

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-909]

**Certain Steel Nails From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review and Preliminary Intent to Rescind New Shipper Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review and new shipper review ("NSR") of the antidumping duty *Order*<sup>1</sup> on certain steel nails ("nails") from the People's Republic of China ("PRC") for the period of review ("POR") August 1, 2009, through July 31, 2010, and August 1, 2009, through August 5, 2010, respectively. The Department has preliminarily determined that The Stanley Works (Langfang) Fastening Systems Co., Ltd. ("Stanley Langfang"), and Stanley Black & Decker ("The Stanley Works")/Stanley Fastening Systems, LP (collectively "Stanley"), Tianjin Jinghai County Hongli Industry and Business Co., Ltd. ("Hongli"), and Tianjin Jinchi Metal Products Co., Ltd. ("Jinchi"), all made sales of subject merchandise at less than normal value ("NV"). The Department has also preliminarily determined that Shanghai Colour Co., Ltd. and Wuxi Colour Co., Ltd. (collectively "Shanghai Colour")'s single sale to the United States does not constitute a *bona fide* transaction. Therefore, we have preliminarily rescinded the new shipper review with regard to Shanghai Colour. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

**DATES:** *Effective Date:* September 12, 2011.

**FOR FURTHER INFORMATION CONTACT:**

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482-3927, (202) 482-4532, or (202) 482-2243, respectively.

**SUPPLEMENTARY INFORMATION:****Case Timeline**

On August 27, 2010, pursuant to 19 CFR 351.214(b) and (c), the Department received an NSR request from Shanghai Colour.

On September 29, 2010, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on nails from the PRC, for 222 companies.<sup>2</sup>

On October 4, 2010, the Department published in the **Federal Register** a notice of initiation of a new shipper review of nails from the PRC, for Shanghai Colour.<sup>3</sup> On April 28, 2011, the Department published a notice rescinding the administrative review with respect to 160 companies and extending the time period for issuing the preliminary results by 90 days to August 1, 2011.<sup>4 5 6</sup>

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 60076 (September 29, 2010) ("*2nd AR Initiation*").

<sup>3</sup> See *Certain Steel Nails from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 75 FR 61132 (October 4, 2010).

<sup>4</sup> See *Certain Steel Nails from the Peoples' Republic of China: Notice of Extension of Time Limits and Partial Rescission of the Second Antidumping Duty Administrative Review*, 76 FR 23788 (April 28, 2011) ("*Rescission*").

<sup>5</sup> The Department incorrectly identified three companies, Cana (Tianjin) Hardware Ind., Co., Ltd.; Huanghua Jinhai Metal Products Co., Ltd.; and Qingdao Jisco Co., Ltd., in the *Rescission* as having separate rates. These three companies do not have separate rates from previous reviews and may still be under review as part of the PRC-wide entity. The Department intends to issue liquidation instructions for the PRC-wide entity 15 days after publication of the final results of this review. Although Qingdao Jisco Co., Ltd. submitted a Separate Rate Certification stating it received a separate rate in the investigation, Qingdao Jisco Co., Ltd. in fact never received a separate rate. In the investigation, as a producer, Qingdao Jisco Co., Ltd. received a combination rate, however, in the first review, the separate rate was assigned to the exporter, Jisco Corporation. See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977, 33981 (June 16, 2008) ("*Investigation*"). See also *Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379, 16382 (March 23, 2011) ("*1st Review*").

<sup>6</sup> Additionally, in Petitioner's December 28, 2010, withdrawal request, Petitioner withdrew requests for review on Shanxi Tianli Enterprise Co., Ltd. and Shanxi Tianli Enterprise Co. The Department subsequently rescinded the review for both companies, although the Department had not even initiated a review of Shanxi Tianli Enterprise Co. We clarified with Petitioner and they explained that they considered both companies to be variations of the same company. As such, the Department intends to liquidate Shanxi Tianli Enterprise Co., Ltd. at the PRC-wide rate 15-days after publication of the final results of this review.

Between October 25, 2010, and June 30, 2011, Shanghai Colour submitted responses to the Department's original and supplemental questionnaires. Between January 21, 2011, and July 19, 2011, Stanley, Hongli, and Jinchi submitted responses to the Department's original and supplemental questionnaires.

On July 11, 2011, the Department aligned the antidumping duty new shipper and administrative reviews.<sup>7</sup>

**Respondent Selection**

Section 777A(c)(1) of the Tariff Act of 1930, as amended ("Act") directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

The Department initiated a review for the 222 companies for which it received a timely request for review. See *2nd AR Initiation*. On October 28, 2010, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order ("APO") to all interested parties with access to the APO, inviting comments regarding the CBP data and respondent selection. Between November 5, 2010, and November 8, 2010, Stanley and Petitioner<sup>8</sup> submitted comments on the respondent selection process. On November 22 and 24, 2010, respectively, Petitioner met with the Senior Director, China/NME Unit, for AD/CVD Operations and the Deputy Assistant Secretary for Import Administration regarding respondent selection. On November 26, 2010, Hongli requested to be selected as a mandatory respondent or to be permitted to participate as a voluntary respondent. On December 14, 2010, Stanley requested to be selected as a mandatory respondent or to be permitted to participate as a voluntary respondent.

After assessing its resources, on December 16, 2010, the Department issued its respondent selection memorandum. The Department determined that the number of

<sup>7</sup> See Memorandum to the File, through Matthew Renkey, Office 9 Acting Program Manager, from Ricardo Martinez Rivera, Case Analyst, dated July 11, 2011, *Certain Steel Nails from the People's Republic of China: Alignment of the New Shipper Review of Shanghai Colour Co., Ltd and Wuxi Colour Co., Ltd. ("Shanghai Colour")* with the 2nd Administrative Review.

<sup>8</sup> Mid Continent Nail Corporation.

<sup>1</sup> See *Notice of Antidumping Duty Order: Certain Steel Nails from the People's Republic of China*, 73 FR 44961 (August 1, 2008) ("*Order*").

companies (*i.e.*, 222) was too large a number for individual reviews and that the Department could reasonably examine three exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Stanley, Hongli, and Qingdao Jisco Co., Ltd. (“Jisco”) as mandatory respondents.<sup>9</sup> On December 17, 2010, the Department issued an antidumping duty questionnaire to these three mandatory respondents. On January 21, 2011, after receiving requests for withdrawal of review from Jisco and Petitioner, the Department selected Jinchi as a mandatory respondent in place of Jisco.<sup>10</sup> On January 21, 2011, the Department issued an antidumping duty questionnaire to Jinchi.

### New Shipper Review Bona Fide Analysis

Consistent with the Department’s practice, we investigated the *bona fide* nature of Shanghai Colour’s sale for this NSR. In evaluating whether a single sale in a NSR is commercially representative, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) Timing of the sale; (2) price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were sold at a profit; and (5) whether the transaction was made on an arms-length basis.<sup>11</sup> Accordingly, the Department considers a number of factors in its *bona fide* analysis, “all of which may be specific to the commercial realities surrounding an alleged sale of subject merchandise.”<sup>12</sup> In examining Shanghai Colour’s sale in relation to these factors, the Department found evidence that indicates this sale was non-*bona fide*.<sup>13</sup> Therefore, we preliminarily find that the new shipper sale by Shanghai Colour was not made on a *bona fide* basis and, thus, preliminarily determine that Shanghai Colour has not met the requirements to

qualify as a new shipper during this POR.

### Preliminary Rescission of the New Shipper Review

For the foregoing reasons, and as discussed in the *bona fide* memo, the Department finds that the sale by Shanghai Colour is not *bona fide* and that the sale does not provide a reasonable or reliable basis for calculating a dumping margin. Because this non-*bona fide* sale was the only sale of subject merchandise during the POR, the Department is preliminarily rescinding the NSR.

### Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that the following companies made no shipments of subject merchandise during the POR: (1) Beijing Hongsheng Metal Co., Ltd.; (2) Besco Machinery Industry (Zhejiang) Co., Ltd.; (3) Certified Products International Inc. (“CPI”); (4) Chiieh Yung Metal Ind. Corp.; (5) China Staple Enterprise (Tianjin) Co., Ltd.; (6) CYM (Nanjing) Nail Manufacture Co., Ltd.; (7) Jining Huarong Hardware Products Co., Ltd.; (8) Nanjing Yuechang Hardware Products Co., Ltd.; (9) PT Enterprise Inc.; (10) Qidong Liang Chyuan Metal Industry Co., Ltd.; (11) Shanghai Tengyu Hardware Tools Co., Ltd.; (12) Shanxi Yuci Broad Wire Products Co., Ltd.; and (13) Zhejiang Gem-Chun Hardware Accessory Co., Ltd.; (collectively, the “No Shipment Respondents”).

Subsequent to receiving no-shipment certifications from the No Shipment Respondents, the Department examined entry statistics obtained from CBP. The Department also issued no-shipment inquiries to CBP, asking it to provide any information contrary to our preliminary findings of no entries of subject merchandise for merchandise manufactured and shipped by the above companies.<sup>14</sup> For nine companies, we did not receive any response from CBP, thus indicating that there were no entries of subject merchandise into the United States exported by these companies. CBP did indicate potential entries of nails during the POR for four companies. The Department requested CBP entry packages for the four companies. Between November 24, 2010 and March 2, 2011, we placed these entry packets on the record and

requested comments from interested parties.<sup>15</sup> After reviewing the responses, and the corrected entry documents, we preliminarily conclude that these companies did not have entries of subject merchandise during the POR. Consequently, we are preliminarily rescinding the reviews with respect to the No Shipment Respondents.

### Facts Otherwise Available

Section 776(a)(1) of the Act mandates that the Department use facts available (“FA”) if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use FA where an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.<sup>16</sup>

In this case, two of the mandatory respondents, Stanley and Jinchi, used unaffiliated tollers for production of tolled intermediate inputs. Jinchi was unable to obtain the factors of production (“FOPs”) from any of its tollers and Stanley was unable to obtain the FOPs from a number of its galvanizing tollers. Both respondents attempted to obtain the FOPs from their unaffiliated tollers and documented these attempts.<sup>17</sup> We do not find that they failed to cooperate by not acting in the best of their abilities. Consistent with our treatment of missing tolled FOPs of an intermediate input in the first administrative review,<sup>18</sup> the

<sup>9</sup> See Memorandum regarding: Respondent Selection for the Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China, dated December 16, 2010 (“First Respondent Selection Memo”).

<sup>10</sup> See Memorandum regarding: Second Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China: Replacement of Respondent Selected for Individual Examination, dated January 21, 2011 (“Second Respondent Selection Memo”).

<sup>11</sup> See *Tianjin Tiancheng Pharmaceutical Co. v. the United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005).

<sup>12</sup> See *Hebei New Donghua Amino Acid Co. v. the United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005).

<sup>13</sup> See Memorandum regarding: *Bona Fide* Sales Analysis and Intent to Rescind the Review with Respect to Shanghai Colour, dated August 31, 2011.

<sup>14</sup> See Memoranda to Michael Walsh, Director, AD/CVD/Revenue Policy & Programs, from Jim Doyle, Office Director, dated between October 28, 2010, and December 17, 2010, Request for U.S. Entry Documents: Certain Steel Nails from the People’s Republic of China.

<sup>15</sup> See Second Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China (“PRC”): No Shipment Supplemental Questionnaire Letters from the Department of Commerce, to Besco, CPI, China Staple, and Tengyu, dated between November 24, 2010, and March 2, 2011.

<sup>16</sup> See Statement of Administrative Action, accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103-316, 870 (1994) (“SAA”); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000).

<sup>17</sup> See Stanley’s Supplemental Section D at 1–8, and Supplemental Section D at 1–17, dated May 13, 2011; Jinchi’s Supplemental Sections C&D at Exhibits 17 and 19, dated May 16, 2011.

<sup>18</sup> See *Certain Steel Nails from the People’s Republic of China: Final Results of the First*

Department has preliminarily applied neutral FA (facts available without an adverse inference) in accordance with section 776(a)(1) of the Act. As neutral FA for Jinchi, the Department is using Jinchi's own production experience because Jinchi also performs the same production steps in-house as the tollers. As neutral FA for Stanley, the Department is using the reported FOPs from Stanley's galvanizers because Stanley did not perform galvanizing itself.

Additionally, all three of the mandatory respondents purchased subject merchandise nails from unaffiliated producers, but were unable to obtain the FOPs for all or a portion of the purchased nails. Hongli eventually was able to obtain the FOPs but because they were submitted to the Department unsolicited and untimely, the Department rejected these FOPs.<sup>19</sup> Because the respondents attempted to obtain the FOPs from the unaffiliated producers and documented these attempts,<sup>20</sup> we do not find that they failed to cooperate by not acting in the best of their abilities. Therefore, for the preliminary results the Department has applied neutral FA in accordance with section 776(a)(1) of the Act. However, after the preliminary results, we intend to issue questionnaires directly to the unaffiliated producers requesting the FOP data. For Hongli and Jinchi, because they do not produce the same type of nails that they purchased from the unaffiliated suppliers (*i.e.*, masonry nails cut from steel plate), the Department will apply as neutral FA the weighted average margin calculated for these respondents' other U.S. sales of subject merchandise reported by Hongli and Jinchi. As neutral FA for Stanley, the Department will use Stanley's own production data, as it produces the same type of nails for which it was unable to obtain the FOP data.

### Scope of the Order

The merchandise covered by this proceeding includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. 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 have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. 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 shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this proceeding are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: (1) Non-collated (*i.e.*, hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500" to 8", inclusive; and an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual washer or cap diameter of 0.900" to 1.10", inclusive; (2) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 4", inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive; (3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 1.75", inclusive; an actual shank diameter of 0.116" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive; and (4) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth

or spiral shank, a galvanized finish, an actual length of 1.75" to 3", inclusive; an actual shank diameter of 0.131" to 0.152", inclusive; and an actual head diameter of 0.450" to 0.813", inclusive.<sup>21</sup>

Also excluded from the scope of this proceeding are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this proceeding are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this proceeding are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of this proceeding are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this proceeding are fasteners having a case hardness greater than or equal to 50 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. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

### Surrogate Country and Surrogate Value Data

On February 1, 2011, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value data.<sup>22</sup> On March 1, 2011, Petitioner, Hongli, and Jinchi submitted surrogate country comments. For a detailed discussion of the selection of the surrogate country, see "Surrogate Country" section below. On May 2, 2011, the Department

<sup>21</sup> As the result of a changed circumstances review, the Department partially revoked the order with respect to these four specific types of steel nails, effective August 1, 2009. See *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 76 FR 30101 (May 24, 2011).

<sup>22</sup> See The Department's Letter regarding: Antidumping Duty Review of Certain Steel Nails from the People's Republic of China ("PRC"); Surrogate Country List, attaching January 31, 2011, Memorandum to Alex Villanueva, Program Manager, Office 9, AD/CVD Operations, from Carole Showers, Director, Office for Policy, Request for List of Surrogate Countries for an Antidumping Duty Review of the Antidumping Duty Order on Certain Steel Nails ("Nails") from the People's Republic of China ("Surrogate Country List").

*Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011) and accompanying Issues and Decision Memorandum at Comment 17.

<sup>19</sup> See Letter to Hongli, regarding Antidumping Duty Administrative Review of Certain Nails from the People's Republic of China: Rejection of Untimely and Unsolicited Information, dated June 30, 2011.

<sup>20</sup> See Stanley's Supplemental Section D at 1-8, and Supplemental Section D at 1-7, dated May 13, 2011; Hongli's Section C&D at 2, dated February 2, 2011; Jinchi's Supplemental Sections C&D at Exhibits 17 and 19, dated May 16, 2011.

received surrogate value information from interested parties.<sup>23</sup> All the surrogate values placed on the record were obtained from sources in India.<sup>24</sup> Between May 12, 2011, and June 24, 2011, parties submitted additional arguments and data regarding the selection and calculation of the surrogate values.<sup>25</sup>

### Non-Market Economy (“NME”) Country Status

The Department considers the PRC to be an NME country.<sup>26</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this review. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results and calculated normal value in accordance with section 773(c) of the Act, which applies to all NME countries.

### Surrogate Country

When the Department reviews imports from an NME country and the available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer’s factors of production (“FOPs”), to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Philippines, Indonesia, Ukraine, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See* Surrogate Country List.

Based on publicly available information placed on the record, the Department determines India to be a reliable source for surrogate values

<sup>23</sup> See Letters to the Secretary of Commerce, Surrogate Value Submissions, from Wiley Rein and Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, dated May 2, 2011.

<sup>24</sup> See *id.*

<sup>25</sup> See Letters to the Secretary of Commerce, Rebuttal Surrogate Value Submissions, from Wiley Rein and Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, dated May 12, 2011, through July 15, 2011.

<sup>26</sup> See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People’s Republic of China*, 72 FR 60632 (October 25, 2007) (“CFS Paper”).

because India is at a comparable level of economic development, pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data with which to value FOPs. *See* Surrogate Country List. Furthermore, all the surrogate values placed on the record by the parties were obtained from sources in India. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department’s criteria for surrogate country selection. India is also the surrogate country the Department selected in the last administrative review and investigation.<sup>27</sup>

### Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.<sup>28</sup> Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (“*Sparklers*”), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) (“*Silicon Carbide*”). However, if the Department determines that a company is wholly foreign-owned or located in a market economy (“ME”), then a separate rate analysis is not necessary to determine whether it is independent from government control. *See, e.g., PET Film*, 73 FR at 55040. In addition to the three mandatory respondents, Stanley, Hongli, and Jinchi, the Department received separate rate applications (“SRAs”) or certifications (“SRCs”) from 15 companies (the “Separate Rate Applicants”).<sup>29</sup> Because Stanley is

<sup>27</sup> See *Investigation*, 73 FR at 33980 and *1st Review*, 76 FR at 16381.

<sup>28</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008) (“*PET Film*”).

<sup>29</sup> These companies include: (1) Dezhou Hualude Hardware Products Co., Ltd.; (2) Hengshui Mingyao Hardware & Mesh Products Co., Ltd.; (3) Huanghua Jinhai Hardware Products Co., Ltd.; (4) Huanghua Xionghua Hardware Products Co., Ltd.; (5) Koram Panagene Co., Ltd.; (6) Qingdao D & L Group Ltd.;

wholly foreign-owned, a separate-rate analysis is not necessary to determine whether it is independent from government control, so we preliminarily grant Stanley a separate rate. In contrast, because Hongli, Jinchi, and the Separate Rate Applicants have all stated that they are either joint ventures between Chinese and foreign companies, or are wholly Chinese-owned companies, the Department must analyze whether these companies can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies, and; (3) other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589.

The evidence submitted by Hongli, Jinchi, and the Separate Rate Applicants supports a preliminary finding of absence of *de jure* governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter’s business and export licenses; (2) applicable legislative enactments decentralizing control of the companies; and (3) other formal measures by the government decentralizing control of companies. *See* each company’s SRA, SRC, and/or Section A response, dated November 3, 2010, through February 28, 2011 (where each individually-reviewed or separate-rate respondent stated that it had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations).

#### 2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other

(7) Romp (Tianjin) Hardware Co., Ltd.; (8) Shandong Dinglong Import & Export Co., Ltd.; (9) Shanghai Curvet Hardware Products Co., Ltd.; (10) Shanghai Jade Shuttle Hardware Tools Co., Ltd.; (11) Shanghai Yueda Nails Industry Co., Ltd.; (12) Shanxi Tianli Industries Co.; (13) Tianjin Lianda Group Co., Ltd.; (14) Tianjin Universal Machinery Imp & Exp Corporation; and (15) Tianjin Zhonglian Metals Ware Co., Ltd.

agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>30</sup> The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for the individually-reviewed respondents and Separate Rate Applicants, the evidence on the record supports a preliminary finding of absence of *de facto* governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements, and; (4) each exporter has autonomy from the government regarding the selection of management. See each company's SRA, SRC, and/or Section A response, dated November 3, 2010, through February 28, 2011.

The evidence placed on the record of this investigation by the individually-reviewed respondents and the Separate Rate Applicants demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers and Silicon Carbide*. As a result, we have preliminarily determined that it is appropriate to grant the Separate Rate Applicants a margin based on the experience of the individually-reviewed respondents.

#### Calculation of Margin for Separate Rate Companies

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to

<sup>30</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's practice in this regard, in reviews involving limited respondent selection based on exporters accounting for the largest volume of trade, has been to average the rates for the selected companies, excluding zero and *de minimis* rates and rates based entirely on facts available.<sup>31</sup> Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents, including "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." In this instance, consistent with our practice, we have preliminarily established a margin for the Separate Rate Applicants based on the rate we calculated for the mandatory respondents whose rates were not zero, *de minimis*, or based entirely on facts available.<sup>32</sup>

#### PRC-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents using CBP import data. See First and Second Respondent Selection Memos. In this case, we made available to the companies who were not selected, the separate rates application and certification, which were put on the Department's Web site. See *2nd AR Initiation*. Because some parties for which a review was requested did not apply for separate rate status, the PRC-Wide entity is considered to be part of this review.<sup>33</sup> The following companies did not apply for separate rates and are

<sup>31</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273, 52275 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6.

<sup>32</sup> See, e.g., *Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke*, In Part, 75 FR 11855, 11859 (March 12, 2010).

<sup>33</sup> See, e.g., *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 64930, 64933 (November 6, 2006).

thus considered to be part of the PRC-wide entity:

- (1) Aironware (Shanghai) Co., Ltd.
- (2) Beijing Daruixing Global Trading Co., Ltd.
- (3) Beijing Daruixing Nail Products Co., Ltd.
- (4) Beijing Hong Sheng Metal Products Co., Ltd.
- (5) Beijing Tri-Metal Co., Ltd.
- (6) Cana (Tianjin) Hardware Ind., Co., Ltd.
- (7) China Silk Trading & Logistics Co., Ltd.
- (8) Chongqing Hybest Tools Group Co., Ltd.
- (9) CYM (Nanjing) Nail Manufacture Co., Ltd.
- (10) Faithful Engineering Products Co., Ltd.
- (11) Handuk Industrial Co., Ltd.
- (12) Hong Kong Yu Xi Co., Ltd.
- (13) Huanghua Jinhai Metal Products Co., Ltd.
- (12) Huanghua Huarong Hardware Products Co., Ltd.
- (13) Jinding Metal Products Ltd.
- (14) Kyung Dong Corp.
- (15) Nanjing Dayu Pneumatic Gun Nails Co., Ltd.
- (16) Qingdao Jisco Co., Ltd.
- (17) Rizhao Handuck Fasteners Co., Ltd.
- (18) Senco-Xingya Metal Products (Taicang) Co., Ltd.
- (19) Shandong Minimetals Co., Ltd.
- (20) Shanghai Chengkai Hardware Product Co., Ltd.
- (21) Shanghai Seti Enterprise International Co., Ltd.
- (22) Shanxi Tianli Enterprise Co., Ltd.
- (23) Shouguang Meiqing Nail Industry Co., Ltd.
- (24) Sinochem Tianjin Imp & Exp Shenzhen Corp.
- (25) Superior International Australia Pty Ltd.
- (26) Suzhou Xingya Nail Co., Ltd.
- (27) Tianjin Baisheng Metal Products Co., Ltd.
- (28) Tianjin Jurun Metal Products Co., Ltd.
- (29) Wintime Import & Export Corporation Limited of Zhongshan
- (30) Wuxi Qiangye Metalwork Production Co., Ltd.
- (31) Xuzhou CIP International Group Co., Ltd.
- (32) Yitian Nanjing Hardware Co., Ltd.
- (33) Zhejiang Gem-Chun Hardware Accessory Co., Ltd.
- (34) Zhongshan Junlong Nail Manufactures Co., Ltd.

#### Date of Sale

The date of sale is generally the date on which the parties agree upon all substantive terms of the sale, which

normally includes the price, quantity, delivery terms and payment terms.<sup>34</sup>

19 CFR 351.401(i) states that, “{i}n identifying the date of sale of the merchandise under consideration 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 normal course of business. The Secretary 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 the exporter or producer establishes the material terms of sale.”<sup>35</sup> However, as noted by the Court of International Trade (“CIT”) in *Allied Tube*, a party seeking to establish a date of sale other than invoice date bears the burden of establishing that “a different date better reflects the date on which the exporter or producer establishes the material terms of sale.” See *Allied Tube*, 132 F. Supp. 2d at 1090 (quoting 19 CFR 351.401(i)).

Stanley reported that the earlier of invoice date or shipment date is the appropriate date of sale. See Stanley’s section A questionnaire response at 27–29, dated January 21, 2011, and Stanley’s supplemental section A questionnaire response at 15–17, dated March 4, 2011. Consistent with the regulatory presumption for invoice date and because the Department found no evidence on the record contrary to Stanley’s claims, for these preliminary results, the Department used the invoice date as the date of sale. Consistent with the Department’s practice, for those sales where shipment date preceded invoice date, the Department used the shipment date as the date of sale.<sup>36</sup>

Hongli and Jinchi reported that the PRC Export Declaration is the appropriate date of sale. See Hongli’s section A questionnaire response at 12, dated January 21, 2011, and Hongli’s supplemental A questionnaire response at 12–14, dated March 16, 2011, and Jinchi’s section A questionnaire response at 11, dated February 28, 2011, and Jinchi’s supplemental section A at 1, dated April 7, 2011. As explained above, the Department will not use a date other than the date of invoice

unless a party provides sufficient evidence that a different date better reflects the date on which the material terms of sale were established. See 19 CFR 351.401(i). Hongli and Jinchi did not provide such evidence. Instead, Hongli and Jinchi merely asserted that the PRC Export Declaration date is the correct date of sale without any discussion of when the material terms of sale such as price and quantity were established for their sales. Therefore, given the respondents’ failure to demonstrate that a date other than invoice date better reflects the date on which the material terms of sale were established the Department is following the presumption established in its regulation and using the invoice date as the date of sale.

#### Fair Value Comparison

In accordance with section 751(a)(2)(A) of the Act, to determine whether sales of nails to the United States by Stanley, Hongli, or Jinchi, were made at less than normal value, we compared the export price (“EP”) or constructed export price (“CEP”), as appropriate, to NV, as described in the “U.S. Price,” and “Normal Value” sections of this notice.

#### U.S. Price

##### A. Export Price

For Hongli and Jinchi, in accordance with section 772(a) of the Act, we based the U.S. price for sales on EP because the first sale to an unaffiliated purchaser in the United States was made prior to importation, and the use of CEP was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP by deducting the applicable movement expenses and adjustments from the gross unit price. We based these movement expenses on surrogate values where a PRC company provided the service and was paid in Renminbi (“RMB”). See “Factors of Production” section below for further discussion. For details regarding our EP calculations, see Memorandum regarding: Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China: Tianjin Jinchi Metal Products Co., Ltd., dated concurrently with this notice; see also Memorandum regarding: Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China: Tianjin Jinghai County Hongli Industry and Business Co., Ltd.,” dated concurrently with this notice.

#### B. Constructed Export Price

In accordance with section 772(b) of the Act, we based the U.S. price for Stanley’s sales on CEP because the first sale to an unaffiliated customer was made by Stanley’s U.S. affiliate. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting the applicable expenses from the gross unit price charged to the first unaffiliated customer in the United States. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the applicable selling expenses associated with economic activities occurring in the United States. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values or actual expenses, where appropriate. For details regarding our CEP calculations, and for a complete discussion of the calculation of the U.S. price for Stanley, see Memorandum regarding: Antidumping Duty Administrative Review of Certain Steel Nails from the People’s Republic of China: Stanley,” dated concurrently with this notice.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.<sup>37</sup>

#### Factor Valuation Methodology

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from an ME country and pays for it in an ME currency, the Department may value the factor using the actual price paid for the input. During the POR, Stanley reported

<sup>34</sup> See *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007) and accompanying Issues and Decision Memorandum at Comment 1; see also *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 Comment 2.

<sup>35</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1092 (CIT 2001) (“*Allied Tube*”).

<sup>36</sup> See 19 CFR 351.401(i).

<sup>37</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006).

that it purchased certain inputs from an ME supplier and paid for the inputs in an ME currency. See Stanley's Supplemental Section D, dated May 13, 2011. The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006) (“*Antidumping Methodologies*”).

In this case, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. See *Antidumping Methodologies*. When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33 percent threshold. See *Antidumping Methodologies*.

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the respondents. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting surrogate values, the Department is tasked with using the best available information on the record. See section 773(c) of the Act. To satisfy this statutory requirement, we compared the quality, specificity, and contemporaneity of the potential surrogate value data.<sup>38</sup> The

Department's practice is to select, to the extent practicable, surrogate values which are: publicly available; representative of non-export, broad market average values; contemporaneous with the POR; product-specific; and exclusive of taxes and import duties.<sup>39</sup> As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the surrogate values derived from Indian Import Statistics a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). For a detailed description of all surrogate values selected in these preliminary results, see Memorandum regarding: Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Preliminary Results, dated concurrently with this notice (“Preliminary Surrogate Value Memo”).

For these preliminary results, we concluded that data from Indian Import Statistics and other publicly available Indian sources constitute the best available information on the record for the surrogate values for the respondents' raw materials, packing, by-products, energy, and the surrogate financial ratios. The record shows that data in the Indian Import Statistics, as well as those from the other publicly available Indian sources, are contemporaneous with the POR, product-specific, tax-exclusive, and represent a broad market average. See Preliminary Surrogate Value Memo. In those instances where we could not obtain publicly available information contemporaneous with the POR we adjusted the surrogate values, consistent with our practice using where appropriate the Indian Wholesale Price Index (“WPI”) as published in the

Memorandum at Comment 6; *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>39</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

International Financial Statistics of the International Monetary Fund.<sup>40</sup>

The Department used Indian import data from the Global Trade Atlas (“GTA”) published by Global Trade Information Services, Inc., which is sourced from the Directorate General of Commercial Intelligence & Statistics, Indian Ministry of Commerce, to determine the surrogate values for certain raw materials, by-products, and packing material inputs. The Department has disregarded statistics from NMEs, countries with generally available export subsidies, and countries listed as “unidentified” in GTA in calculating the average value. In accordance with the *Omnibus Trade and Competitiveness Act of 1988* legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.<sup>41</sup> In this regard, the Department has previously found that it is appropriate to disregard such prices from e.g., Indonesia, South Korea and Thailand, because we have determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>42</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POI, the Department finds that it is reasonable to infer that all exporters from Indonesia, South Korea and Thailand may have benefitted from these subsidies.

Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an “unspecified” country from the average value, because the Department could not be certain that they were not from

<sup>40</sup> See, e.g., *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 69 FR 46498, 46500 (August 3, 2004).

<sup>41</sup> Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

<sup>42</sup> See, e.g., *Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

<sup>38</sup> See, e.g., *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision

either an NME country or a country with general export subsidies.<sup>43</sup>

The Department valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided.

The Department valued water using data from the Maharashtra Industrial Development Corporation (“MIDC”) as it includes a wide range of industrial water tariffs. To value water, we used the average rate for industrial use from MIDC water rates at <http://www.midcindia.org>.

The Department valued truck freight expenses using a per-unit average rate calculated from data on the Infobanc Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POR, the Department deflated the rate using WPI.

To value factory overhead, selling, general, and administrative (“SG&A”) expenses, and profit, the Department used the audited financial statements of Bansidhar Granites, Nasco Steel Pvt Ltd., and J&K Wire and Steel.

**Labor**

Section 773(c) of the Act provides that the Department will value the FOPs in NME cases using the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the

administering authority. The Act requires that when valuing FOPs, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise. See section 773(c)(4) of the Act.

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita Gross National Income (“GNI”) and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent’s cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (“CAFC”), in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) (“*Dorbest*”), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC’s ruling in *Dorbest*, the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources.<sup>44</sup>

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>45</sup> In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (“Yearbook”).

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies*. To value the

respondent’s labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under ISIC–Revision 3 (“Manufacture of Fabricated Metal Products, Except Machinery and Equipment”) to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Sub-Classification 28 of the ISIC–Revision 3 standard, in accordance with section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is \$1.22. A more detailed description of the wage rate calculation methodology is provided in the Preliminary Surrogate Value Memo.

As stated above, the Department used India ILO data reported under Chapter 6A of Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Because the financial statements used to calculate the surrogate financial ratios include itemized detail of labor costs, the Department made adjustments to certain labor costs in the surrogate financial ratios. See *Labor Methodologies*, 76 FR at 36093.

**Currency Conversion**

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

The Department preliminarily determines that the following weighted-average dumping margins exist:

Manufacturer/Exporter	Weighted average margin (Percent)
(1) The Stanley Works (Langfang) Fastening Systems Co., Ltd. (“Stanley Langfang”), and Stanley Black & Decker (“The Stanley Works”)/Stanley Fastening Systems, LP <sup>46</sup> .....	1.24
(2) Tianjin Jinghai County Hongli Industry and Business Co., Ltd. ....	19.59
(3) Tianjin Jinchu Metal Products Co., Ltd. ....	31.27
(4) Dezhou Hualude Hardware Products Co., Ltd. ....	7.60
(5) Hengshui Mingyao Hardware & Mesh Products Co., Ltd. ....	7.60
(6) Huanghua Jinhai Hardware Products Co., Ltd. ....	7.60

<sup>43</sup> See *Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China: Notice of Preliminary Results of the New Shipper Review*, 75 FR 47270, 47273 (August 5, 2010); see also *Drill Pipe From the People’s Republic of China: Preliminary Determination of Sales at Less Than*

*Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 75 FR 51004, 51006 (August 18, 2010).

<sup>44</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies:*

*Valuing the Factor of Production: Labor, Request for Comment*, 76 FR 9544 (February 18, 2011).

<sup>45</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).



Manufacturer/Exporter	Weighted average margin (Percent)
(7) Huanghua Xionghua Hardware Products Co., Ltd. ....	7.60
(8) Koram Panagene Co., Ltd. ....	7.60
(9) Qingdao D & L Group Ltd. ....	7.60
(10) Romp (Tianjin) Hardware Co., Ltd. ....	7.60
(11) Shandong Dinglong Import & Export Co., Ltd. ....	7.60
(12) Shanghai Curvet Hardware Products Co., Ltd. ....	7.60
(13) Shanghai Jade Shuttle Hardware Tools Co., Ltd. ....	7.60
(14) Shanghai Yueda Nails Industry Co., Ltd. ....	7.60
(15) Shanxi Tianli Industries Co. ....	7.60
(16) Tianjin Lianda Group Co., Ltd. ....	7.60
(17) Tianjin Universal Machinery Imp & Exp Corporation .....	7.60
(18) Tianjin Zhonglian Metals Ware Co., Ltd. ....	7.60
PRC-Wide Rate .....	118.04

### Disclosure and Public Hearing

The Department intends to disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.<sup>47</sup>

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. In regard to this publicly available information and in accordance with 19 CFR 351.301(c)(1), interested parties may submit factual information to rebut, clarify, or correct such factual information no later than ten days after the date such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1).<sup>48</sup> Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary

results of review.<sup>49</sup> Rebuttal briefs and rebuttals to written comments must be limited to issues raised in such briefs or comments and must be filed no later than five days after the deadline for filing case briefs.<sup>50</sup> The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculate importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales to a particular importer/customer, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).<sup>51</sup> To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. Where an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>52</sup>

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 118.04

<sup>46</sup> Stanley Fastening Systems LP and Stanley Fastening LP, two names that were initiated upon, appear to be slight variations of The Stanley Works (Langfang) Fastening Systems Co., Ltd., and Stanley Black & Decker/Stanley Fastening Systems, LP (collectively "Stanley"). As such, the Department is assigning Stanley's rate to both variations of the name.

<sup>47</sup> See 19 CFR 351.224(b).

<sup>48</sup> See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>49</sup> See 19 CFR 351.309(c).

<sup>50</sup> See 19 CFR 351.309(d).

<sup>51</sup> See 19 CFR 351.212(b)(1).

<sup>52</sup> See 19 CFR 351.106(c)(2).

percent;<sup>53</sup> and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1), 751(a)(2)(B) and 777(i)(1) of the Act, 19 CFR 351.221(b)(4), and 19 CFR 351.214.

Dated: August 31, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-23148 Filed 9-9-11; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before October 3, 2011. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and

5 p.m. at the U.S. Department of Commerce in Room 3720.

*Docket Number:* 11-056. *Applicant:* Battelle Energy Alliance, 2525 North Freemont Ave., Idaho Falls, ID 83415.

*Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument will be used to analyze nuclear fuels and materials for energy production. The experiments will involve structural and chemical analyses of materials on the atomic resolution scale. Current U.S. manufactured instruments do not reach the sensitivity level of this instrument. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 16, 2011.

*Docket Number:* 11-057. *Applicant:* Battelle Energy Alliance, 2525 North Freemont Ave., Idaho Falls, ID 83415.

*Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to analyze nuclear fuels and materials for energy production. The experiments will involve structural and chemical analyses of materials on the electron based nanometer scale. Current U.S. manufactured instruments do not reach the sensitivity level of this instrument. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 15, 2011.

*Docket Number:* 11-058. *Applicant:* University of Texas at Austin, Texas Materials Institute, 1 University Station C2201, Austin, TX 78712. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument will be used to study materials such as polymers, metals, ceramics, and biological specimens like tissues, viruses, and bacteria, to determine the morphology of multiphase materials, determine the particle size and size distribution, probe the sample's surface topography, and determine the chemical composition of materials at nanometer scale. Scanning electron microscopy is the only technique that allows direct imaging of material features within the nanometer size range. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 9, 2011.

Dated: September 2, 2011.

**Gregory Campbell,**

*Director, IA Subsidies Enforcement Office.*

[FR Doc. 2011-23256 Filed 9-9-11; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Decision of Panel.

**SUMMARY:** On August 19, 2011, the binational panel issued its decision in the review of the final results of the 2004/2005 antidumping administrative review made by the U.S. Department of Commerce, respecting Stainless Steel Sheet and Strip in Coils from Mexico, NAFTA Secretariat File Number USA-MEX-2007-1904-01. The binational panel affirmed in part and remanded in part the Commerce's determination. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

**FOR FURTHER INFORMATION CONTACT:**

Ellen M. Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

<sup>53</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502, 24505 (May 10, 2005), for an explanation on the derivation of the PRC-wide rate.