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

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

SUBJECT: Decision Memorandum for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Steel Nails from Malaysia; 2014-2016

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain steel nails from Malaysia. The period of review is December 29, 2014, through June 30, 2016. The review covers three producers/exporters of the subject merchandise: Inmax Sdn. Bhd. (Inmax Sdn.) and Inmax Industries Sdn. Bhd. (Inmax Industries) (collectively, Inmax), Region System Sdn. Bhd. (Region System) and Region International Co. Ltd. (Region International) (collectively, Region), and Tag Fasteners Sdn. Bhd. (Tag Fasteners). The Department selected two of these respondents, Inmax and Region, for individual examination and preliminarily finds that they have sold subject merchandise at less than normal value during the period of review. We are rescinding the review with respect to an additional 16 companies for which the petitioner, Mid Continent Steel & Wire, Inc., timely withdrew its request for review.

Background

On July 19, 2016, Tag Fasteners filed a request for administrative review of its imports of certain steel nails from Malaysia, as did Inmax on July 27 and Region on July 29, 2016.[1] The petitioner

[1] The public record of the review, including all public or public versions of correspondence filed by parties or the Department, may be accessed electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to guest and registered users at

filed a request for review of the three respondents and an additional 16 companies on August 1, 2016. The Department published a notice of initiation of the administrative review on September 12, 2016.[2]

In the *Initiation Notice*, we stated our intention, in the event we limit the number of respondents for individual examination, to select respondents based on U.S. Customs and Border Protection (CBP) data.[3] Based on a consideration of the data, timely comments received from the petitioner and Inmax, the number of potential producers/exporters involved in this review, and the resources available to the Department, we determined that we could reasonably individually examine two producers/exporters in the current review.[4] We, thus, selected Inmax and Region as producers and exporters accounting for the largest volume of the subject merchandise from Malaysia that could reasonably be examined, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act).[5]

On December 12, 2016, the petitioner withdrew its request for review with respect to the 16 companies which did not self-request a review. On March 31, 2017, we extended the time limit for completion of the preliminary results of the review to no later than June 9, 2017.[6] On June 6, 2017, we extended the time limit for completion of the preliminary results of the review to no later than July 28, 2017.[7]

Scope of the Order

The merchandise covered by the antidumping duty order is certain steel nails having a nominal shaft length not exceeding 12 inches.[8] 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

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http://access.trade.gov and is also available to the public in the Central Records Unit, located in room B8024 of the main Department of Commerce building.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).

[3] *See Initiation Notice* at 62720-62721.

[4] *See* Memorandum, "Antidumping Duty Administrative Review of Certain Steel Nails from Malaysia: Respondent Selection Memorandum," dated November 23, 2016 (Respondent Selection Memorandum) at 5.

[5] *Id.*

[6] *See* Memorandum, "Certain Steel Nails from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014/2016," dated March 31, 2017.

[7] *See* Memorandum, "Certain Steel Nails from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014/2016," dated June 6, 2017.

[8] 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.

turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of this order are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: 1) builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; 2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; 3) swivel seats with variable height adjustment; 4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); 5) seats of cane, osier, bamboo or similar materials; 6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); 7) furniture (other than seats) of wood (with the exception of i) medical, surgical, dental or veterinary furniture; and ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or 8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.*, furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

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

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

Also excluded from the scope of this order are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 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 order are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

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

Certain steel nails subject to this order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this order also may be classified under HTSUS subheadings 7907.00.60.00, 7806.00.80.00, 7318.29.00.00, 8206.00.00.00 or other HTSUS subheadings.

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

Partial Rescission of Administrative Review

As noted in the "Background" section above, we received timely requests for review of their own entries from Inmax, Region, and Tag Fasteners. The petitioner filed a request for review of these companies and an additional 16 companies on August 1, 2016. Accordingly, the Department initiated a review of 21 companies (*i.e.*, Inmax Sdn., Inmax Industries, Region System, Region International, Tag Fasteners and the other 16 companies) on September 12, 2016.[9] On December 12, 2016, the petitioner withdrew its request for review of the following companies: Apex Container Line (M) Sdn Bhd; Astrotech Steels Private Ltd.; C.H. Robinson Freight Services Ltd.; Caribbean International Co. Ltd.; Chia Pao Metal Co. Ltd.; Expeditors (Malaysia) Sdn Bhd; Flyjac Logistics Private Ltd.; Hanjin Logistics India Private Ltd.; Hecny Transportation (M) Sdn Bhd; Honour Lane Logistics Sdn Bhd; Jinhai Hardware Co. Ltd.; Nora Freight Services Sdn Bhd; Orient Containers Sdn Bhd; Orient Star Transport Sdn Bhd; Sino Connections Logistics Co. Ltd.; and Swift Freight Private Ltd. As no other party had requested a review of these companies and in response to the petitioner's timely filed withdrawal request, we are rescinding the administrative review, pursuant to 19 CFR 351.213(d)(1), with respect to these companies.

Company Not Selected for Individual Examination

The Department did not select Tag Fasteners for individual examination. Although we have a publicly-ranged U.S. sales volume for Inmax for the period of review, we do not have this public data for Region. If we had this data for both companies, we could calculate a weighted-average percentage margin for Tag Fasteners in this review. Because we lack some of the data and consistent with our practice, we calculated a simple-average percentage margin for Tag Fasteners based on the margins calculated for Inmax and Region.

DISCUSSION OF THE METHODOLOGY

Collapsing of Affiliated Companies

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

[9] *See Initiation Notice*, 81 FR at 62722.

products that would not require substantial retooling to restructure manufacturing priorities and there is a significant potential for manipulation of price or production.[10] 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."[11]

The U.S. 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.[12]

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.[13]

Based on this collapsing analysis, we preliminarily determined that Inmax Sdn. and Inmax Industries, which both produce and export subject merchandise, are affiliated pursuant to section 771(33)(F) of the Act. We also preliminarily determined that these two companies should be treated as a single entity for antidumping purposes pursuant to 19 CFR 351.401(f). As detailed in the Inmax Analysis Memorandum, these companies are both ultimately owned by and under

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[10] 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*)).

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

[12] *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.

[13] *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 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).

common control of the same group of individuals and, therefore, are affiliated in accordance with section 771(33)(F) of the Act.[14] Furthermore, as both Inmax Sdn. and Inmax Industries produced and sold subject merchandise during the period of review, we preliminarily found that, pursuant to 19 CFR 351.401(f)(1), the companies have production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities. Furthermore, we find that the record shows there is a significant potential for manipulation of price or production between the two companies, pursuant to 19 CFR 351.401(f), due to the significant level of common ownership between Inmax Sdn. and Inmax Industries; the considerable overlap in the directorship and management of the three Inmax companies; and the intertwined operations between Inmax Sdn. and Inmax Industries because of approval over sales prices by the same president, a shared website for pricing information, and transactions between the companies during the period of review.[15] Thus, we preliminarily collapsed these companies as a single entity.

With respect to Region, we preliminarily determined that Region System, a producer or subject merchandise is affiliated with Region International, the company that exports its subject merchandise to the United States, pursuant to section 771(33)(B) and (F) of the Act.[16] We also preliminarily determined that Region System and Region International should be treated as a single entity for antidumping purposes pursuant to 19 CFR 351.401(f).[17] As explained in the Region Analysis Memorandum, these companies are both ultimately owned by and under common control of the same group of individuals and, therefore, are affiliated in accordance with section 771(33)(F) of the Act. In addition, there is significant common ownership and other shared operations between the producing affiliate and the exporting company. We have also determined that there is a significant potential for the manipulation of prices among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies. Thus, we preliminarily treated these companies as a single entity.

Date of Sale

Section 351.401(i) of the Department's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which

[14] *See* Memorandum from Edythe Artman, International Trade Compliance Analyst, to Scot Fullerton, Office Director, regarding "Certain Steel Nails from Malaysia: Analysis Memorandum for the Preliminary Results of Review for Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd.," dated concurrently with this memorandum (Inmax Analysis Memorandum), 2-3.
[15] *Id*.
[16] *See* Memorandum, "Analysis Memorandum for Region International Co., Ltd and Region Systems Sdn. Bhd. in the Preliminary Results of the 2014/2016 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from Malaysia," dated concurrently with this memorandum (Region Analysis Memorandum).
[17] *Id*., at 3-4.

the exporter or producer establishes the material terms of sale.[18] The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.[19]

For its home-market sales, Inmax reported that it used the actual sales/tax invoice date as its date of sale because that date represented the earliest date on which all material terms of sale, specifically quantity and value, are fixed.[20] Inmax also reported the actual sales/tax invoice date as the date of sale for its U.S. sales because that date represented the earliest date on which all material terms of sale are fixed.[21] However, Inmax later stated that the terms of a U.S. sale cannot change after the issuance of the "commercial invoice" or after the issuance of the delivery order, and that it based its reported date of shipment on the date of the delivery order.[22] Based on this information, we preliminarily find that the actual sales/tax invoice date is the most appropriate date of sale for Inmax's home-market sales, as the record indicates that the terms of sale are established by the time the actual sales/tax invoice is issued and that the date of issuance of this document coincides with the issuance of the delivery order. However, for U.S. sales, the record suggests that there are instances where the terms of sale are established by the delivery order date and that the delivery order is issued prior to the actual sales/tax invoice. In other words, the reported shipment date precedes that of the reported date of sale. Thus, we preliminarily find that the date of sale is, most appropriately, the earlier of reported invoice or shipment date for U.S. sales.[23]

Region reported all dates of sale for the home market as the invoice date, because the invoice 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.[24] The invoice contains the final terms of sale, and the price and quantity did not change after the issuance of the invoice.[25] We reviewed sales and shipment documentation submitted by Region (*e.g.*, a purchase order, an amended purchase order, Region's invoice to the customer against the initial purchase order demonstrating the change in quantity, and delivery order) and have confirmed

[18] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).
[19] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.
[20] *See* Inmax's response to Section A of the antidumping duty questionnaire, dated January 17, 2017 (Inmax's Section A Response), pages A-18-20 and exhibit A-25; Inmax's response to Section B of the antidumping duty questionnaire, dated January 26, 2017 (Inmax's Section B Response), page B-15.
[21] *See* Inmax's Section A Response at A-18-20 and exhibits A-26-A-27; Inmax's response to Section C of the antidumping duty questionnaire, dated January 26, 2017 (Inmax's Section C Response), pages C-13-C-14.
[22] *See* Inmax's Section C Response at C-14.
[23] *See* Inmax Analysis Memorandum at 3-5.
[24] *See* Region Section B Responses at 22-23.
[25] *Id*. *See also* Region First Supplemental at 3.

that the material terms of sale are set at the invoice date.[26] Therefore, we preliminarily determine to use Region's invoice date as the date of sale for all home market sales.[27]

For U.S. market sales, Region reported the invoice date or shipment date from the factory, whichever occurred first, as the date of sale.[28] Region stated that there were not changes in material terms of sale between the invoice date and the date of shipment.[29] We reviewed sales and shipment documentation for a U.S. sale and have confirmed that the material terms of sale are set at the invoice date or shipment date, whichever occurred first.[30] Thus, we preliminarily find that the date of sale is, most appropriately, the date of sale is the earlier of reported invoice or shipment date for U.S. sales.[31]

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Inmax and Region's sales of the subject merchandise from Malaysia to the United States were made at less than normal value, the Department compared the export price to the normal value, as described in the "Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(b) and (c)(1), the Department calculates dumping margins by comparing weighted-average normal values to weighted-average export prices or constructed export prices (CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to compare weighted-average normal values with the export prices (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.[32]

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation

[26] *Id*., at exhibit S-1(a).
[27] *Id*.
[28] *See* Region Section C Response at 18.
[29] *See* Regions First Supplemental at 3.
[30] *Id*., at exhibit S-1(b).
[31] *Id*., at exhibit S-1(a).
[32] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[33] The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of export prices, (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes or city and state names) 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 period of review 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 export price (or CEP) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period 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 prices to the particular purchaser, region or time period differ significantly from the 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 (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the

[33] *See*, *e.g.*, Xanthan *Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average 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 average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average 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 average-to-average 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 prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison 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 average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.[34]

[34] We note that the Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (Fed. Cir. July 12, 2017) recently affirmed much of the Department's differential pricing methodology. We ask interested parties present only arguments on issues which have not already been decided by the CAFC.

B. Results of the Differential Pricing Analysis

For Inmax, based on the results of the differential pricing analysis, the Department preliminarily finds that 76.70 percent of the value of U.S. sales pass the Cohen's *d* test,[35] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. For Region based on the results of the differential pricing analysis, the Department preliminarily finds that 90.12 percent of the value of U.S. sales pass the Cohen's *d* test,[36] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences for either Inmax or Region because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Inmax and Region.

Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for goods produced by Inmax and Region and sold in the home market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are (1) nail form; (2) product form; (3) steel type; (4) surface finish; (5) diameter; (6) shank length; (7) collation material; (8) head style; (9) shank style; and (10) heat treatment.

Export Price

Section 772(a) of the Act defines export price 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 export price 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.

With respect to Inmax, in accordance with section 772(c)(2) of the Act, and where appropriate, we made adjustments to the starting price for billing adjustments and import revenues and deductions for certain movement expenses for foreign inland freight, domestic brokerage and handling, international freight, U.S. brokerage and handling, U.S. duties and other import fees. In accordance with Departmental practice, we capped the amount of import revenues permitted to offset gross unit price at no greater than the amount of the corresponding import fees incurred

[35] *See* Inmax Analysis Memorandum at 9.
[36] *See* Region Analysis Memorandum at 7.

by Inmax.[37] Pursuant to section 772(d)(1) of the Act, we made additional adjustments to export price for commissions, direct selling expenses (*i.e.*, bank and fumigation charges), credit expenses and indirect selling expenses.

For Region, in accordance with section 772(c)(2) of the Act, and where appropriate, we made deductions from the starting price for certain movement expenses (*e.g.*, foreign inland freight, and domestic brokerage and handling). Pursuant to section 772(d)(1) of the Act, we made additional adjustments to export price for warranty expenses, fumigation and bank charges, credit expenses and indirect selling expenses.

Normal Value

A. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales of nails in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), the Department compared the volume of Inmax and Region's respective home-market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.[38] Based on this comparison, we determine that both companies had a viable home market during the period of review. Consequently, we based normal value on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade, described in detail below.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act and to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the export price or CEP.[39] Pursuant to 19 CFR 351.412(c)(1)(iii), the level of trade for normal value is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses (SG&A), and profit.

To determine if normal value sales are at a different level of trade than export price sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.[40] If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern

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[37] *See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review,* 74 FR 40167 (Aug. 11, 2009), and accompanying Issues and Decision Memorandum at Comment 3; *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 46584 (Aug. 11, 2008), and accompanying Issues and Decision Memorandum at Comment 7; *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (Feb. 11, 2009), and accompanying Issues and Decision Memorandum at Comment 6.

[38] *See* Inmax's Section B Response at Exhibit B-14; Region's Section A Response at Exhibit A-1.

[39] *See also* section 773(a)(7) of the Act.

[40] *See* 19 CFR 351.412(c)(2).

of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

Based on the sales process and selling-function information provided by Inmax, we conclude that its home-market sales were made at one level of trade to dealers or end users during the period of review. We further found that, based on the information provided by Inmax about its U.S. sales, these sales had been made to distribution traders and distributors at one level of trade.[41] Because there was only one level of trade in the home market and no data was available to determine the existence of a pattern of price differences within that market, and because we do not have any other information that provides an appropriate basis for determining a level-of-trade adjustment, we were unable to calculate a level-of-trade adjustment. Therefore, for these preliminary results, we matched Inmax's export-price sales to its home-market sales without making a level-of-trade adjustment to normal value.[42]

Region stated there is only one channel of distribution in each market and all sales were shipped directly to the unaffiliated customer.[43] Region identified four customer categories in the home market: (1) end users; (2) trading companies; (3) distributors, and (4) retailers and two customer categories in the U.S. market: (1) trading companies and (2) distributors.[44] Region made little distinction in selling functions provided based on channels of distribution or customer categories. Region identified three selling functions that are never performed on sales to the U.S. market, nonetheless, sometimes or rarely 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.

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 level of trade exists in each market for both Inmax and Region. Consequently, no level-of-trade adjustment is warranted.

C. Sales to Affiliates

We exclude comparison market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade.[45] To test whether the respondents' comparison market sales are made at arm's-length prices, we compare the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, and direct selling expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party are, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for

[41] *See* Inmax's Section C Response at C-20.
[42] *See* Section 773(a)(7)(A) of the Act.
[43] *See* Region's Section A response at 14-16
[44] *Id*.
[45] *See* 19 CFR 351.403(c).

merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party are at arm's-length prices.[46] Because Region reported sales to affiliates in the comparison market, we tested to see if those sales were made at arm's-length prices for our preliminary results. In the event they were not, we disregarded these sales for purposes of calculating weighted-average monthly normal values.

D. Cost of Production

On June 29, 2015, the President signed into law The Trade Preferences Extension Act of 2015, Public Law 114-27, which provides a number of amendments to the antidumping and countervailing duty laws. Pursuant to the amendment of section 773(b)(2) of the Act,[47] the Department required that both respondents provide constructed-value and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

1. Calculation of Cost of Production

We calculated the COP for the respondents based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Inmax and Region.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the per-unit price of the comparison-market sales of the foreign like product to determine whether these sales had been made at prices below the COP. In particular, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were net of billing adjustments, discounts, movement expenses, direct and indirect selling expenses, and packing expenses, where appropriate.

3. Results of the Cost of Production 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 normal value. 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 made at prices less than the COP. We disregarded

[46] *See* Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002).
[47] *See* 19 USC 1677b(b)(2)(A)(ii).

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 and where "the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales."[48] Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.[49]

For Inmax and Region, the cost test indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales as outside of the ordinary course of trade in our analysis of the companies' home-market sales data and used the remaining sales to determine normal value.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated normal value for Inmax and Region based on the reported packed, ex-factory, or delivered prices to comparison-market customers.

With respect to Inmax, we made adjustments, where appropriate, to normal value for certain billing adjustments and inland freight revenues. We also made deductions from the starting price, where appropriate, for certain movement expenses (*i.e.*, inland freight) and for certain direct selling expenses (*e.g.*, credit expenses), pursuant to section 773(a)(6)(B)(ii) of the Act. In accordance with Departmental practice, we capped the amount of inland freight revenues permitted to offset gross unit price at no greater than the amount of the corresponding inland freight expenses incurred by Inmax. For Region, we made adjustments, where appropriate, to normal value for certain billing adjustments and other discounts. Additionally, we made deductions from the starting price, where appropriate, for certain movement expenses (*i.e.*, inland freight and inland insurance) and for certain direct selling expenses (*i.e.*, charges related to warranty, and bank charges), pursuant to section 773(a)(6)(B)(ii) of the Act. For both companies, 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. Because Inmax incurred commissions on U.S. sales but not on comparison-market sales, we made an adjustment to normal value for a commission offset pursuant to 19 CFR 351.410(e). Specifically, we deducted home-market indirect selling expenses from normal value up to the amount deducted from U.S. price for commissions.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, 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 of the foreign-like product and that of the subject merchandise.[50]

[48] *See* section 773(b)(2)(C)(ii) of the Act.
[49] *See* section 773(b)(2)(D) of the Act.
[50] *See* 19 CFR 351.411(b).

F. Price-to-Constructed Value Comparison

Where we were unable to find a home-market match of identical or similar merchandise, we based normal value on constructed value, in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, we calculated constructed value based on the sum of the respondents' material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of constructed value as described above in the "Calculation of Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. The Department's normal practice is to rely on the financial information most contemporaneous with the period of review.[51] Because the majority of this period fell within fiscal year 2015 rather than fiscal year 2014 or 2016, we relied on Inmax and Region's G&A and financial expense rates for fiscal year 2015.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at *http://enforcement.trade.gov/exchange*.

[51] *See*, *e.g.*, *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007), and accompanying Issues and Decision Memorandum at Comment 3.

Recommendation

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

7/28/2017

X 

Signed by: GARY TAVERMAN

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