for U.S. sales.[81] However, Inmax elsewhere noted that for all U.S. sales, it arranged for delivery of the merchandise from the factory to the FOB destination.[82] Accordingly, we do not find that the level of activity associated with provision of freight was more substantial for home market sales than for U.S. sales. Therefore, based on the information provided we conclude that there is no material difference between the selling activities provided for home market sales than for U.S. sales.

Region stated there is only one channel of distribution in each market and all sales were shipped directly to the unaffiliated customer.[83] Region identified four customer categories in the home market: (1) end users; (2) trading companies; (3) distributors, and (4) retailers and two customer

[76] *See* SAA, H.R. Doc. 103-316 at 829-831.
[77] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive SG&A expenses and profit for CV, where possible.
[78] *See* 19 CFR 351.412(c)(1)(i).
[79] 19 CFR 351.412(c)(2).
[80] *See* Inmax Section A response at 8 and 10.
[81] *See* Inmax Supplemental Section A response at 13-14 and Exhibit SA-4.
[82] *See* Inmax's Section B&C questionnaire response dated September 12, 2014 (Inmax Section B&C response) at C-14 and C-21.
[83] *See* Region Section A response at 8.

categories in the U.S. market: (1) trading companies and(2) distributors.[84] Region made no distinction in selling functions provided based on channels of trade or customer categories . Region identified three selling functions that are never performed on sales to the U.S. market, nonetheless, sometimes performed for home market sales: sales marketing support, provision of certain other discounts, and commission payments. Aside from these small differences, Region stated there is no difference in the selling functions between the customer categories in the home market and the U.S. market. Region did not request an LOT adjustment.[85]

The Department preliminary determines that for both Inmax and Region there are no significant differences in selling and marketing practices between their respective home and U.S. markets, and that a single LOT exists in each market for both Inmax and Region. Consequently, no LOT adjustment is warranted.

3. Cost of Production

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and packing costs.[86] We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data, as adjusted below.[87]

We relied on Inmax's and Region's submitted COP data, except as follows:

For Region, we have adjusted the transfer price for services provided by an affiliated party in accordance with section 773(f)(2) of the Act. We have also revised the allocation of other common variable overhead costs to subject and non-subject products to reflect allocations consistent with those used for direct labor and energy costs.[88]

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling expenses. For both Inmax and Region, the prices were net of

[84] *See* Region Section A response at 14-18.
[85] *Id*., at revised exhibit A-6.
[86] *See* "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.
[87] *See, e.g., Xanthan Gum From Austria* and accompanying Issues and Decision Memorandum at 9.
[88] *See* Memorandum from Heidi K. Schriefer to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Region Systems SDN BHD," dated December 17, 2014.

billing adjustments, movement charges, and direct and indirect selling expenses, where appropriate.[89]

c. Results of the COP Test

Section 773(b)(1) of the Act provides that where sales made at less than the COP "have been made within an extended period of time in substantial quantities" and "were not at prices which permit recovery of all costs within a reasonable period of time", the Department may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in "substantial quantities" (*i.e.*, where less than 20 percent of sales of a given product were at prices less than the COP). We disregarded below-cost sales when they were made in substantial quantities (*i.e.*, where 20 percent or more of a respondent's sales of a given product were at prices less than the COP or where "the weighted average per unit price of the sales . . . is less than the weighted average per unit COP for such sales").[90] Finally, based on our comparison of prices to the weighted-average COPs for the POI, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.[91]

Based on the analysis described above, for both Inmax and Region we disregarded below-cost sales of a given product control number (CONNUM) where they were made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time and used the remaining sales of that CONNUM as the basis for determining NV, in accordance with section 773(b)(1) of the Act.[92]

4. Calculation of NV Based on Comparison Market Prices

We calculated NV for Inmax based on the reported delivered or ex-factory prices to unaffiliated comparison market customers. We deducted home market movement expenses, pursuant to section 773(a)(6)(B) of the Act. Where appropriate, we made circumstance-of-sale adjustments (*i.e.*, credit expenses) for Inmax, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.[93]

For Region, we calculated NV based on the reported delivered or ex-factory prices to unaffiliated comparison market customers. We deducted home market movement expenses, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit expenses and bank charges). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.[94]

[89] *See* Inmax Preliminary Analysis Memorandum and Region Preliminary Analysis Memorandum, respectively.
[90] *See* sections 773(b)(2)(C)(i) and (ii) of the Act.
[91] *See* section 773(b)(2)(D) of the Act.
[92] *See* Inmax Preliminary Analysis Memorandum and Region Preliminary Analysis Memorandum, respectively.
[93] *See* Inmax Preliminary Analysis Memorandum.
[94] *See* Region Preliminary Analysis Memorandum.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, for Inmax and Region, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign-like product and subject merchandise.[95]

F. Date of Sale

19 CFR 351.40l(i) states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[96] The CIT stated that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[97] Alternatively, the Department may exercise its discretion to rely on a date other than invoice date if the Department "provides a rational explanation as to why the alternative date 'better reflects' the date when 'material terms' are established."[98] The date of sale is generally the date on which the parties establish the material terms of the sale,[99] which normally includes the price, quantity, delivery terms, and payment terms.[100]

Inmax

Inmax indicated the material terms of sale (*e.g.*, quantity) occasionally changed between initial agreement and actual shipment of the merchandise from the factory (*via* revised purchase orders and revised pro forma invoices for U.S. sales, and *via* verbal requests and confirmations for home market sales).[101] For home market and U.S. sales, Inmax stated it reported invoice date as the date of sale because it is issued shortly after the shipment date from the factory and all sales are recorded in the company's books and records based on invoice date, not based on shipment date from the factory.[102] Inmax also clarified that expanding the sales databases to include all shipments in the POI had no effect on the sales databases because its reporting of all sales with invoice dates in the POI covered all shipments that occurred during the POI.[103] Based on Inmax's responses, the Department is using date of shipment as date of sale for both the home

[95] *See* 19 CFR 351.411(b).
[96] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001).
[97] *Allied Tube*, 132 F. Supp. at 1090 (brackets and citation omitted).
[98] *SeAH Steel Corp. v. United States*, 25 CIT 133, 135 (CIT 2001).
[99] 19 CFR 351.401(i).
[100] *See USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).
[101] *See* Inmax Supplemental Section A response at 15-17.
[102] *Id.* at 14.
[103] *Id.* at 15.

market and the U.S. market, because the record indicates material terms of sale may change up until that date.

Region

Region reported all dates of sale for the home market and U.S. sales as the invoice date because it is the first document in which the final price and quantity for sale are agreed upon and memorialized in Region's records in their ordinary course of business.[104] For U.S. market sales, Region clarified it issues the invoice to the U.S. customer a few days prior to the date of shipment date.[105] Nevertheless, Region stated that the price and quantity terms do not change after the issuance of the invoice.[106] Region indicated the material terms of sale (*e.g.*, quantity and price) occasionally changed for both markets between the initial agreement and the actual invoiced terms (*via* revised or cancelled purchase orders made by written or verbal requests).[107] We reviewed sales and shipment documentation submitted by Region (*e.g.*, order prepared based on verbal communication with the client, purchase order listing cancellation of certain item initially requested, Region's invoice to the customer against the initial purchase order demonstrating the change in quantity or price, delivery order, customer ledger account showing payment of actual shipped quantity or price charged, *etc*.) and have confirmed that the material terms of sale are set at the invoice date. Therefore, we preliminarily determine to use Region's invoice date as the date of sale for all home market and U.S. sales.[108]

G. Currency Conversion

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

XII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[109] Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.[110]

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[104] *See* Region International Section A, B and C responses, at 11, 20, and 18, respectively.
[105] *See* Region Supplemental Section A response at 21.
[106] *See* Region International Section B and C responses, at 20 and 18, respectively. *See also* Region Supplemental Section A response at 22.
[107] *See* Region Supplemental Section A response at 21-28.
[108] *Id*., at exhibits AS-3(a) and AS-3(b) for home market sales documentation, and exhibit AS-3(c) for U.S. market sales documentation. *See also* Region Preliminary Analysis Memorandum.
[109] *See* 19 CFR 351.224(b).
[110] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[111] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[112] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[113] Electronically filed documents must be received successfully in their entirety by 5:00 PM Eastern Time,[114] on the due dates established above.

XIII. VERIFICATION

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

[111] *See* 19 CFR 351.309(c)(2) and (d)(2).
[112] *See* 19 CFR 351.310(c).
[113] *See* 19 CFR 351.303(b)(2)(i).
[114] *See* 19 CFR 351.303(b)(1).

XIV. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓
Agree

Disagree

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

December 17, 2014
Date