

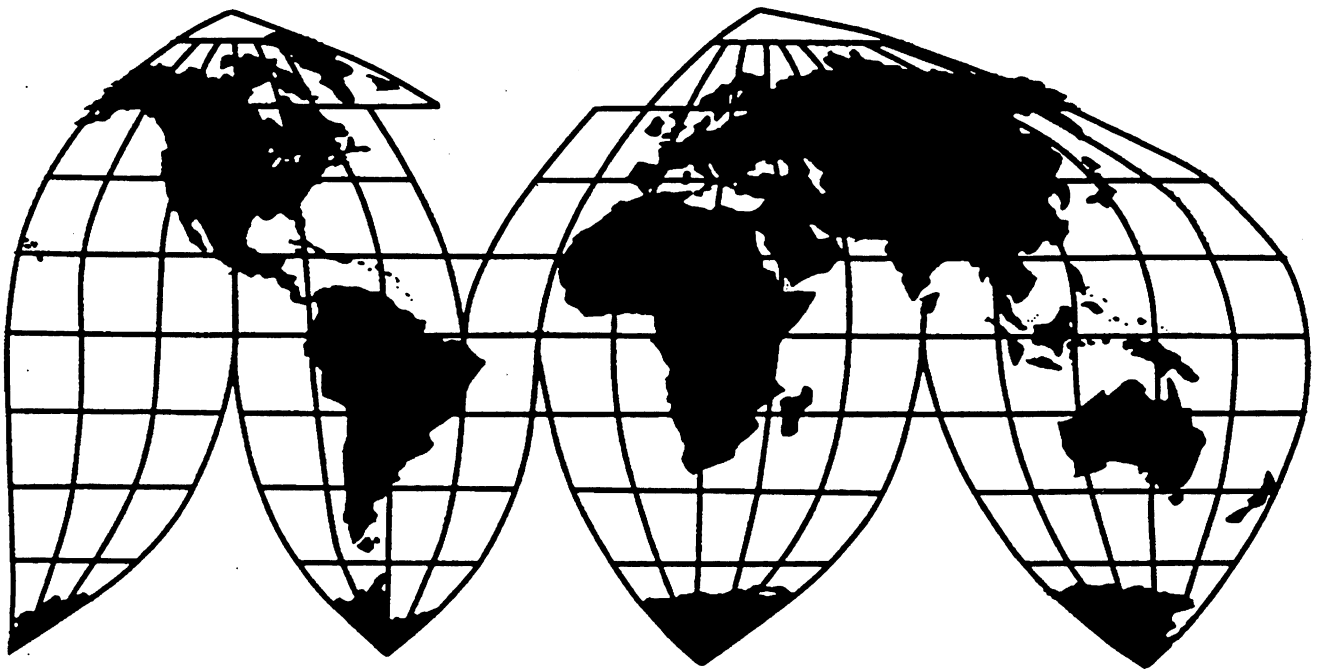
# **Collated Roofing Nails From China and Taiwan**

Investigations Nos. 731-TA-757 and 759 (Final)

**Publication 3070**

**November 1997**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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## Collated Roofing Nails From China and Taiwan



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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.



# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-757 and 759 (Final)

## COLLATED ROOFING NAILS FROM CHINA AND TAIWAN

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China and Taiwan of collated roofing nails (“CR nails”),<sup>3</sup> provided for in subheading 7317.00.55 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).<sup>4</sup>

### BACKGROUND

The Commission instituted these investigations effective November 26, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by the Paslode Division of Illinois Tool Works, Vernon Hills, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of CR nails from China and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission’s investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of May 27, 1997 (62 FR 28731). The hearing was held in Washington, DC, on September 30, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Commissioner Carol T. Crawford dissenting.

<sup>3</sup> CR nails are roofing nails made of steel, having a length of  $1\frac{13}{16}$  inch to  $1\frac{13}{16}$  inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

<sup>4</sup> The Commission further determines, pursuant to 19 USC § 1673(b)(4)(B), that it would not have found material injury by reason of subject imports but for the suspension of liquidation of the merchandise under investigation.



## VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that an industry in the United States is threatened with material injury by reason of imports of collated roofing nails from China and Taiwan that have been found by the Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”).<sup>1</sup>

### I. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the “domestic like product” and the “industry.” Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>2</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”<sup>3</sup>

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and we apply the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>4</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>5</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>6</sup> Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>7</sup>

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<sup>1</sup> Commissioner Crawford determines that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of the subject merchandise from China and Taiwan. *See* Dissenting Views of Commissioner Carol T. Crawford.

<sup>2</sup> 19 U.S.C. § 1677(4)(A).

<sup>3</sup> 19 U.S.C. § 1677(10).

<sup>4</sup> *See, e.g., Nippon Steel Corp. v. United States*, 19 CIT \_\_\_, Slip Op. 95-57 at 11 (Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. *See id.* at 11 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>5</sup> *See, e.g., S. Rep. No. 249*, 96th Cong., 1st Sess. 90-91 (1979).

<sup>6</sup> *Torrington Co. v. United States*, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991).

<sup>7</sup> *Hosiden Corp. v. Advanced Display Manufacturers*, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

## B. Domestic Like Product Issues

In its final determinations, Commerce defined the scope of merchandise subject to investigation as

[collated roofing] nails made of steel, having a length of 13/16 inch to 1-13/16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires ("CR nails").<sup>8</sup>

CR nails are used in pneumatic nail-driving tools ("nail guns") to fasten shingles and flashing materials to roofs.<sup>9</sup>

We have considered two principal domestic like product issues in the final phase of these investigations, both of which concern whether CR nails produced by the petitioner (the Paslode Division of Illinois Tool Works, Inc.) should be included in the same domestic like product as other domestically produced CR nails.<sup>10</sup> The first issue, which was raised by the respondents, involves whether petitioner's CR nails are "like" the merchandise subject to investigation. The second issue involves whether petitioner's CR nails and other domestic CR nails constitute two separate domestic like products.

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<sup>8</sup> Collated Roofing Nails from the People's Republic of China, 62 Fed. Reg. 51410, 51411 (Oct. 1, 1997) and Collated Roofing Nails from Taiwan, 62 Fed. Reg. 51427, 51427 (Oct. 1, 1997).

<sup>9</sup> Confidential Report ("CR") at I-3 to I-4, Public Report ("PR") at I-3.

<sup>10</sup> In our preliminary determinations, we declined to include hand-driven roofing nails ("bulk roofing nails") or collated roofing staples ("CR staples") in the domestic like product, because we found clear dividing lines between each of these products and CR nails. Collated Roofing Nails from China, Korea, and Taiwan, Inv. Nos. 731-TA-757-759 (Preliminary), USITC Pub. 3010 (Jan. 1997) ("Prelim. Deters.") at 4-7. No party in the final phase of these investigations has requested the Commission to include bulk roofing nails or CR staples in the domestic like product.

Additional information gathered during the final phase of these investigations regarding bulk roofing nails does not indicate that the domestic like product definition should be expanded to include bulk roofing nails. See CR at I-6, PR at I-4 to I-5, and the responses to the producers' and importers' questionnaires at pages 12 and 10, respectively (providing additional information regarding bulk roofing nails not materially different from that gathered in the preliminary determinations). With regard to CR staples, the information on the record is essentially the same as that gathered in the preliminary determinations. See CR at II-4 to II-5 and n.22, PR at II-3 and n.22, and transcript of September 30, 1997 hearing ("Hearing Tr.") at 18 (Heinlen) (providing no material information regarding CR staples not contained in the record of the preliminary investigations). Accordingly, for the reasons stated in the preliminary determinations, we determine that bulk roofing nails and CR staples are not included in the domestic like product in these investigations.

In the final phase of these investigations, we also considered whether roofing nails collated with a plastic belt ("plastic-collated roofing nails") should be included in the domestic like product. We find a clear dividing line between plastic-collated roofing nails and CR nails, and thus do not include them in the domestic like product. The two types of roofing nails are not interchangeable: plastic-collated roofing nails cannot function in standard nail guns, and CR nails cannot function in nail guns made for plastic-collated roofing nails. CR at I-5, PR at I-4. As a consequence, customers perceive that the two types of nails are not substitutable, due to the expense of the corresponding nail gun. CR at I-11 and II-5, PR at I-7 and II-3. The collating processes, equipment, and production employees used to make plastic-collated roofing nails are different from those used to make CR nails. CR at I-7, PR at I-5. Finally, the price of plastic-collated roofing nails is \*\*\* than the price of CR nails. CR at I-11, PR at I-8; \*\*\* at page 12; and memorandum to the File from T. Quilter (Oct. 20, 1997).

Respondents point to two alleged physical differences, which, they claim, limit the interchangeability of petitioner's CR nails with other CR nails, thereby justifying their exclusion from the domestic like product.<sup>11</sup> Respondents first argue that the location of the collating wires on petitioner's CR nails is different than other CR nails.<sup>12</sup> In the petitioner's product, the collating wires are attached closer to the head of the nail than are the collating wires used in other producers' CR nails.<sup>13</sup> The placement of the collating wires is uniform among all other producers.<sup>14</sup>

We decline to exclude petitioner's CR nails from the domestic like product based on the position of the collating wires on the nails. The statute directs the Commission to define a domestic like product that is "like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."<sup>15</sup> Commerce has defined the article subject to investigation as "CR nails made of steel, having [certain dimensions], that are collated with two wires."<sup>16</sup> The Commission generally defines the domestic like product by reference to the subject merchandise as defined by Commerce.<sup>17</sup> Petitioner's CR nails are like the subject merchandise as defined by Commerce, despite the difference in the location of the collating wires relative to the other domestically produced CR nails.

Respondents also argued that petitioner's CR nails differ from other producers' CR nails with regard to the angle at which the roofing nails are oriented relative to the collating wires.<sup>18</sup> Petitioner responded that there was no difference in the angle of collation during the period of investigation, although it concedes that until 1992 its CR nails were collated at a 10-degree angle.<sup>19</sup> Petitioner explained that it began producing CR nails with the 15-degree, universal angle when it introduced a new nail gun model in 1992, prior to the beginning of the period of investigation.<sup>20</sup> The record also reflects that the packaging materials for petitioner's nail gun and CR nails indicate that petitioner's CR nails are collated at the 15-

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<sup>11</sup> Prehearing Brief of CANA (Tianjin) Hardware Industrial Co., Ltd.; Wuxi Jiangchao Metalwork Co., Ltd.; and Beijing Central Top Metal Co., Ltd. ("Respondents' Prehearing Brief") at 2-8.

<sup>12</sup> Respondents' Prehearing Brief at 3.

<sup>13</sup> CR at I-5, PR at I-4.

<sup>14</sup> CR at II-6, PR at II-4.

<sup>15</sup> 19 U.S.C. § 1677(4)(A).

<sup>16</sup> 62 Fed. Reg. 51427 (Taiwan), 62 Fed. Reg. 51411 (China).

<sup>17</sup> See Certain Pasta from Italy and Turkey, Inv. Nos. 701-TA-365-366 (Preliminary) and 731-TA-734-735 (Preliminary), USITC Pub. 2905 (July 1995) at I-10 to I-11 (finding a domestic like product for oriental-style noodles, which come within Commerce's definition of the subject imports, but which were not actually imported from the subject countries during the period of investigation); Institutional Melamine Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Preliminary) USITC Pub. 3016 (Feb. 1997) at 5 (indicating that the domestic like product must be defined by reference to the scope of the investigation, as described by Commerce). In any event, the record indicates that the subject imports include a small amount of CR nails that are collated using the same high wire collation as petitioner. CR at II-6 n.25, PR at II-4 n.25.

<sup>18</sup> See Respondents' Prehearing Brief at 3, Respondents' Posthearing Brief at Exhibit 4 (containing a drawing indicating that the angle of collation is different in petitioner's CR nails, despite marking on the packing materials to the contrary), and Hearing Tr. at 69, 71 (Morrell).

<sup>19</sup> Hearing Tr. at 19, 56 (Heinlen), Petitioner's Posthearing Brief at 4-5 and Exhibit 5 at pages 1 and 4, Petitioner's Prehearing Brief at 6-7, Petitioner's Postconference Brief at 25.

<sup>20</sup> Hearing Tr. at 56 (Heinlen), Prehearing Brief at 6-7.

degree, universal angle.<sup>21</sup> Despite contrary claims by respondents, we find that no difference existed with regard to the angle of collation for CR nails manufactured during the period of investigation.<sup>22</sup> Accordingly, we decline to exclude petitioner's CR nails from the domestic like product based on the angle of collation.<sup>23 24</sup>

We next consider the Commission's traditional six factors to determine whether petitioner's CR nails and other producers' CR nails constitute two separate domestic like products.

*Physical characteristics and uses.* Petitioner's and other domestic producers' CR nails are nearly identical in physical characteristics and have the same uses. Both types of CR nails are galvanized steel wire nails that have large heads, are produced to the strict tolerances required to prevent jamming in nail guns, and are collated with two wires.<sup>25</sup> As noted above, petitioner's CR nails differ from other domestic producers' CR nails by the placement of the collating wires.<sup>26</sup> Nevertheless, we find the CR nails of petitioner and other domestic producers to be very similar in physical characteristics. With respect to uses, all CR nails are used in nail guns to fasten shingles and flashing materials to roofs.<sup>27</sup>

*Interchangeability.* The record is somewhat mixed regarding whether petitioner's and other producers' CR nails are interchangeable. Because CR nails are intended for use in nail guns, interchangeability encompasses two issues: whether petitioner's CR nails function acceptably (without

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<sup>21</sup> Respondents' Posthearing Brief at Exhibit 4, page 1 ("The current Paslode's carton is marking 15 degree . . . ."), Petitioner's Posthearing Brief at Exhibit 5, pages 4-5.

<sup>22</sup> Although we find the record mixed on whether petitioner's CR nails differ from other CR nails in the angle of collation, we find credible petitioner's explanation that it began producing CR nails with the universal angle of collation prior to the period of investigation. We place significant weight on the testimony presented at the hearing by a witness with an official capacity at Paslode as well as Paslode's nail gun and CR nail packaging materials, which indicate that Paslode has adopted the 15-degree, universal angle. The Commission is cognizant that the witness conceded he did not have direct knowledge of events in 1992, which was prior to his employment at Paslode. See Hearing Tr. at 19, 56 (Heinlen), Petition at App. 3, page 1. See Petitioner's Posthearing Brief at Exhibit 5, pages 4 & 5 (containing copies of packaging materials). We place less weight on the drawing prepared by respondents and the testimony of other witnesses with little access to information regarding Paslode's production decisions. Respondents' Posthearing Brief at Exhibit 4, Hearing Tr. at 69, 71 (Morrell).

<sup>23</sup> Even if we were persuaded that a difference in the angle of collation existed during the period of investigation, we would still find that petitioner's CR nails should not be excluded from the domestic like product, because petitioner's CR nails are like the subject merchandise as defined by Commerce. We also conclude that the alleged difference would not change our conclusion, based on our analysis of the six domestic like product factors discussed below, that there is a single domestic like product, which includes petitioner's CR nails. We note also that respondents characterized the alleged difference in the angle of collation as less significant than the difference in the placement of the collating wires. Respondents' Prehearing Brief at 3-8, Hearing Tr. at 86-87 (Morrell), Transcript of December 17, 1996 conference ("Conference Tr.") at 90-91 (Morrell). We note further that a witness for a respondent conceded at the hearing that petitioner's 7/8-inch and 1-inch CR nails function acceptably in other companies' nail guns, despite the alleged difference in the angle of collation. Hearing Tr. at 69-71, 86 (Morrell).

<sup>24</sup> Commissioner Crawford does not join in the conclusion that no differences existed in the angle of collation between Paslode's CR nails and other CR nails. She does, however, concur that a difference in the angle of collation does not support the exclusion of Paslode's CR nails from the like product definition.

<sup>25</sup> CR at I-4, PR at I-3.

<sup>26</sup> Commissioner Crawford also acknowledges the possibility of differences in the angle of collation between Paslode's CR nails and other CR nails.

<sup>27</sup> CR at I-3 to I-4, PR at I-3.

jamming) in nail guns made by other companies, and whether other producers' CR nails function acceptably in petitioner's nail guns.<sup>28</sup>

The record indicates that petitioner's 7/8-inch and 1-inch CR nails function without jamming in other manufacturers' nail guns.<sup>29</sup> These shorter CR nails account for approximately one quarter of domestic sales.<sup>30</sup> With regard to petitioner's longer CR nails, the record is mixed. A slight majority of purchasers questioned (13 of 23) indicated that petitioner's CR nails could be used interchangeably in other companies' nail guns.<sup>31</sup> Nine purchasers, however, indicated that petitioner's CR nails do not function in other companies' nail guns, and one purchaser indicated it did not know.<sup>32</sup> Two CR nail distributors gave conflicting testimony on the issue at the hearing.<sup>33</sup> The record also contains conflicting data from tests using petitioner's CR nails in other manufacturers' nail guns.<sup>34</sup>

Record evidence regarding the second issue -- whether other producers' CR nails function in petitioner's nail guns -- is also somewhat mixed. We consider this issue to be less significant because it appears that only a small proportion of the nail guns used during the period of investigation was made by petitioner.<sup>35</sup>

Most purchasers questioned (15 out of 23) indicated that other producers' CR nails functioned in petitioner's nail guns, although several added that only petitioner's newer model guns accepted the CR nails, and one added that the nail gun first required modification.<sup>36</sup> Three responded that other producers' CR nails did not function in petitioner's nail guns, and four indicated they did not know (one answered "yes and no").<sup>37</sup> The record indicates that other producers' CR nails functioned acceptably in two of petitioner's three nail guns in use during the period of investigation. Petitioner sold nail gun model PY134R until

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<sup>28</sup> It is undisputed that petitioner's CR nails function in nail guns made by petitioner and that other producers' CR nails function in any one of the other nail guns on the market.

<sup>29</sup> Hearing Tr. at 70 and 86 (Morrell).

<sup>30</sup> CR at V-4 and V-8 n.7, PR at V-3 and V-5 n.7 (indicating that the 1-inch CR nail makes up \*\*\* percent of the CR nails for which pricing data were available and that pricing data were available for \*\*\* percent of U.S. producers' domestic shipments); Hearing Tr. at 70 (Morrell).

<sup>31</sup> CR at I-10, PR at I-7. Petitioner testified that 60 to 80 percent of all its CR nails are used in nail guns manufactured by other companies. Hearing Tr. at 20 (Heinlen), 23 (Manfroni).

<sup>32</sup> CR at I-10, PR at I-7.

<sup>33</sup> Hearing Tr. at 23 (Manfroni), 70, 86 (Morrell).

<sup>34</sup> Petitioner's Posthearing Brief at Exhibit 5 and in submitted videotape (indicating that petitioner's CR nails function in nail guns made by other companies without jamming); and Respondents' Posthearing Brief at Exhibit 5 (indicating that petitioner's CR nails jammed at an unacceptable rate when fired in an Atro nail gun).

<sup>35</sup> See Conference Tr. at 88-89 (Morrell) (indicating that certain nail gun makers not including petitioner, Stanley-Bostitch, or International Staple and Machine, accounted for at least 50 percent of nail guns in use), and Petitioner's Posthearing Brief at Exhibits 5 & 6 and Respondents' Posthearing Brief at Exhibit 2, Hearing Tr. at 35 (Manfroni), 70 (Morrell) (identifying, collectively, at least 17 brands of nail guns).

<sup>36</sup> CR at II-7, PR at II-5.

<sup>37</sup> *Id.*

1993.<sup>38</sup> Both petitioner and respondents agree that this older model accepted other producers' CR nails.<sup>39</sup> Relatively few of this type of petitioner's nail gun, however, were probably in use except during the early part of the POI, given that the lifespan of a nail gun is approximately one-and-a-half to perhaps four years.<sup>40</sup> From 1992 until late 1996, petitioner sold model 3175R, which petitioner concedes could not accept other producers' CR nails unless the gun's feed claw was filed down by the purchaser.<sup>41</sup> This model presumably accounted for the majority of petitioner's nail guns in use during the period of investigation. In late 1996, petitioner began selling the 3175R model with a modified feed claw, allowing it to accept other producers' nails without modification.<sup>42</sup> Although this model was introduced late in the period of investigation, presumably not insignificant numbers were sold because of the relatively short lifespan of nail guns.

Based on the foregoing, particularly the fact that a majority of purchasers reported that petitioner's CR nails function in other companies' nail guns and that other companies' CR nails function in petitioner's nail guns, we find a moderate degree of interchangeability between petitioner's CR nails and other producers' CR nails, and thus fail to find a clear dividing line between these product on this basis.<sup>43</sup>

*Channels of Distribution.* Both petitioner's CR nails and other domestic producers' CR nails were sold through the same channels of distribution during the period of investigation.<sup>44</sup>

*Production facilities, processes, and production employees.* Nail-forming equipment is generic in nature, and can be used to form any type of collated nail, roofing or otherwise.<sup>45</sup> Thus, petitioner and other domestic producers of CR nails generally use the same type of production equipment and processes. Some minor production process differences exist, however, with regard to \*\*\*.<sup>46</sup>

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<sup>38</sup> Hearing Tr. at 37 (Heinlen) (indicating the introduction of the succeeding model in 1992); memorandum to the File regarding telephone conversation between \*\*\* and M. Diehl (clarifying that, despite the \*\*\*; and respondents' Posthearing Brief at "Answers to Questions Presented at the Hearing" at p. i.

<sup>39</sup> Hearing Tr. at 37 (Heinlen) and respondents' Posthearing Brief at "Answers to Questions Presented at the Hearing" pp. i and ii (both indicating that the PY134R accepted other producers' CR nails).

<sup>40</sup> Hearing Tr. at 39-40 (Manfroni) (indicating that the average lifespan of a nail gun is one-and-a-half to two years); notes by A. Preece regarding visit to trade show on August 11 and 12, 1997 (an exhibitor indicating a possible lifespan of 4 years or more with proper maintenance and mentioning a kit sold to allow replacement of the "o-rings" said to often fail in nail guns after 2 years).

<sup>41</sup> *Id.* at 37-38 (Heinlen). Petitioner claims that the modification necessary to allow these guns to accept other producers' CR nails was simple and widely known. Conference Tr. at 37 (Heinlen). The record indicates that less than half of the purchasers questioned knew how to perform that modification. Nine out of 23 purchasers questioned knew how to perform the necessary modification. CR at II-7, PR at II-5.

<sup>42</sup> Hearing Tr. at 39 (Heinlen) and petitioner's Prehearing Brief at 7.

<sup>43</sup> Commissioner Crawford considers interchangeability in her analysis of the like product. She is careful to distinguish substitutability, which she considers in her analysis of material injury by reason of less than fair value subject imports. Commissioner Crawford concurs with her colleagues that Paslode's CR nails have a sufficient degree of interchangeability with other domestic CR nails to support the Commission's like product determination. She, however, concludes that evidence in the record indicates that the degree of substitution in the market between Paslode's CR nails and nails from other producers, imports and domestic, is limited.

<sup>44</sup> CR at I-8 to I-9 and II-1, PR at I-5 and II-1.

<sup>45</sup> CR at I-6 n.18 and III-1, PR at I-4 n.18 and III-1.

<sup>46</sup> Petitioner \*\*\*. CR at I-6 nn.19 & 21, PR at I-4 nn.19 & 21. Its finished nails \*\*\*. *Id.* The \*\*\*. CR at I-6 n.21, PR at I-4 n.21. \*\*\*. *Id.*



*Producer and Customer Perceptions.* Both Stanley-Bostitch, Inc. (“Bostitch”), the largest domestic producer, and petitioner reported that petitioner’s CR nails can be used in all nail guns.<sup>47</sup> \*\*\* stated, however, that its CR nails cannot be used in petitioner’s nail guns.<sup>48</sup> With regard to purchasers, as indicated above, a slight majority viewed petitioner’s CR nails and other producers’ CR nails as substitutes. A significant minority, however, did not view the two types of CR nails as substitutes.

*Prices.* Prices for petitioner’s CR nails and other domestic producers’ CR nails were not significantly different.<sup>49</sup>

*Conclusion.* We conclude that the record does not indicate a sufficiently clear dividing line between petitioner’s CR nails and other producers’ CR nails to find these products to be separate domestic like products. The different placement of the collating wires in the petitioner’s CR nails appears to limit their interchangeability with other CR nails, or at least the perception of their interchangeability with other CR nails, but not to an extent that indicates a clear dividing line between these products. Moreover, both types of CR nails have the same end use, generally similar physical characteristics, are sold through the same channels of distribution, and are similar in price. Accordingly, we find a single domestic like product consisting of all steel wire nails of the dimensions described by Commerce that are collated with two wires, including those produced by petitioner.

### C. Domestic Industry and Related Parties

The Commission is directed to consider the impact of the subject imports on the domestic industry, defined as “the producers as a [w]hole of a domestic like product.”<sup>50</sup> Based on our domestic like product definition, there is one domestic industry consisting of producers of CR nails.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B). One domestic producer, Bostitch, imported the subject merchandise during the period of investigation.<sup>51</sup> Bostitch is also \*\*\*.<sup>52</sup> Bostitch is thus a related party, and we may exclude it from the domestic industry if “appropriate circumstances” exist.<sup>53</sup>

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<sup>47</sup> CR at I-10, PR at I-7 and \*\*\*.

<sup>48</sup> \*\*\*. As indicated above, petitioner maintains that its PY134R (sold until 1993) and its modified 3175R (sold beginning in late 1996) accept all CR nails. Petitioner also took the position that the earlier version of its model 3175R could accept all CR nails following a simple modification of the tool’s “feed claw.” See discussion of “Interchangeability,” above.

<sup>49</sup> Figure F-1, CR and PR at Appendix F, page F-3.

<sup>50</sup> 19 U.S.C. § 1677(4)(A).

<sup>51</sup> CR at III-2 and n.6, PR at III-2 and n.6.

<sup>52</sup> CR at III-2 n.6, PR at III-2 n.6.

<sup>53</sup> 19 U.S.C. § 1677(4)(B). Factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the percentage of domestic production attributable to the importing producer; the reason the U.S. producer has decided to import the product subject to investigation; whether inclusion or exclusion of the related party will skew the data for the rest of the industry; the ratio of import shipments to U.S. production for related producers; and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). See also Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Final), USITC Pub. 3042 (June 1997) at 10 n.26.

We determine that appropriate circumstances do not exist to exclude Bostitch from the domestic industry. Bostitch's primary interest appears to lie in domestic production rather than importation. Bostitch's imports of the subject merchandise were \*\*\* compared to its domestic production during the period of investigation.<sup>54</sup> Bostitch is also the largest domestic producer of CR nails.<sup>55</sup> The \*\*\* volume of its imports (relative to its domestic production) suggests that Bostitch's interests lie in domestic production.<sup>56</sup> Accordingly, we define the domestic industry to include all domestic producers of CR nails: the Paslode Division of Illinois Tool Works, Inc. ("Paslode" or the "petitioner"), Bostitch and International Staple and Machine Co. ("International").

## II. CONDITION OF THE DOMESTIC INDUSTRY<sup>57</sup>

In assessing whether a domestic industry is materially injured or threatened with material injury by reason of LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>58</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>59</sup> <sup>60</sup>

We consider the condition of the domestic industry against a background of rising consumption. Apparent U.S. consumption rose from 1994 to 1995, and from 1995 to 1996, measured by quantity.<sup>61</sup> Consumption was higher in interim (January-June) 1997 than in interim 1996.<sup>62</sup>

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<sup>54</sup> Bostitch's imports of the subject merchandise, as a percentage of Bostitch's domestic production of CR nails, were \*\*\* percent in 1994 and 1995, \*\*\* percent in 1996, and \*\*\* percent in interim 1997. CR at III-2, PR at III-2. \*\*\*. CR at III-2 n.4, PR at III-2 n.4.

<sup>55</sup> CR at III-2 and n.4, PR at III-1 and n.4. Bostitch accounts for \*\*\* percent of reported domestic CR nail production. CR and PR at VI-1.

<sup>56</sup> We note Bostitch's support of the petition. Bostitch's Prehearing Brief at 1.

<sup>57</sup> Commissioner Crawford joins her colleagues in this investigation in a discussion of the "condition of the industry" even though she does not make her determination based on industry trends. Rather she views the discussion as a factual recitation of the data collected concerning the statutory impact factors.

<sup>58</sup> 19 U.S.C. § 1677(7)(C)(iii).

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

<sup>60</sup> Much of the information regarding the factors considered in this section is business confidential. Accordingly, the public version of this opinion contains only nonnumerical characterizations of that information. 19 C.F.R. § 201.6(a)(1).

<sup>61</sup> Apparent U.S. consumption rose \*\*\* percent from 1994 to 1995, from \*\*\* pounds to \*\*\* pounds. Apparent U.S. consumption rose an additional \*\*\* percent from 1995 to 1996, to \*\*\* pounds. Table C-1, CR and PR at C-3.

<sup>62</sup> Consumption was \*\*\* percent higher in interim 1997 (\*\*\*) than in interim 1996 (\*\*\*) pounds). *Id.*

The quantity of U.S. producers' shipments rose from 1994 to 1995 and from 1995 to 1996.<sup>63</sup> The quantity of shipments was also higher during interim 1997 than during interim 1996.<sup>64</sup> By value, U.S. shipments were flat from 1994 to 1996, falling slightly from 1994 to 1995, and rising slightly more from 1995 to 1996.<sup>65</sup> The value of U.S. shipments was higher, however, in interim 1997 than in interim 1996.<sup>66</sup> The domestic industry's production showed little variation from 1994 to 1995 and rose from 1995 to 1996.<sup>67</sup> Production during interim 1997 was higher than during interim 1996.<sup>68</sup> End-of-period inventories fell from 1994 to 1995, and fell more from 1995 to 1996.<sup>69</sup> End-of-period inventories were slightly higher, however, for interim 1997 than for interim 1996.<sup>70</sup>

The domestic industry's share of apparent consumption showed declines both from 1994 to 1995, and from 1995 to 1996, whether measured by quantity or value.<sup>71</sup> The domestic industry's market share was lower during interim 1997 than during interim 1996, when measured by quantity, and essentially the same when measured by value.<sup>72 73</sup>

Production capacity rose from 1994 to 1995, but declined from 1995 to 1996 to a level below that of 1994.<sup>74</sup> Capacity figures were higher for interim 1997 than for interim 1996.<sup>75</sup> Capacity utilization fell

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<sup>63</sup> U.S. producers' shipments rose \*\*\* percent from 1994 to 1995, from \*\*\* pounds to \*\*\* pounds. Shipments rose a further \*\*\* percent from 1995 to 1996, to \*\*\* pounds. From 1994 to 1996, the rise in shipments was \*\*\* percent. Table C-1, CR at C-4, PR at C-3.

<sup>64</sup> U.S. producers' shipments were \*\*\* pounds in interim 1997, \*\*\* percent higher than the \*\*\* pounds shipped in interim 1996. *Id.*

<sup>65</sup> The value of U.S. shipments fell \*\*\* percent from 1994 to 1995, from \*\*\* to \*\*\*. In 1996, the value of U.S. shipments increased \*\*\* percent from 1995 levels to \*\*\*. From 1994 to 1996 the value rose \*\*\* percent. *Id.*

<sup>66</sup> The value of U.S. shipments was \*\*\* percent higher in interim 1997 (\*\*\*) than in interim 1996 (\*\*\*). *Id.*

<sup>67</sup> Domestic production rose \*\*\* percent from 1994 to 1995, from \*\*\* pounds to \*\*\* pounds. From 1995 to 1996, production increased \*\*\* percent, reaching \*\*\* pounds. *Id.*

<sup>68</sup> Production was \*\*\* pounds during interim 1996 compared to \*\*\* pounds during interim 1997, a rise of \*\*\* percent. *Id.*

<sup>69</sup> From 1994 to 1995, end-of-period inventories fell \*\*\* percent, from \*\*\* to \*\*\* pounds. From 1995 to 1996, end-of-period inventories fell \*\*\* percent to \*\*\* pounds. *Id.*

<sup>70</sup> End-of-period inventories were \*\*\* pounds in interim 1996, compared to \*\*\* pounds in interim 1997. Table III-1, CR at III-4, PR at III-2.

<sup>71</sup> The domestic industry's market share, measured by quantity, fell from \*\*\* percent in 1994 to \*\*\* percent in 1995. It then fell to \*\*\* percent in 1996. By value, the domestic industry's share of apparent consumption fell from \*\*\* percent in 1994 to \*\*\* percent in 1995, and then fell to \*\*\* percent in 1996. Table IV-4, CR at IV-6, PR at IV-5.

<sup>72</sup> The domestic industry's market share, measured by quantity, was \*\*\* percent during interim 1996 and \*\*\* percent in interim 1997. By value, its market share was \*\*\* percent in interim 1996, and \*\*\* percent in interim 1997. *Id.*

<sup>73</sup> Commissioner Crawford notes that the presence of imports in the domestic market represents a condition of competition directly affecting the domestic industry's market share. Throughout the period of investigation imports were the dominant supplier of demand for CR nails. Subject imports supplied \*\*\* percent of the domestic market in 1996 and nonsubject imports supplied \*\*\* percent of the domestic market in 1996. Table C-1, CR and PR at C-3.

<sup>74</sup> Production capacity rose by \*\*\* percent from 1994 to 1995, from \*\*\* pounds in 1994, to \*\*\* pounds in 1995. Production capacity was \*\*\* percent lower in 1996 than 1995, however, falling to \*\*\* pounds. Table C-1, CR at

(continued...)

from 1994 to 1995, but rose above 1994 levels in 1996.<sup>76</sup> Capacity utilization was also higher in interim 1997 than in interim 1996.<sup>77 78</sup>

The number of production and related workers (PRWs), hours worked, and wages all increased from 1994 to 1995.<sup>79</sup> From 1995 to 1996, the number of PRWs declined slightly, remaining higher than in 1994.<sup>80</sup> The number of PRWs was higher, however, in interim 1997 than in interim 1996.<sup>81</sup> Hours worked fell in 1996, to a level below that in 1994.<sup>82</sup> Hours worked were higher during interim 1997 than during interim 1996, however.<sup>83</sup> Wages continued to rise in 1996, and were higher in interim 1997 than in interim 1996.<sup>84</sup> Productivity, measured by pounds produced per hour, fell from 1994 to 1995, but rose by a greater amount in 1996, and was higher in interim 1997 than in interim 1996.<sup>85</sup>

Sales revenues were flat from 1994 to 1996, although they were higher in interim 1997 than in interim 1996.<sup>86</sup> The average per-pound value of sales fell from 1994 to 1995, and from 1995 to 1996, but was higher in interim 1997 than in interim 1996.<sup>87</sup>

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<sup>74</sup> (...continued)

C-4, PR at C-3.

<sup>75</sup> Production capacity was \*\*\* pounds in interim 1996 and \*\*\* pounds in interim 1997, an increase of \*\*\* percent. *Id.*

<sup>76</sup> Capacity utilization was \*\*\* percent in 1994, \*\*\* percent in 1995, and \*\*\* percent in 1996. Table III-1, CR at III-3, PR at III-2.

<sup>77</sup> Capacity utilization was \*\*\* percent in interim 1996 and \*\*\* percent in interim 1997. *Id.*

<sup>78</sup> Commissioner Crawford notes that the evidence in the record demonstrates that the domestic industry does not have the capacity to supply the demand for CR nails in the domestic market. In 1996 the domestic industry reported an average capacity quantity of \*\*\* million pounds, while the U.S. consumption quantity for 1996 was \*\*\* million pounds. Table C-1, CR at C-3 and C-4, PR at C-3.

<sup>79</sup> For the years 1994 and 1995 respectively, the number of PRWs was \*\*\* and \*\*\*, hours worked by PRWs were \*\*\* and \*\*\*, and wages paid to PRWs were \*\*\* and \*\*\*. Table III-1, CR at III-4, PR at III-2.

<sup>80</sup> The number of PRWs in 1996 was \*\*\*. *Id.*

<sup>81</sup> The number of PRWS in interim 1997 was \*\*\*, compared to \*\*\* in interim 1996. *Id.*

<sup>82</sup> Hours worked by PRWs in 1996 fell to \*\*\*, compared to \*\*\* in 1994. *Id.*

<sup>83</sup> In interim 1997, hours worked by PRWs was \*\*\* compared to \*\*\* in interim 1996. *Id.*

<sup>84</sup> Wages paid to PRWs were \*\*\* in 1996, \*\*\* in interim 1996, and \*\*\* in interim 1997. *Id.*

<sup>85</sup> Pounds produced per hour rose to \*\*\* in 1996, compared to \*\*\* and \*\*\* in 1994 and 1995. In interim 1996, pounds produced per hour were \*\*\*, compared to \*\*\* in interim 1997. *Id.*

<sup>86</sup> Sales revenues were \*\*\* in 1994, \*\*\* in 1995, \*\*\* in 1996, \*\*\* for interim 1996 and \*\*\* for interim 1997. Table VI-1, CR at VI-3, PR at VI-2.

<sup>87</sup> Average per-pound sales values were \*\*\* in 1994, \*\*\* in 1995, \*\*\* in 1996, \*\*\* in interim 1996, and \*\*\* in interim 1997. *Id.*

The record does not contain reliable industrywide data on cost of goods sold or profitability.<sup>88</sup> Reliable data on these indicators do exist for petitioner and International, which accounted for about \*\*\* of domestic production during the period of investigation.<sup>89</sup> These two firms' combined \*\*\* from 1994 and 1995, and became \*\*\* in 1996.<sup>90</sup> The two companies had \*\*\* on a combined basis for interim 1996, and \*\*\* for interim 1997.<sup>91</sup>

Industrywide capital expenditures were much higher in 1995 than in other full or partial years of the period of investigation, due to the opening of a CR nail plant in 1995.<sup>92</sup> Capital expenditures were higher in 1996 than in 1994, although they were lower in interim 1997 than in interim 1996.<sup>93</sup> Spending on research and development increased from 1994 to 1995, and from 1995 to 1996.<sup>94</sup> Spending on research and development was slightly lower in interim 1997 than in interim 1996.<sup>95 96</sup>

### III. CUMULATION

Section 771(7)(G)(i) requires the Commission to cumulate imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports

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<sup>88</sup> Bostitch, which accounted for about \*\*\* of domestic production of CR nails during the period of investigation, \*\*\* information on its COGS for CR nails. *Compare* Table III-1, CR at III-4, PR at III-2 to CR at III-5 n.10, PR at III-2 n.10. Bostitch's Prehearing Brief at 2. \*\*\*. *See* CR at VI-8 to VI-9, PR at VI-3. The Commission examined two other methodologies by which to allocate \*\*\*, but concludes that neither is reliable. *See* INV-U-075 (October 30, 1997). We note in this regard that the different allocation methodologies resulted in \*\*\* estimates of profitability for Bostitch. CR at VI-8 to VI-9, PR at VI-3; INV-U-075 (October 30, 1997).

We also considered whether to calculate Bostitch's profitability based on its operations for \*\*\*. We conclude, however, that Bostitch's \*\*\* profitability data are not a satisfactory surrogate for the profitability of its CR nails operations. Bostitch has stated that its \*\*\* (CR at III-5 n.12, PR at III-2 to III-3 n.12), claiming that its CR nails operations have been adversely affected by imports from the subject countries (CR at III-2 n.4, PR at III-1 n.4). Bostitch's claim of \*\*\* on CR nails is consistent with its decision to \*\*\* other types of nails during the period of investigation. CR at III-5 nn.10 & 12, PR at III-2 to III-3 nn.10 & 12.

<sup>89</sup> *Compare* Table III-1, CR at III-4, PR at III-2 to CR at III-5 n.10, PR at III-2 n.10.

<sup>90</sup> The combined \*\*\* of \*\*\* and \*\*\* was \*\*\* percent for 1994, and \*\*\* percent for 1995. On a combined basis, the two companies had \*\*\* of \*\*\* percent in 1996. Table 1b of memorandum INV-U-075 (Oct. 30, 1997).

<sup>91</sup> For interim 1996, the two companies had \*\*\* of \*\*\* percent, on a combined basis. For interim 1997, they had \*\*\* of \*\*\* percent. *Id.*

<sup>92</sup> Capital expenditures were \*\*\* in 1995, more than \*\*\* than the capital expenditure in 1996 (\*\*\*), which was the year with the next highest capital expenditure during the POI. Table VI-3, CR at VI-12, PR at VI-4. *See* CR at VI-1 and VI-11, PR at VI-1 and VI-3 (indicating that petitioner \*\*\* in a CR nail-producing plant in 1995).

<sup>93</sup> Capital spending was \*\*\* in 1994, \*\*\* in 1996, \*\*\* in interim 1996, and \*\*\* in interim 1997. Table VI-3, CR at VI-12, PR at VI-4.

<sup>94</sup> R&D spending was \*\*\* in 1994, \*\*\* in 1995, and \*\*\* in 1996. *Id.*

<sup>95</sup> The figures for interim 1996 and 1997 are \*\*\* and \*\*\*, respectively. *Id.*

<sup>96</sup> Based on the foregoing, Commissioner Newquist finds that the domestic industry is vulnerable to the continuing adverse effects of the dumped imports of CR nails from China and Taiwan. He therefore does not reach the issue of whether or not there is material injury by reason of subject imports of CR nails. He instead proceeds directly to the discussion of whether or not there is threat of material injury by the subject imports.

compete with each other and with domestic like products in the United States market.<sup>97</sup> The antidumping petitions regarding China and Taiwan were filed on the same day. Thus, the only issue before the Commission is whether exports from China and Taiwan satisfy the “competition” requirement for cumulation.

In assessing whether imports compete with each other and with the domestic like product,<sup>98</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;<sup>99</sup>
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.<sup>100</sup>

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<sup>97</sup> 19 U.S.C. § 1677(7)(G)(i). There are four exceptions to the cumulation provision, one of which applies here. 19 U.S.C. § 1677(7)(G)(ii). The applicable exception provides that imports from countries with respect to which the investigation has been terminated shall not be cumulated with other subject imports. *Id.* Consequently, imports of CR nails from Korea are not eligible for cumulation with subject imports from China and Taiwan because the investigation regarding Korea was terminated. *See* 19 U.S.C. § 1677(7)(G)(ii)(II) and Collated Roofing Nails from Korea, 62 Fed. Reg. 53799 (Oct. 16, 1997) (Commission notice of termination of investigation of CR nails from Korea).

<sup>98</sup> The Statement of Administrative Action submitted to Congress in connection with the Uruguay Round Agreements Act (P.L. 103-465, approved Dec. 8, 1994) (“URAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. (1994) (“SAA”) at 848 *citing* Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), *aff’d* 859 F.2d 915 (Fed. Cir. 1988).

<sup>99</sup> Commissioner Crawford notes that the Court of International Trade has recognized repeatedly that analyses of substitutability may vary under different provisions of the statute, based upon the requirements of the relevant statutory provision. *E.g.* U.S. Steel Group v. United States, 873 F. Supp. 673, 697 (1994); R-M Industries, Inc. v. United States, 848 F. Supp. 204, 210, n.9 (1994); BIC Corporation v. United States, 964 F. Supp. 391 (1997). Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude that subject imports compete with each other and that subject imports compete with the domestic like product. Therefore, she concurs in cumulating subject imports from China and Taiwan.

<sup>100</sup> *See* Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff’d*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988).

Although no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.<sup>101</sup> Only a "reasonable overlap" of competition is required.<sup>102</sup>

In the preliminary determinations, the Commission cumulated imports from China and Taiwan.<sup>103</sup> We found a significant degree of fungibility between imports of the subject merchandise from China and Taiwan, and between the subject imports and the domestic like product.<sup>104</sup> Domestic producers and importers reported that the subject imports from China and Taiwan were interchangeable, as were the subject merchandise and the domestic like product.<sup>105</sup> It was not disputed that the domestic like product and the subject imports from both countries compete in the same geographical markets nationwide.<sup>106</sup> We also found an overlap in channels of distribution for the subject imports and domestic like product, most of which are sold through roofing products distributors.<sup>107</sup> We found further that subject merchandise from China and Taiwan was simultaneously present in the U.S. market, with imports from both countries recorded during each complete year of the period of investigation, as well as during interim 1996.<sup>108</sup>

In the final phase of these investigations, we have obtained no contrary information that would lead to a different cumulation finding. In fact, the record provides further support for the finding that the subject imports of CR nails are fungible both with each other and with the domestic like product.<sup>109</sup> Moreover, no party argued that the Commission should not cumulate the subject imports during the preliminary phase or in this final phase of these investigations.<sup>110</sup> Accordingly, we cumulate the subject imports from China and Taiwan for purposes of analyzing whether the domestic industry is materially injured by reason of the LTFV imports.

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<sup>101</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>102</sup> See Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685-86 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>103</sup> Prelim. Deters. at 12-13. The Commission also cumulated CR nails from Korea, subject imports that were then still subject to investigation.

<sup>104</sup> Prelim. Deters. at 12.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 13.

<sup>107</sup> *Id.* at 13, I-7.

<sup>108</sup> *Id.* at 13.

<sup>109</sup> CR at II-9 to II-10, PR at II-6 to II-7 (a large majority of importers questioned reporting interchangeability among the Chinese, Taiwanese, and domestically produced CR nails). Notwithstanding somewhat mixed record evidence regarding the interchangeability of petitioner's CR nails with other CR nails discussed above in section I, the record supports the conclusion that the subject imports and the domestic like product (or at least the bulk of domestic production) are sufficiently fungible to warrant cumulation. Commissioner Crawford does not join in this footnote.

<sup>110</sup> At the hearing, several witnesses testified that Chinese CR nails are inferior in quality and therefore not fungible with domestically produced CR nails. Hearing Tr. at 10 (Umejima), 75 (Morrell), 92-95 (Reilly). They did not, however, comment on cumulation expressly, despite a staff request. Memorandum to the file from M. Diehl regarding October 3, 1997 telephone conversation with \*\*\*, counsel to respondents. Despite their testimony, we find a significant degree of fungibility between the subject imports from China and both subject imports from Taiwan and domestically produced CR nails based in part on questionnaire responses from importers, most of which indicated that the CR nails from the three sources are interchangeable. CR at II-9 to II-10, PR at II-6 to II-7.

#### IV. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of an antidumping investigation, the Commission determines whether an industry in the United States is materially injured by reason of the LTFV imports under investigation.<sup>111</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>112</sup> Although the Commission considers causes of injury to the industry other than the LTFV imports, it is not to weigh causes.<sup>113 114</sup> For the reasons discussed below, we determine that the domestic CR nail industry is not materially injured by reason of LTFV imports from China and Taiwan.

##### A. Volume of Subject Imports

Section 771(7)(C)(i) provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or

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<sup>111</sup> 19 U.S.C. § 1673d(b). The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.” 19 U.S.C. § 1677(7)(A).

<sup>112</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination,” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

<sup>113</sup> See, e.g., Gerald Metals, Inc. v. United States, 937 F. Supp. 930, 936 (Ct. Int’l Trade 1996), *appeal pending*; Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int’l Trade 1988).

<sup>114</sup> Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of subsidized and LTFV imports, not by reason of the subsidized and LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the subsidized and LTFV imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the subsidized and LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added).

For a detailed description of Commissioner Crawford’s analytical framework, see Polyvinyl Alcohol from China, Japan, and Taiwan, Inv. Nos. 731-TA-726, 727, and 729 (Final), USITC Pub. 2960 at 25-26 (May 1996). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’g* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).



consumption in the United States, is significant.<sup>115</sup> The volume of subject imports increased throughout the period of investigation.<sup>116</sup> Subject imports rose 59.3 percent from 1994 to 1996, and were 18.3 percent higher in interim 1997 than in interim 1996.<sup>117</sup> The subject imports increased at a greater rate than U.S. apparent consumption, resulting in market share gains during the period of investigation. The market share of the subject imports increased from \*\*\* percent in 1994 to \*\*\* percent in 1996.<sup>118 119 120 121</sup>

## B. Price Effects of Subject Imports

Section 771(7)(C)(ii) provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether--(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>122 123</sup>

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<sup>115</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>116</sup> As noted earlier (see note 73 *supra*) Commissioner Crawford acknowledges the presence of nonsubject imports in the domestic market. The quantity of nonsubject imports increased from 31.2 million pounds in 1994 to 37.8 million pounds in 1996. Table IV-1, CR at IV-2, PR at IV-2. Although their market share declined during the period of investigation, nonsubject imports maintained a greater share of the domestic market than the LTFV imports throughout the period of investigation. Table IV-2, CR at IV-3, PR at IV-3.

<sup>117</sup> The quantity of subject imports, in pounds, was \*\*\* in 1994, \*\*\* in 1995, \*\*\* in 1996, \*\*\* in interim 1996, and \*\*\* in interim 1997. Table C-1, CR and PR at C-3. Value figures for the subject imports are not available. Table C-1, CR at C-3 and C-4 n.4, PR at C-3.

<sup>118</sup> Table IV-4, CR at IV-6, PR at IV-5.

<sup>119</sup> Based on the foregoing, Chairman Miller finds that the volume of subject imports and the increase in that volume over the period are significant.

<sup>120</sup> Vice Chairman Bragg notes that for the reasons discussed in section IV.C below, she finds the volume of subject imports and the increase in this volume not to be sufficient, either in absolute terms or relative to production or consumption, to have had a significant present adverse impact on the domestic industry.

<sup>121</sup> Commissioner Crawford notes that while subject imports did increase, domestic consumption of CR nails also increased. While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of their price effects and impact. Based on the increasing demand in the domestic market for CR nails, the inability of the domestic industry to supply the demand in the market, the market share of subject and nonsubject imports and the conditions of competition in the domestic market for CR nails, she finds that the volume of subject imports of CR nails is not significant.

<sup>122</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>123</sup> To evaluate the effects of the alleged dumping on domestic prices, Commissioner Crawford compares domestic prices that existed when the imports were dumped with what domestic prices would have been if the subject imports had been fairly traded. In most cases, if the subject imports had not been traded unfairly, their prices in the U.S. market would have increased. In these investigations, the alleged dumping margins for subject imports range from relatively low for some of the Taiwanese exporters, to high for Chinese subject imports. Thus, subject imports likely would have been priced only slightly higher had they been fairly traded in some instances and significantly higher in other instances. The degree of substitution between domestic CR nails and subject imports is limited. As previously noted (see note 78) the domestic industry did not have the available capacity to

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The record confirms that price is a significant factor in purchasing decisions for CR nails, which are essentially a commodity-type product.<sup>124</sup> Subject imports and the domestic like product are generally interchangeable, as discussed above. Although there were some perceptions of differences in quality between the subject imports and the domestic like product, the record supports the conclusion that any such differences do not significantly limit interchangeability. Nearly all importers with an opinion reported that the subject imports could be used interchangeably with domestically-produced CR nails.<sup>125</sup> Given these market conditions, large or rapidly increasing volumes of low-priced LTFV imports can have significant adverse price effects.

The subject imports consistently undersold the domestic like product.<sup>126</sup> Margins of underselling were high, ranging from 18.4 to 46.6 percent over the period of investigation, with most margins between 20 and 30 percent.<sup>127</sup> We thus find significant underselling by the subject imports.

Prices of domestically-produced 1-inch and 1-1/4-inch CR nails declined \*\*\* and \*\*\* percent, respectively, during the period of investigation.<sup>128</sup> These CR nails sizes are estimated to account for \*\*\* percent of U.S. producers' shipments of CR nails.<sup>129</sup> Likewise, the net sales value of CR nails per pound by U.S. producers fell \*\*\* percent from 1994 to 1996.<sup>130</sup> These price declines occurred despite significantly increased demand for CR nails.<sup>131</sup> The Commission also confirmed several instances of sales lost to the subject imports due to their lower price.<sup>132</sup>

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<sup>123</sup> (...continued)

supply the increasing demand for CR nails. Domestic purchasers could not obtain the supply of CR nails from the domestic industry to meet market demand and purchasers were placed on allocation by the domestic industry's largest producer. \*\*\* CR at PR at III-2, II-2, and III-5 nn. 10-12, PR at III-1, II-1, III-2 to III-3 nn.10-12. The record further reflects that Bostitch has \*\*\* CR at III-6, PR at III-3. Capacity limitations would have severely limited the ability of domestic producers to replace CR nails supplied by LTFV subject imports. Further, purchasers' perceived substitution problems with Paslode's CR nails would have further limited any shift in demand from LTFV CR nails to domestic CR nails. Purchasers would have resisted any significant increase in domestic producer prices. On the supply side, any attempt by an individual supplier in the domestic industry to increase its prices in response to any limited shift in demand that may have taken place would have been challenged by competitors, primarily nonsubject imports that represent the dominant supplier in the domestic market. Under such supply and demand conditions, any effort by a domestic supplier to raise its prices significantly would have been beaten back by its competitors. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of subject imports. Consequently, Commissioner Crawford finds that subject imports are not having significant effects on prices of domestic CR nails.

<sup>124</sup> Nineteen of 24 purchasers listed price as among the three most important factors in their purchasing decisions. CR at II-8, PR at II-5.

<sup>125</sup> CR at II-9, PR at II-7, and importers' questionnaire responses at pages 15 and 16.

<sup>126</sup> Tables V-1 and V-2, CR at V-5 and V-6, PR at V-3 and V-4.

<sup>127</sup> *Id.*

<sup>128</sup> CR at V-8, PR at V-4.

<sup>129</sup> CR at V-4, PR at V-3.

<sup>130</sup> Table C-1, CR at C-4, PR at C-3. Net sales value per pound fell from \$\*\*\* to \$\*\*\* per pound from 1994 to 1996. Table VI-2, CR at VI-6, PR at VI-2.

<sup>131</sup> U.S. apparent consumption rose \*\*\* percent from 1994 to 1996, and was \*\*\* percent higher in interim 1997 than in interim 1996, measured by quantity. Table C-1, CR and PR at C-3.

<sup>132</sup> CR at V-10 to V-15, PR at V-5 to V-7.

Accordingly, in light of evidence that subject imports compete with the domestic like product on the basis of price, consistent underselling by significant margins, declines in prices and net sales per pound for the domestic products over the period of investigation, and lost sales due to low subject import prices, we find that the increasing volume of subject imports from China and Taiwan that entered the United States during the period of investigation depressed prices for the domestic like product to a significant degree.<sup>133</sup>

### C. Impact of Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry,” as described above in section II.<sup>134 135 136 137</sup>

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<sup>133</sup> We do not believe that the higher net sales value per pound for interim 1997 (\$\*\*\*) than for interim 1996 (\$\*\*\*) materially detracts from our price finding. We generally give less weight to interim data than to full year data. The full year data for net sales value per pound indicates a decline from \$\*\*\* in 1994 to \$\*\*\* in 1995, and further to \$\*\*\* in 1996. Table C-1, CR and PR at C-3. Even if we were confident that the interim data for 1997 were representative of the entire year, it would still indicate a net sales value per pound lower than in 1994. *Id.*

<sup>134</sup> 19 U.S.C. § 1677(7)(C)(iii). The statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in its evaluation of the impact of imports on the domestic industry. 19 U.S.C. § 1677(7)(C)(iii)(V); *see also* 19 U.S.C. § 1677(35)(C); URAA Statement of Administrative Action (“SAA”), H.R. Rep. 316, 103d Cong., 2d Sess., vol. I at 850 (this provision “does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive of the Commission’s material injury analysis”). The statute further states that the dumping margins that the Commission is to consider in making a final determination are those “most recently published by the administering authority prior to the closing of the Commission’s administrative record.” 19 U.S.C. § 1677(35)(C)(ii). The margins as amended by Commerce are 2.98 and 40.28 percent for subject Taiwanese producers, and 118.41 for subject Chinese producers. *See* October 24, 1997 memorandum for The File from Team, Office 5, AD/CVD Enforcement Group II.

<sup>135</sup> Chairman Miller does not find the magnitude of the margins of dumping to be particularly significant in the context of these investigations.

<sup>136</sup> Vice Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

<sup>137</sup> As previously stated, Commissioner Crawford does not evaluate impact based on trends in statutory impact factors. In her analysis of material injury by reason of alleged dumped imports, Commissioner Crawford evaluates the impact of subject imports on the domestic industry by comparing the state of the industry when the imports were dumped with what the state of the industry would have been had the imports been fairly traded. In assessing the impact of the subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry’s prices, sales and overall revenues is critical, because the impact on the other industry indicators (*e.g.*, employment, wages, etc.) is derived from this impact. As noted above, there is no substantial evidence that the domestic industry would have been able to increase its prices significantly if subject imports had been sold at fairly traded prices. Had subject imports been fairly priced, there would have been an insignificant shift in demand from subject imports to the domestic industry due to capacity limitations in the domestic industry and perceived

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Although the volume and market penetration of subject imports rose during the period of investigation and the subject imports had significant price-depressing effects on sales of the domestic like product, we cannot conclude definitively that the subject imports are having a significant adverse impact on the domestic industry. Many important indicators of the domestic industry's condition improved over the period of investigation. Specifically, the domestic industry's production, shipments, net sales, and number of PRWs all rose.<sup>138</sup> Capacity utilization also increased, although primarily as a result of reductions in CR nail production capacity.<sup>139</sup>

Other factors, however, were not as favorable. These include the declining market share held by the domestic industry, falling net sales value per pound, and an essentially flat trend in the value of total net sales.<sup>140</sup> The combined \*\*\* of petitioner and International \*\*\* over the period of investigation. We consider their combined \*\*\* to be an additional indicator of the impact of the subject imports on the domestic industry. However, these two producers represent only approximately \*\*\* of domestic production and, therefore we assign relatively little weight to this evidence.<sup>141</sup>

Taking all factors into account, we do not believe that the record demonstrates that the current adverse impact of the subject imports on the domestic industry is sufficient in magnitude to constitute material injury. We therefore determine that the domestic industry producing CR nails is not materially injured by reason of the subject imports from China and Taiwan.

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<sup>137</sup> (...continued)

substitution problems with the Paslode CR nails. If subject imports had been fairly traded, to satisfy the demand for CR nails purchasers would have continued to purchase a decreased quantity of subject imports and would have increased their purchases of nonsubject imports. In other words, had subject imports not been dumped, the domestic industry would not have been able to increase its output and sales, and therefore its revenues, significantly. Consequently the domestic industry would not have been materially better off if the subject imports had been fairly traded. Therefore, Commissioner Crawford does not find that LTFV traded Chinese and Taiwanese imported CR nails are having a significant impact on the domestic industry and she finds that the domestic industry producing CR nails is not materially injured by reason of LTFV imports of CR nails from China and Taiwan.

<sup>138</sup> From 1994 to 1996, production rose \*\*\* percent, shipments rose \*\*\* percent, and net sales rose \*\*\* percent, all measured by quantity. Table C-1, CR at C-4, PR at C-3. The number of PRWs rose \*\*\* percent from 1994 to 1996. *Id.*

<sup>139</sup> Capacity utilization increased from \*\*\* to \*\*\* percent from 1994 to 1996, although average production capacity fell \*\*\* percent over the same time period. *Id.* The drop in production capacity came entirely as a result of \*\*\*. Compare CR at III-5 n.12, PR at III-2 n.10 to Table III-1, CR at III-4, PR at III-2 (regarding capacity); and Bostitch's Prehearing Brief at 5-6 and CR at III-2 n.4 and III-5 n.12, PR at III-1 n.4 and III-2 to III-3 n.12 (regarding the profitability of Bostitch's CR nails). Bostitch stated further that it is "especially sensitive to imports of the [subject merchandise]" and that its CR nails operations "have been adversely affected by [those] imports." CR at III-2 n.4, PR at III-1 n.4. We regard Bostitch's decision to \*\*\* as an additional indicator of the adverse impact of the subject imports.

<sup>140</sup> *Id.*

<sup>141</sup> We note again the difficulty in assessing industry profitability in these investigations. As indicated in section II above, we are unable to calculate reliable estimates of Bostitch's profitability. Moreover, because Bostitch accounts for \*\*\* percent of domestic production, and because some estimates of Bostitch's profitability indicate operating margins \*\*\* the joint figures for petitioner and International, we do not consider that the combined operating margins for petitioner and International are necessarily representative of industrywide profitability. See CR and PR at VI-1, and discussion of Bostitch's profitability at section II above. We note that no single factor bearing on the state of the industry is dispositive. 19 U.S.C. § 1677(7)(E)(ii).

## V. THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS<sup>142</sup>

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>143</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.<sup>144</sup> In making our determination, we have considered all statutory factors<sup>145</sup> that are relevant to these investigations.<sup>146</sup>

For the reasons discussed below, we find that the domestic CR nails industry is threatened with material injury by reason of the subject imports from China and Taiwan.

We have cumulated the LTFV imports from China and Taiwan for purposes of our threat analysis. Under section 771(7)(H) of the Act, the Commission may “to the extent practicable” cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation for material injury analysis are satisfied.<sup>147</sup> We determined in section III above that the requirements for cumulation for material injury analysis are satisfied in these investigations, and we apply the same analysis here and determine in our discretion to cumulate the LTFV imports for our threat analysis as well.<sup>148</sup>

The record indicates that there has been a significant rate of increase of the volume of subject merchandise imported into the United States, indicating the likelihood of substantially increased imports in the near future. As noted previously, the volume of the subject imports increased 59.3 percent from 1994

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<sup>142</sup> Commissioner Crawford does not join in this section. *See* Commissioner Crawford’s Dissenting Views.

<sup>143</sup> 19 U.S.C. § 1673b(a) and 1677(7)(F)(ii).

<sup>144</sup> 19 U.S.C. § 1677(7)(F)(ii). While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 854.

<sup>145</sup> The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the WTO Antidumping Agreement and Subsidies and Countervailing Measures Agreement, although “[n]o substantive change in Commission threat analysis is required.” SAA at 855.

<sup>146</sup> 19 U.S.C. § 1677(7)(F)(i). Factor I regarding consideration of the nature of the subsidies is inapplicable because there have not been any subsidies alleged. Factor VII regarding raw and processed agriculture products is also inapplicable to the products at issue. Additionally, the record indicates that there are no known dumping findings or antidumping remedies in effect in other countries with respect to CR nails from China or Taiwan. CR at VII-1, PR at VII-1. *See* 19 U.S.C. § 1677(7)(F)(iii)(I).

<sup>147</sup> 19 U.S.C. § 1677(7)(H).

<sup>148</sup> Although Commissioner Newquist did not join section III of the opinion, he agrees that the subject imports compete with each other and the domestic like product. He notes that, in his view, once a like product determination is made, that determination establishes an inherent level of fungibility within that like product. Only in exceptional circumstances could Commissioner Newquist find products to be “like” and then turn around and find that, for purposes of cumulation, there is no “reasonable overlap of competition” based on some roving standard of substitutability. *See* Additional and Dissenting Views of Chairman Newquist in Flat-Rolled Carbon Steel Products, USITC Pub. 2664 (August 1993).

to 1996, and was 18.3 percent higher in interim 1997 than in interim 1996.<sup>149</sup> This rate of increase in subject imports outpaced growth in domestic demand, resulting in increased market shares for the subject imports, from \*\*\* percent in 1994 to \*\*\* percent in 1996.<sup>150</sup> The record also demonstrates existing unused capacity and a substantial increase in production capacity in the exporting countries, indicating the likelihood of substantially increased volumes of subject imports to the United States in the near future. The aggregate production capacity of the subject foreign producers more than doubled from 1994 to 1996.<sup>151</sup> Moreover, there is significant unused capacity among the Chinese producers (35 percent of capacity in 1996), and Chinese and Taiwanese producers project further increases in capacity in the future.<sup>152</sup> These increases in foreign production capacity are most likely to be directed at the U.S. market, which accounted for approximately 90 percent of the Chinese producers' shipments and over 95 percent of the Taiwanese producers' shipments during the period of investigation.<sup>153</sup> <sup>154</sup> The record does not demonstrate that there will be significant increases in home market consumption in either China or Taiwan based on the very small quantity of home market sales during the period of investigation.<sup>155</sup>

The record also indicates that imports of the subject merchandise are entering at prices likely to significantly depress prices of the domestic like product, or suppress price increases that otherwise would have occurred.<sup>156</sup> Margins of underselling were consistent during the period of investigation, mostly in a range between 20 and 30 percent, and we conclude that this trend is likely to continue in the future.<sup>157</sup> As discussed previously, we find that subject imports have depressed prices of the domestic like product to a significant degree, and we conclude that subject imports are likely to depress prices or suppress price increases to a significant degree in the future.<sup>158</sup>

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<sup>149</sup> Table C-1, CR and PR at C-3.

<sup>150</sup> Table IV-4, CR at IV-6, PR at IV-5.

<sup>151</sup> Tables VII-1 and VII-2, CR at VII-2 and VII-4, PR at VII-1.

<sup>152</sup> Table VII-1, CR at VII-2, PR at VII-1; response to foreign producers' questionnaire of \*\*\*, as clarified by Mr. \*\*\* in telephone conversation on Oct. 24, 1997; and INV-U-078 (Nov. 3, 1997).

<sup>153</sup> Tables VII-1 and VII-2, CR at VII-2 and VII-4, PR at VII-1.

<sup>154</sup> The available data regarding importers' inventories of the subject merchandise show a decline in inventories over the period of investigation. We place little weight on that indication, however, because the data are incomplete and because it is not certain to what extent reported data pertain to the LTFV imports. CR at VII-5, PR at VII-2.

<sup>155</sup> Tables VII-1 and VII-2, CR at VII-2 and VII-4, PR at VII-1.

<sup>156</sup> The price of the subject imports has remained essentially flat during the period of investigation, and there is no indication of a change in the near future. Figure V-3, CR at V-7, PR at V-4.

<sup>157</sup> Tables V-1 and V-2, CR at V-5 and V-6, PR at V-3 and V-4; and CR at V-9, PR at V-5.

<sup>158</sup> Although Commissioner Newquist did not join section IV of this opinion, he generally agrees with that discussion for purposes of the instant analysis. He additionally notes that, in his analytical framework, "evaluation of the magnitude of the margin of dumping" is not generally helpful in answering the questions posed by the statute: whether the domestic industry is threatened with material injury and, if so, whether such threat of material injury is by reason of the subject imports.

\*\*\* domestic producers reported present negative effects from the subject imports and reported that they anticipated negative effects in the future.<sup>159</sup> <sup>160</sup> We view Bostitch's assertions of actual and anticipated negative effects from subject imports to be consistent with its \*\*\*.<sup>161</sup>

We believe that as the volumes of subject imports continue to increase, the price pressure exerted by these imports will increase, resulting in further reductions in prices or suppression of price increases, leading to losses in domestic industry revenues and profitability. We view the falling net sales value per pound for the domestic like product during the three-year period of investigation as an indicator that other measures of the industry's condition will in turn deteriorate in the near future if the escalating price pressure exerted by the subject imports continues.<sup>162</sup> <sup>163</sup> <sup>164</sup>

Finally, we do not find that but for the suspension of liquidation, we would have found the domestic industry to be experiencing present material injury. Available data do not indicate that, absent suspension of liquidation in May of 1997, the domestic industry would have been materially injured by reason of subject imports.

In sum, based on the rapid increases in the volume and market share of the subject imports, unused foreign production capacity, increases in foreign production capacity and projected future increases, the significant adverse price effects of the subject imports, and certain adverse trends bearing on the condition of the domestic industry, we find that the domestic industry producing CR nails is threatened with material injury by reason of the subject imports from China and Taiwan.

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<sup>159</sup> \*\*\* domestic producers reported that the subject imports have caused the \*\*\*. One domestic producer anticipated an \*\*\*, and another anticipated \*\*\*. CR at VI-11, PR at VI-4.

<sup>160</sup> Commissioner Newquist notes that although the petitioner may have previously enjoyed a fairly small captive market for its nails -- dedicated for use in its nail guns -- such captive market was eliminated during the period of investigation by modifications to the guns. Therefore, the petitioner is clearly on equal footing with other domestic producers concerning the adverse impact of the subject imports.

<sup>161</sup> CR at III-5 nn.10 & 12, PR at III-2 to III-3 nn.10 & 12.

<sup>162</sup> As indicated previously, we do not believe that the higher net sales value per pound for interim 1997 than for interim 1996 materially detracts from our price finding. We generally give less weight to interim data than to full year data, which indicates a decline from \$\*\*\* in 1994 to \$\*\*\* in 1995, and further to \$\*\*\* in 1996. Table C-1, CR and PR at C-3. Even if we were confident that the interim data for 1997 was representative of the entire year, it would still indicate a net sales value per pound lower than in 1994. *Id.*

<sup>163</sup> The \*\*\* for Paslode and International also represent a possible additional adverse trend, although for the reasons described previously we do not view them as necessarily representing the profitability for the entire domestic industry and therefore place comparatively little weight on them.

<sup>164</sup> We reject the argument of the respondents that there is no threat of material injury to the domestic industry because the domestic industry would not experience any significant increase in sales volume or price after the application of the antidumping duties. Respondents' Posthearing Brief at 2-4. Our affirmative threat finding is based on the factors discussed in the text above, not on the expectation that the imposition of antidumping duties would produce benefits for the domestic industry. *See id.* at 4 (arguing that "the application of dumping duties would produce no benefits for U.S. CR nail producers"). In our view, the statute does not instruct the Commission to evaluate the remedial effect of the potential antidumping duty. With regard to respondents' contention, however, we note that the subject imports gained market share primarily at the expense of the domestic industry, rather than the nonsubject imports, during the period of investigation. Table IV-4, CR at IV-6, PR at IV-5. This fact tends to refute respondents' supposition that the volume of subject imports would be replaced by nonsubject imports after the imposition of antidumping duties.

## VI. DETERMINATION REGARDING CRITICAL CIRCUMSTANCES

Commerce made affirmative critical circumstances determinations with regard to certain subject imports from both China and Taiwan.<sup>165</sup> Petitioner argues that we should find that the imports subject to Commerce's affirmative critical circumstances determination are likely to undermine seriously the remedial effect of the antidumping duty order to be issued.<sup>166</sup>

In investigations pre-dating the Uruguay Round Agreements Act ("URAA"), the Commission did not reach the issue of critical circumstances when it made a determination of threat of material injury on the ground that "a finding that retroactive imposition of antidumping duties is necessary to prevent recurrence of material injury would be inconsistent with [a] finding that the domestic industry is threatened with material injury at this time."<sup>167</sup> One of the URAA's amendments to the critical circumstances provision was deletion of the statutory reference to "recurrence of material injury." This revision was made to avoid creating any impression that critical circumstances cases and section 751 reviews, where the Commission must make findings about the likelihood of continuation or recurrence of material injury, should apply the same legal standard.<sup>168</sup> Nevertheless, we do not believe that this amendment was intended to modify the Commission's prior practice of rendering critical circumstances determinations only when it made an affirmative determination of material injury by reason of subject imports.

The remedy created by an affirmative critical circumstances determination would generally be of no practical utility in the context of a threat determination. The effect of affirmative findings on critical circumstances by Commerce and the Commission is to permit suspension of liquidation for a time 90 days earlier than is normally authorized.<sup>169</sup> When the Commission makes an affirmative threat determination, however, duties are ordinarily imposed not from the time of suspension of liquidation, but from the time of notice of the Commission's final determination.<sup>170</sup> The Commission anticipates that this procedure will be followed in the instant investigations. In such circumstances, the establishment of an earlier date for suspension of liquidation cannot result in the imposition of retroactive duties, or any additional duties.<sup>171</sup>

Additionally, the statute still contains language requiring that there be a Commerce finding of either a "history of dumping and material injury by reason of dumped imports" or importer knowledge that "there would be material injury" by reason of the imports as a prerequisite for an affirmative critical circumstances determination.<sup>172</sup> This requirement suggests that there must still be a nexus between "massive imports" and material injury -- rather than threat of material injury -- to the domestic industry. Indeed, a purpose of the critical circumstances provision is more fully to remedy the domestic industry for any material injury it has sustained as of the time of the Commission determination. When the Commission concludes that the domestic industry is not sustaining current material injury by reason of imports, but is threatened with material injury in the imminent future, there would appear to be no reason to authorize a

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<sup>165</sup> Collated Roofing Nails from the People's Republic of China, 62 Fed. Reg. 51410, 51413-14, 51419 (Oct. 1, 1997) and Collated Roofing Nails from Taiwan, 62 Fed. Reg. 51427, 51429, 51437 (Oct. 1, 1997).

<sup>166</sup> Petitioner's Posthearing Brief at 13.

<sup>167</sup> *E.g.*, Stainless Steel Flanges from India and Taiwan, Inv. No. 731-TA-639-640 (Final), USITC Pub. 2724 at I-21 n.112 (Feb. 1994).

<sup>168</sup> SAA at 877.

<sup>169</sup> 19 U.S.C. § 1673b(e)(2).

<sup>170</sup> 19 U.S.C. § 1673e(b)(2).

<sup>171</sup> As indicated above, the Commission has not made an affirmative "but for" finding in these investigations.

<sup>172</sup> *See* 19 U.S.C. § 1673d(a)(3).



retroactive remedy. Accordingly, we decline to consider whether critical circumstances exist because we do not find that the domestic industry is presently experiencing material injury by reason of the subject imports from China and Taiwan.

### **CONCLUSION**

For the reasons stated above, we determine that the domestic industry producing CR nails is threatened with material injury by reason of subject imports from China and Taiwan.



## DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

### NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF COLLATED ROOFING NAILS FROM CHINA AND TAIWAN

On the basis of information obtained in these investigations, I determine that an industry in the United States is not threatened with material injury by reason of LTFV imports of subject imports of collated roofing nails from China and Taiwan. Section 771(7)(F) of the Act directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of the subject merchandise by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted”.<sup>173</sup> The Commission considers the threat factors “as a whole”<sup>174</sup> and may not make such a determination “on the basis of mere conjecture or supposition”.<sup>175</sup> In making my determination, I have considered all of the statutory factors<sup>176</sup> that are relevant to these investigations<sup>177</sup> and have determined that the domestic industry producing collated roofing nails is not threatened with material injury by reason of the LTFV imports from China and Taiwan.<sup>178</sup>

I do not find that there is a significant increase in production capacity or unused capacity in the exporting countries likely to result in a substantial increase in subject imports into the United States. Even though production capacity has increased and some capacity is available in China, there is \*\*\* capacity in Taiwan, and there is no indication that subject imports will increase significantly in the immediate future. Capacity utilization remained at a high level, with a utilization rate of \*\*\* percent in 1996 for Taiwan and a rate of \*\*\* percent in 1995 for China.<sup>179</sup> At these levels of capacity utilization, subject exporters would have difficulty increasing exports to the U.S. market.

While subject imports increased their market share by \*\*\* percentage points between 1995 and 1996, this increase took place at the same time that domestic consumption increased \*\*\* percent between

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<sup>173</sup> 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

<sup>174</sup> While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 184.

<sup>175</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” *Metallwerken Nederland B.V. v. U.S.*, 744 F. Supp. 281, 287 (CIT 1990). See also *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387 and 388 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

<sup>176</sup> The statutory factors have been amended to track more closely the language concerning threat of material determinations in the Antidumping and Subsidies Agreements, although “[n]o substantive change in Commission threat analysis is required.” SAA at 185.

<sup>177</sup> 19 U.S.C. § 1677(7)(F)(I). Factor I regarding consideration of the nature of the subsidies alleged is inapplicable because there have not been subsidies alleged. Factor VII regarding raw and processed agricultural products is also inapplicable to the products at issue.

<sup>178</sup> For my threat analysis, I have considered cumulated subject imports from China and Taiwan pursuant to § 771(7)(H) of the statute, for the same reasons stated above in Section II of the Commission’s opinion.

<sup>179</sup> Table VII-2, CR at VII-5, PR at VII-2.

1995 and 1996. Subject imports, nonsubject imports and domestic production all increased shipments between 1995 and 1996 to satisfy rising demand for CR nails in the domestic market.<sup>180</sup>

In my determination of no material injury by reason of LTFV imports of collated roofing nails from China and Taiwan, I demonstrated that subject imports have had no significant effect on domestic prices. In light of the competition among CR roofing nail suppliers in the U.S. market and other conditions of competition, I find no evidence that this will change in the immediate future. Therefore, I conclude that subject imports will not enter the United States at prices that will have a depressing or suppressing effect on domestic prices, or that are likely to increase demand for further subject imports.

At the end of 1996, inventories of subject collated roofing nails represented approximately \*\*\* percent of all U.S. shipments in 1996, by quantity.<sup>181</sup> These inventories are not significant, thus I do not find that subject import inventories constitute a threat of material injury.

There is no information in the record indicating that there is any potential for product-shifting. Finally, there is no indication of any convincing evidence of any recent or imminent changes in subject import levels or domestic market structure, that indicate the probability that there is likely to be material injury by reason of imports of the subject merchandise.

Given the high capacity utilization rates found in subject countries, the dominant role in the domestic market of nonsubject imports, the lack of substantial evidence that a significant increase in the quantity of subject imports is imminent, and the conditions of competition discussed above in Section II of the Commission's opinion, I find that the domestic industry producing collated roofing nails is not threatened with material injury by reason of LTFV imports of collated roofing nails from China and Taiwan.

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<sup>180</sup> Table C-1, CR and PR at C-3.

<sup>181</sup> Tables VII-1 and VII-2, CR at VII-2 and VII-4, PR at VII-1.

## PART I: INTRODUCTION

### BACKGROUND

These investigations result from a petition filed by the Paslode Division of Illinois Tool Works, Inc. ("Paslode"), on November 26, 1996, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of less-than-fair-value (LTFV) imports of certain collated roofing nails<sup>1</sup> from China, Korea, and Taiwan. Information relating to the background of the investigations is provided below.<sup>2</sup>

<i>Date</i>	<i>Action</i>
November 26, 1996 . . . . .	Petition filed with Commerce and the Commission; institution of Commission investigations
December 20, 1996 . . . . .	Commerce's notice of initiation
January 10, 1997 . . . . .	Commission's preliminary determinations
May 9, 1997 . . . . .	Commerce's preliminary determinations (62 FR 25895, May 12); <sup>3</sup> scheduling of final phase of Commission investigations (62 FR 28731, May 27)
September 29, 1997 . . . . .	Commerce's final determinations (62 FR 51420, October 1) <sup>4</sup>
September 30, 1997 . . . . .	Date of the Commission's hearing <sup>5</sup>
October 1, 1997 . . . . .	Termination of the Commission's investigation concerning Korea (62 FR 53799)
November 3, 1997 . . . . .	Date of the Commission's vote
November 12, 1997 . . . . .	Commission determinations transmitted to Commerce

Effective October 1, 1997, Commerce determined that collated roofing nails from Korea are not being sold in the United States at LTFV, and terminated its investigation concerning Korea. The Commission's investigation concerning Korea was also terminated effective October 1, 1997.

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<sup>1</sup> The products subject to these investigations, as defined by Commerce's scope, are roofing nails made of steel, having a length of  $1\frac{3}{16}$  inch to  $1\frac{13}{16}$  inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires. The subject nails are provided for in subheading 7317.00.55 of the HTS with a most-favored-nation tariff rate of 0.4 percent *ad valorem*, applicable to products of China, Korea, and Taiwan.

<sup>2</sup> *Federal Register* notices cited in the tabulation are presented in app. A.

<sup>3</sup> The Commission was officially notified of Commerce's preliminary determinations on May 9, 1997.

<sup>4</sup> The Commission was officially notified of Commerce's final determinations on Sept. 29, 1997. Commerce subsequently revised some of the LTFV margins on October 24, 1997. Commerce calculated final LTFV margins to be as follows: China - - zero for Top United and Qingdao Zongxun, and 118.41 percent for all other producers/exporters; Korea - - zero for all firms investigated; and Taiwan - - zero for Unicatch and for Lei Chu, 2.98 percent for S&J, 40.28 percent for Romp, 40.28 percent for K. Ticho, and 5.36 percent for all others. Commerce also found "critical circumstances" (history of dumping and massive increases in imports) for Chinese producers/exporters (other than Top United and Qingdao Zongxun) and for the Taiwanese producers/exporters Romp and K. Ticho.

<sup>5</sup> A list of witnesses appearing at the hearing is presented in app. B.

## SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C, tables C-1 through C-4. Table C-1 covers steel roofing nails collated with two wires ("CR nails"); table C-2 covers CR nails plus plastic-collated roofing nails; table C-3 covers CR nails plus bulk roofing nails; and table C-4 covers all roofing nails. Except as noted, U.S. industry data for CR nails are based on questionnaire responses of 3 firms that accounted for virtually all U.S. production of CR nails during 1996. U.S. imports are based on official Commerce statistics and on questionnaire responses.

## THE PRODUCT

The imported products subject to these investigations are roofing nails made of steel, with a length of  $1\frac{3}{16}$  inch to  $1\frac{13}{16}$  inches (20.64 to 46.04 mm), a head diameter of 0.330 inch to 0.415 inch (8.38 to 10.54 mm), and a shank diameter of 0.100 inch to 0.125 inch (2.54 to 3.18 mm), whether or not galvanized, that are collated with two wires for application with pneumatic roofing nail guns. This section of the report presents information on both imported and domestically-produced subject nails, as well as information related to the Commission's "domestic like product" determination.<sup>6</sup> In the remainder of this report, the products subject to these investigations, including the domestically-produced products meeting the description above, are referred to as "steel roofing nails collated with two wires" or as "CR nails." Accordingly, **the term "CR nails" used in this report consists only of steel roofing nails collated with two wires and does not include any other types of roofing nails.**

The Commission found in the preliminary phase of these investigations that the domestic like product consisted only of steel collated roofing nails collated with two wires, or CR nails. However, for purposes of the final phase of these investigations, other significant products that are potentially "like" or "most similar in characteristics and uses" with CR nails are steel roofing nails collated with a plastic belt (hereinafter referred to as "plastic-collated roofing nails")<sup>7</sup> and hand-driven roofing nails ("bulk roofing nails").<sup>8</sup> In its preliminary determinations, the Commission did not include such nails in its definition of the domestic like products.<sup>9</sup> Roofing nails are recognized within the industry as having characteristics that are distinct from other types of nails, collated or otherwise.

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<sup>6</sup> The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and, where appropriate, (6) price.

<sup>7</sup> Additionally, aluminum and copper roofing nails collated with a plastic belt are specialty products for application in environments where weather and resulting corrosion are a significant consideration. Only one U.S. producer of these nails has been identified, Duo-Fast Corp. \*\*\*.

<sup>8</sup> Bulk roofing nails are available in steel, aluminum, and copper. Aluminum and copper bulk roofing nails are not commonly used, but are available for environmental and aesthetic applications, including ceramic tile and slate roofs. Aluminum and copper nails are not galvanized.

<sup>9</sup> Commissioner Crawford indicated in the preliminary opinion that additional information should be obtained in the final phase of the investigations regarding the issue of whether to include bulk roofing nails in the domestic like product. *Collated Roofing Nails from China, Korea, and Taiwan*, USITC Pub. 3010, January 1997, p. 6, fn. 27.

## Physical Characteristics and Uses

CR nails are nails of one-piece construction manufactured from round steel wire with the dimensions listed above. Two thin wires are welded to the shanks of the roofing nails, thus fastening the individual roofing nails together in a string of nails, and a coil of CR nails is formed from this string. Each of these coils usually is composed of 120 nails (the number of CR nails that fit most pneumatic roofing nail guns). CR nails are galvanized (coated with zinc) to retard corrosion,<sup>10</sup> and may also have additional finishes (see description of manufacturing processes later). CR nails are used in pneumatically-powered nailing guns to attach asphalt shingles to sheathing on roofs, and to fasten flashing materials around the edge of a roof. Nail length requirements vary with the thickness of the roof sheathing (the plywood that is nailed or screwed to the roof rafters) and the number of layers of roofing felt and shingles.<sup>11</sup> The heads of roofing nails are flat and large relative to heads of other nails. This large, flat head is designed to distribute pressure on the surface of a shingle, thus providing greater holding power compared with other types of nails.

CR nails have been developed for use in pneumatic roofing nail guns, and such nails have tended to generally become more interchangeable among nail guns of different manufacturers during the 1990s (with the possible exception of Paslode, as discussed later in this report).<sup>12</sup> This development has affected two aspects of the nail:

- Standard sizes (length, shank diameter, and head diameter) have been developed by a number of different companies, including Stanley-Bostitch (“Bostitch”) and Paslode. However, Paslode’s nails are collated such that there is some disagreement within the industry as to their interchangeability with other CR nails. Imports of CR nails generally are interchangeable with domestically-produced CR nails and can be used in the same pneumatic nailers as domestically-produced CR nails, with certain limitations.<sup>13</sup> Nails for collation are manufactured to more demanding physical tolerance requirements than are bulk roofing nails of the same size and designated end use; this need is driven by twin requirements that the nails not jam inside the pneumatic roofing nail gun and that they can be collated.<sup>14</sup>

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<sup>10</sup> Steel roofing nails are galvanized to increase the nail’s resistance to corrosion. Petitioner states that “Federal Specification FF-N-105B” and ASTM designation A 641-92 “Standard Specification for Zinc-Coated (Galvanized) Carbon Steel Wire” are the industry standards for the use of zinc-coated roofing nails and the weight of zinc on each nail. The Council of American Building Officials also references consensus standards developed by other independent organizations such as the American Society of Testing and Materials (ASTM) that call for the use of corrosion-resistant roofing nails or corrosion-resistant roofing staples in roofing applications. Council of American Building Officials, “Model Codes in the United States,” retrieved from <http://www.cabo.org/codes/modcodes.html>.

<sup>11</sup> The nail is supposed to be driven so that the tip protrudes through the sheathing. Plywood sheathing may be from 3/8 inch to 5/8 inch thick, and the asphalt-impregnated roofing felt measures approximately 1/8 inch thick. Roofers are allowed to install up to two layers of shingles before they must remove existing shingles. Shingles, roofing felt, and sheathing collectively measure about one inch. Hence the most popular lengths of roofing nails are 1 inch and 1-1/4 inches.

<sup>12</sup> For example, Max Co., Ltd. manufactures a pneumatic roofing nail gun; however, this company does not make CR nails. \*\*\*. PrimeSource Building Products, Inc. indicates on its package label which CR nails will work in the various manufacturers’ roofing nail guns. Testimony of Peter Tolk, PrimeSource, conference transcript, p. 100.

<sup>13</sup> Staff conference, Dec. 17, 1996. Conference transcript, p. 38. Paslode’s CR nails present a possible exception. Paslode’s CR nails are discussed in the section entitled *Interchangeability and Customer and Producer Perceptions* later in Part I of this report and in the section entitled *Substitutability Issues* in Part II of this report.

<sup>14</sup> According to \*\*\*, collated nails are a precision-made product compared with bulk nails. One aspect of this is (continued...)

- Collation allows use in a pneumatic roofing nail gun, typically increasing labor productivity in fastening shingles to a roof. The two wires are welded, normally at a 15-degree angle and at a specific spacing on the shank of each nail. Paslode's CR nails are collated with a high wire location which is placed closer to the nail head relative to wire placement on other CR nails. Welded-wire collation apparently is the preferred method of collating roofing nails and is the method used by at least four manufacturers of pneumatic roofing nail guns. Using different spacing of the wires may hinder or prevent the interchangeability of one brand of CR nails in another manufacturer's nail guns.

For plastic-collated roofing nails, the nail head diameter, shank diameter, length, and tensile strength meet the same standards as steel roofing nails collated with two wires. Duo-Fast Corp., the only U.S. manufacturer of plastic-collated roofing nails, coats the plastic-collated roofing nails with a thermoplastic coating which it claims is for driving ease and increased holding power.<sup>15</sup> The plastic belt is formed around the nail, gripping the nail in two places along the shank. The pneumatic nailer uses the perforations in the belt to advance the nail through itself without touching the nail, while the pneumatic nailers designed for steel roofing nails collated with two wires use two claws to push the nail through the gun; plastic-collated roofing nails will not function in pneumatic nailers designed for CR nails, and vice-versa.<sup>16</sup> The coil of roofing nails collated by a plastic belt is alleged to be more stable and less likely to lose its shape than a coil of steel roofing nails collated by two wires; however, the plastic belt requires disposal after the coil has been emptied.<sup>17</sup>

Bulk roofing nails are similar to CR nails with respect to physical dimensions and end use. However, bulk roofing nails are not manufactured to the same precise dimensions, may not possess the same exact coating weight, and, obviously, are not collated. These factors prevent their use in pneumatic nail guns and may even prevent bulk nails from being collated. Bulk roofing nails are designed to be driven by hand to fasten shingles onto roof decking; of course, it would be uneconomic to strip single nails from a coil to apply them singly by hand.

### **Common Manufacturing Facilities and Production Employees**

CR nail production consists of several sequential steps. First, wire is fed into a nail-making machine in which the head is impact-formed and the point is cut.<sup>18</sup> The nails are then galvanized in a separate process.<sup>19</sup> All steel roofing nails are galvanized to impede corrosion. Bright (non-galvanized) wire is formed into nails, and the nails can then generally be galvanized by either of two methods: (1) electrogalvanizing (EG) with a yellow iridescent coating, commonly used for CR nails and plastic-collated

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<sup>14</sup> (...continued)

the need to meet more critical dimensional tolerances imposed by collating machines that run at high speed; another is that bulk nails must meet specifications only, and one bad nail out of 10,000 is considered acceptable compared with acceptable defect rates in production of collated nails of less than one per million. Telephone conversation on Nov. 7, 1996.

<sup>15</sup> Duo-Fast brochure, 1996, p. 13.

<sup>16</sup> \*\*\*

<sup>17</sup> \*\*\*

<sup>18</sup> Design of the cold-header used for making nails is similar for most types of nails. However, CR nail production differs from the production of bulk roofing nails in terms of the precise dimensional tolerances imparted by this machinery and the use of a collator.

<sup>19</sup> \*\*\*



roofing nails, or (2) hot-dipped (HD) galvanization, traditionally used for bulk roofing nails.<sup>20</sup> The nails are collated after coating. \*\*\* coating weight affects the dimensions of the nails. If the nails do not come within the specified dimensional tolerances, they may jam in the pneumatic nailers. The EG process provides a better coating than does the HD galvanization process.<sup>21</sup>

\*\*\*. The collator (which consists of several pieces of equipment) aligns each nail at the desired angle and distance apart; welds two small-diameter wires to the shank of each nail to form strings of nails; cuts each string at 120-nails; and forms each string of 120 nails into a coil. A belt is then attached around each coil to hold it together.

The nails used in plastic-collated roofing nails are made by the same general process as CR nails. Plastic-collated roofing nails are also machine-grade nails made to precise specifications that are then collated; the nails are fed into a hopper which then sorts them into position to prepare for the application of the plastic belt. The collation machine is necessarily different for applying a plastic belt compared with welding two wires.<sup>22</sup> The plastic belt is formed \*\*\*<sup>23</sup> \*\*\*<sup>24</sup> There is no welding process. The end product is a coil of roofing nails for use in a pneumatic nail gun designed specifically to accommodate roofing nails collated by a plastic belt.

Table I-1 depicts the location of U.S. producers' facilities manufacturing CR nails, plastic-collated roofing nails, and bulk roofing nails. The table shows that there are three known U.S. producers of CR nails, one U.S. producer of plastic-collated roofing nails, and four U.S. producers of bulk roofing nails. No producer of any one of the types of roofing nails produces any of the other types of roofing nails. Thus, CR nails, plastic-collated roofing nails, and bulk roofing nails are each made by separate U.S. firms in different facilities, using different machinery and equipment and different production workers.<sup>25</sup>

### Channels of Distribution

Roofing products are used primarily by professional roofing contractors and by do-it-yourselfers (DIY). Professional roofing contractors purchase roofing nails from distributors through roofing supply houses (accounting for most domestic shipments of CR nails) or directly from manufacturers (accounting for a much lower share of domestic shipments of CR nails). In addition, some CR nails are sold to home centers, which primarily serve the DIY segment of the residential building market, and from which roofing contractors also obtain a small percentage of their needs.<sup>26</sup> According to information presented at the conference, roofing supply houses specialize in residential roofing product lines, providing a convenient source of one-stop shopping for the roofing contractor. Domestically-produced and imported CR nails, plastic-collated roofing nails, and bulk roofing nails are distributed through these same channels.

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<sup>20</sup> Glass-bead impacted galvanization is an alternative method that meets ASTM specifications \*\*\*.

<sup>21</sup> \*\*\*.

<sup>22</sup> \*\*\*.

<sup>23</sup> Correspondence from \*\*\*.

<sup>24</sup> As reported by Duo-Fast Corp., the sole U.S. producer of plastic-collated roofing nails.

<sup>25</sup> Mr. Charles Heinlen, Paslode's selling unit manager, stated that "the equipment potentially could be used to make other products." Mr. Larry Miller, Plant Manager of Paslode's White River, AR plant, added that "it would take . . . weeks in order to change this (the White River, AR) plant over from roofing into another product line on this particular equipment." Hearing transcript, pp. 48-49. \*\*\*.

<sup>26</sup> Petition, p. 14.

TABLE I-1

**ROOFING NAILS: U.S. PRODUCERS AND U.S. PRODUCING LOCATIONS, BY TYPES, 1996**

U.S. producer	CR nails	Plastic-collated roofing nails	Bulk roofing nails
<b>Bostitch</b>	<b>East Greenwich, RI</b>	Does not produce.	Does not produce.
<b>International Staple and Machine<sup>1</sup></b>	<b>Butler, PA Southgate, CA Merrin, IL</b>	Does not produce.	Does not produce.
<b>Paslode</b>	<b>White River, AR</b>	Does not produce.	Does not produce.
<b>Duo-Fast</b>	Does not produce.	<b>Cleveland, MS<sup>2</sup></b>	Does not produce.
<b>Davis Wire Co.</b>	Does not produce.	Does not produce.	<b>Los Angeles, CA</b>
<b>Dickson Nail Co.</b>	Does not produce.	Does not produce.	<b>Evanston, IL</b>
<b>Keystone Steel and Wire Co.</b>	Does not produce.	Does not produce.	<b>Peoria, IL</b>
<b>Northwestern Steel and Wire Co.</b>	Does not produce.	Does not produce.	<b>Sterling, IL</b>

<sup>1</sup> International Staple and Machine produces CR nails in Butler, PA. Its affiliated firms Air Nail Co. and Container Stapling Co. produce CR nails in Southgate, CA, and Merrin, IL, respectively.

<sup>2</sup> Duo-Fast \*\*\* at its Cleveland, MS, plant. \*\*\*.

Note: Tree Island, an additional firm, is a Canadian company that manufactures CR nails in Richmond, BC (a suburb of Vancouver) but collates the nails in Ferndale, WA.

### Interchangeability and Customer and Producer Perceptions

Several model building codes specify the types of materials that can be used for roofing. Building codes are local laws, and while each municipality enforces a set of regulations, very few communities compose their own unique set of regulations. Most adopt all or part of one of the model codes published by one of several organizations: The Building Officials and Code Administrators International, Inc.; the International Conference of Building Officials; the Southern Building Code Congress International, Inc.; and the Council of American Building Officials (CABO). CABO maintains an all-inclusive body of regulations covering building and other aspects of one- and two-family residential construction, which are incorporated within each of the other three model codes.<sup>27</sup> The roofing nails specified under each of the model codes are corrosion-resistant 12-gauge wire nails with a minimum 3/8-inch-wide head. CR nails, plastic-collated roofing nails, and bulk roofing nails meet this specification. Depending on local codes, the use of any other product may expose the contractor to possible claims, including replacement of the roof and other damages.

<sup>27</sup> Paul Fiset, "Decoding Building Codes," Department of Building Materials and Wood Technology, University of Massachusetts at Amherst. Retrieved from <http://www.umass.edu/bmatwt/codes.html>.

There was agreement at the hearing and in questionnaire responses that imported CR nails generally are interchangeable with domestic CR nails for the same end uses and for use in pneumatic roofing nail guns used in the United States, with the possible exception of Paslode's CR nails or Paslode's roofing nail guns, as discussed later in this section. The primary factors cited by purchasers in responses to Commission questionnaires are, in order of importance, quality, price, and availability. Consistent quality is important to end users because of the need for the pneumatic roofing nail gun to work without jamming.

At the hearing, discussion further addressed the issue of Paslode's CR nails being interchangeable with the imported product and other domestically produced CR nails. Mr. Heinlen of Paslode characterized Paslode's CR nails as a "universal nail"<sup>28</sup> that will work in any manufacturer's pneumatic roofing guns and provided customer surveys and lab trial results to indicate that its CR nails function in other firms' nail guns without incidents or problems.<sup>29</sup> Respondents disagreed, citing the high wire location of the collation as an impediment, or at least a perceived impediment, to Paslode's CR nails working in non-Paslode nail guns. However, petitioners and respondents recognized that at least 7/8-inch CR nails are interchangeable because the shortness of the shank necessitates a high wire collation on these nails.<sup>30</sup> Respondents maintained that the inch-and-a-quarter and the inch-and-a-half nails with the low wire collation are not interchangeable with the Paslode high wire collation.<sup>31</sup> Purchasers, in their responses to Commission questionnaires, did not provide a consensus. Of the 23 responding purchasers, 13 reported that Paslode's CR nails could be used interchangeably in other producers' nail guns, 9 reported that they could not, and 1 reported that it did not know. Additional information of this issue is presented in the section entitled *Substitutability Issues* in Part II of this report.

Although plastic-collated roofing nails and CR nails have the same end use (the fastening of shingles to sheathing on roofs), plastic-collated roofing nails are not fully interchangeable with CR nails because pneumatic roofing nail guns cannot accommodate both types of collation and cannot be adjusted to do so. The manner in which the nail proceeds through the nail gun is different. "In general, pneumatic roofing nailers accept either coil nails with wire collation or plastic belting collation, but not both. Pneumatic tool costs prohibit the interchangeability of the two types."<sup>32</sup> Plastic-collated roofing nails are produced by Duo-Fast to \*\*\*<sup>33</sup>

Bulk roofing nails will not work in a pneumatic roofing nail gun, as the nails must advance through the gun as a string of nails. The rationale for using a nail gun is the greater labor productivity and daily earnings compared with hand-nailing. These factors account for a broad movement within the roofing industry toward the use of pneumatic roofing nail guns since they were introduced in the 1980s.

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<sup>28</sup> Hearing transcript, p. 19.

<sup>29</sup> "The Paslode nails have always been designed to fit through all tools." Paslode's posthearing brief, exhs. 5, 6. Paslode also stated that 60 to 80 percent of its nails are used in non-Paslode tools (Mr. Heinlen, hearing transcript, p. 20). \*\*\*.

<sup>30</sup> Mr. Heinlen, Paslode, hearing transcript, pp. 20, 111, and 112, and Mr. Ralph Morrell, National Product Manager, Metal Products, Georgia-Pacific, hearing transcript, p. 86.

<sup>31</sup> Mr. Ralph Morrell, National Products Manager, Metal Products, Georgia-Pacific Corp., stated "the import coiled roof nail, the seven-eighths will work, but that's less than one percent of the market. One-inch nails will work, but when you get to the vast majority of the coiled roof nails, the inch and a quarter which is 60 percent of the market, and certainly inch and a half, and inch and three-quarter lengths, they are not interchangeable. They will jam. The import product will jam in Paslode's tools, and vice versa the Paslode product will jam in other people's tools." Hearing transcript, p. 86.

<sup>32</sup> \*\*\*.

<sup>33</sup> \*\*\*. Interview with \*\*\*.

## Price

CR nails are priced between plastic-collated roofing nails and bulk roofing nails. (Within CR nails, the imported products from China and Taiwan have been priced lower than the domestically-produced CR nails; see the section entitled *Price Data* in Part V of this report). Plastic-collated roofing nails sell at a higher price compared with CR nails.<sup>34</sup> Bulk roofing nails are generally priced by weight (per carton of 1, 5, 10, 25, or 50 pounds) whereas CR nails are priced by count (per box of 3,600 CR nails, box of 7,200 CR nails, or on a per-thousand basis). Although the price of bulk roofing nails is considerably less than the price of CR nails, industry sources indicate that most roofing contractors who use CR nails are unlikely to revert to using hand-driven roofing nails unless CR nails are unobtainable.

## Domestic and Imported Products

CR nails have been standardized in recent years and the imports appear to comply with the specifications.<sup>35</sup> However, petitioners alleged at the hearing, based on information obtained in Commerce's investigations, that the plating (galvanization) on the imported product does not meet requirements of U.S. building codes.<sup>36</sup> Respondents state that the Chinese and Taiwanese products generally do meet U.S. codes.<sup>37</sup> However, a number of purchasers commented in their questionnaire responses that the U.S. product is superior in quality to at least the subject imports. Among the subject imports, some purchasers commented that the Chinese products are inferior in quality to the Taiwanese products; the Chinese CR nails were reported to jam in some instances, leading to a perception that the products are not of the same quality as can be obtained from other countries.<sup>38</sup> Additional information on the comparability of CR nails produced in different countries (including from nonsubject countries) is found in the section entitled *Comparison of Domestic Products and Subject Imports* in Part II of this report.

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<sup>34</sup> Hardware Trade Show staff notes of Amelia Preece, p. 2.

<sup>35</sup> Ibid.

<sup>36</sup> Hearing transcript, pp. 21 and 109. Petitioners claim that whereas U.S. building codes specify a minimum thickness of corrosion-resistant coatings for CR nails of 12 microns, the foreign producers submitting information to Commerce reported that their CR nails' coating thicknesses were generally 2.5 to 3.5 microns. Paslode's prehearing brief, p. 12.

<sup>37</sup> Building codes are established at the local level. Respondents indicated that their product meets most U.S. building codes with the exception of Dade County, FL and Southern California. Some import orders for these areas may be specially galvanized. Telephone conversation with Mr. Osamu Umejima of White and Case, Oct. 6, 1997.

<sup>38</sup> Purchaser questionnaire responses of \*\*\* and Hardware Trade Show staff notes of Tracy Quilter, p. 3.

## **PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET**

### **BUSINESS CYCLES**

Demand for CR nails is determined by the demand for new homes and for roof repairs. Demand is not seasonal in nature since, unlike most construction, reroofing can be done in most dry weather.<sup>1</sup> Demand for new housing is influenced by interest rates and other business cycle factors. Since most CR nails are used in roof repairs rather than in new housing, demand for CR nails is less cyclical than demand for most construction materials. However, natural disasters such as hurricanes or severe hail storms in densely populated areas can increase demand for home repairs.

### **MARKET SEGMENTS AND CHANNELS OF DISTRIBUTION**

U.S. producers of CR nails sell primarily to distributors but also sell to retailers.<sup>2</sup> Distributors sell to roofing supply houses, home centers, lumber yards, and end users. The distinction between distributors and retailers can be blurred since some firms act as distributors in some locations and retailers in others. U.S. producers also sell directly to roofing supply houses, home centers, lumber yards, and end users. Importers sell to many of the same types of distributors and retailers, and sell directly to end users. Some larger distributors also act as importers. \*\*\*<sup>3</sup>

U.S. producers reported that purchasers' Buy American requirements promote demand for their products. Both importers and domestic producers usually sell on a spot basis and have price lists, but prices are usually determined case-by-case. Volume discounts are common.

### **SUPPLY AND DEMAND CONSIDERATIONS**

#### **U.S. Supply**

##### **Domestic Production**

Based on the available information, staff believes that U.S. CR nail producers are likely to respond to changes in demand with relatively small changes in shipments of U.S.-produced CR nails to the U.S. market, and larger changes in prices.

##### *Capacity in the U.S. industry*

Although the domestic capacity utilization rate has been moderate, rising from \*\*\* percent in 1994 to \*\*\* percent in January-June 1997, purchasers reported some problems obtaining CR nails from domestic suppliers. Four purchasers reported that Stanley-Bostitch has put them on allocation for CR nails since

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<sup>1</sup> Available data show no seasonal pattern of imports. See tables V-1 and V-2.

<sup>2</sup> In the preliminary questionnaires, none of the domestic producers were able to clearly separate out sales to distributors from sales to retailers; as a result they were not asked to do this in the final questionnaires. Some purchasers, such as Gotham Staple, specialize in the products of a single domestic producer, although they also may sell imports. Mr. John Manfroni of Gotham Staple, conference transcript, p. 33.

<sup>3</sup> Petition, app. 24, p. 1.

1996<sup>4</sup> and Bostitch reports that it \*\*\*.<sup>5</sup> \*\*\*.<sup>6</sup> However, Paslode reported no difficulty in supplying CR nails and was able to fill all orders in 1997 within three days.<sup>7</sup> The remaining domestic producer, International Staple and Machine, accounts for \*\*\* percent of the production of U.S.-produced CR nails.<sup>8</sup>

### *Production alternatives*

Capacity to produce CR nails can be converted to the production of other types of collated nails,<sup>9</sup> but the transition may be time-consuming, and production is reported to be less efficient than with equipment that was originally designed for non-roofing collated nails. CR nails have larger heads than most other types of nails; as a result, larger forces are needed to produce the head than for most other types of nails. Machines that produce CR nails are therefore slower than machines designed to produce other types of nails.<sup>10</sup> None-the-less, \*\*\* used some equipment intended for CR nails to produce some other types of collated nails during the period of investigation and Paslode may have.<sup>11</sup>

Equipment used to produce CR nails has not been used to produce bulk roofing nails during the period of investigation. All CR nails are machine-grade and are therefore more precisely made<sup>12</sup> and more expensive than bulk nails.<sup>13</sup> It is therefore unlikely that equipment used to produce CR nails could profitably be used to produce bulk roofing nails.

### *Inventory and export levels*

Falling inventories relative to total demand and low end-of-the-period inventories indicate that U.S. producers have little ability to respond immediately to increases in demand with shipments from inventories.<sup>14</sup> Inventories fell from \*\*\* pounds in 1994 to \*\*\* pounds in 1995, and to \*\*\* pounds in 1996, but rose to \*\*\* pounds in January-June 1997. The inventories fell from \*\*\* percent of total shipments in 1994 to \*\*\* percent in 1996, and then increased to \*\*\* percent of annualized shipments in the first half of 1997. U.S. producers exported \*\*\* percent of their production in 1994, \*\*\* percent in 1995, \*\*\* percent in 1996, and \*\*\* percent in the first half of 1997.

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<sup>4</sup> Purchaser questionnaires of \*\*\*, p. 15.

<sup>5</sup> Producer questionnaire, p. 28.

<sup>6</sup> Purchaser questionnaire, p. 15. \*\*\* of \*\*\* reported that Paslode refused to sell to \*\*\* because Paslode believed that it had adequate distribution in the market served by \*\*\*. Discussions with Commission staff, Oct. 16, 1997.

<sup>7</sup> Mr. Charles Heinlen, Paslode, hearing transcript, p. 31.

<sup>8</sup> See Part III.

<sup>9</sup> Mr. R. Ted Hume, co-counsel for Paslode, hearing transcript, p. 65.

<sup>10</sup> Mr. Larry Miller, Paslode, hearing transcript, p. 64.

<sup>11</sup> For \*\*\*. Mr. Chuck Heinlen of Paslode reported that the Arkansas facility was built to be exclusively dedicated to producing coiled roofing nails in 1995, hearing transcript, p. 14. However, Mr. Larry Miller of Paslode reported that currently, "roofing represents about a 60/40 split in the" same plant, hearing transcript, p. 24.

<sup>12</sup> Mr. Charles Heinlen, Paslode, hearing transcript, p. 18.

<sup>13</sup> Petition, p. 10,

<sup>14</sup> Paslode reported that it reduced inventories intentionally to reduce cost. Petitioner's prehearing brief, pp. 8-9.

## U.S. Demand

Demand for CR nails has been increasing over the period of investigation, primarily by replacing demand for bulk roofing nails and staples. Total shipments increased from \*\*\* million pounds in 1994 to \*\*\* million pounds in 1996, an increase of \*\*\* percent. Purchasers were asked whether their purchasing patterns have changed significantly in the last 3 years. Of 20 responding purchasers, 10 reported that purchases had increased or become more frequent since January 1994. Ten of the respondents reported that their purchasing patterns were unchanged over the period.<sup>15</sup> Paslode estimated that demand for CR nails was growing at 5 percent per year.<sup>16</sup>

Changing roofer preferences, building codes, and homeowner preferences have been cited as reasons for the demand shift toward CR nails. Roofers have increased their use of nail guns since nail guns make roof installation twice as fast as with bulk roofing nails, and nails require less skill to apply than staples.<sup>17</sup> At the same time, changing building codes require the use of nails over staples in many locations.<sup>18</sup> Additionally, in some areas insurance companies are reluctant to insure roofs that have been stapled.<sup>19</sup>

The main factor influencing overall demand for all types of roofing nails and staples is the demand for new homes and roof repairs. A representative of Georgia-Pacific estimated that new construction accounted for 20 percent of sales and reroofing accounted for 80 percent of sales of CR nails.<sup>20</sup> Interest rates and household incomes are the main determinants of demand for new homes and both have improved slightly over the period of investigation. The existing housing stock is the main determinant of demand for reroofing, and this tends to grow at a relatively steady pace. Demand can increase abruptly when natural disasters such as hurricanes damage large numbers of homes, but Georgia-Pacific reported that none of these have occurred in the last two years.<sup>21</sup>

## Substitute Products

Purchasers were asked to identify substitutes for CR nails; of 19 responding purchasers, 12 reported that there are substitutes for CR nails. Six reported that bulk roofing nails and staples are substitutes, 3 reported that only bulk roofing nails are substitutes, and 3 reported that only roofing staples are substitutes.<sup>22</sup> No purchasers reported that plastic-collated roofing nails are substitutes for CR nails.<sup>23</sup>

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<sup>15</sup> Two other firms responded but did not discuss overall demand for CR nails.

<sup>16</sup> Mr. Chuck Heinlen, Paslode, hearing transcript, pp. 16-17.

<sup>17</sup> Mr. Chuck Heinlen, Paslode, conference transcript, p. 30, and petition, p. 11.

<sup>18</sup> Importers were asked what had changed demand for CR nails. Out of 23 importers responding, 3 reported that changes in building codes had increased demand for nails. Responses to importer questionnaires, p. 15.

<sup>19</sup> Petition, p. 11.

<sup>20</sup> Mr. Ralph Morrell, Georgia-Pacific, hearing transcript, p. 74.

<sup>21</sup> Ibid.

<sup>22</sup> One purchaser, \*\*\*, while reporting that bulk roofing nails and staples were substitutes, also reported that bulk roofing nails are too labor intensive and staples do not meet all building codes. Another, \*\*\*, reported that staple usage is declining as builders move to CR nails.

<sup>23</sup> The question asked for substitutes for collated roofing nails, which earlier had been defined to consist only of roofing nails collated with two wires; however, some purchasers may have assumed that collated roofing nails included plastic-collated roofing nails.

Purchasers were also asked if nails collated with wire are interchangeable with other collated roofing nails, including plastic-collated roofing nails. Plastic-collated roofing nails are apparently not very well known, as only 7 purchasers responded to the question. Six purchasers reported that other collated roofing nails are not interchangeable with for nails collated with wire, and one reported that they are. Plastic-collated roofing nails do not work in nail guns designed for wire-collated roofing nails. The manufacturer of plastic-collated roofing nails produces a nail gun for its nails, and wire-collated roofing nails cannot be used in this nail gun.

## Cost Share

CR nails make up approximately 1 to 3 percent of the total cost of reroofing<sup>24</sup> and a much smaller share of the cost of a new home. Changes in the price of CR nails, therefore, will have little impact on demand for reroofing or new homes.

## SUBSTITUTABILITY ISSUES

CR nails are manufactured in different lengths, with longer nails used to apply a second layer of roof shingles to a roof. Otherwise, CR nails tend to be uniform, with all manufacturers except Paslode producing CR nails with the same wire placement.<sup>25</sup> As a result, most CR nails can be used interchangeably in most nail guns. Paslode's CR nails, however, have a slightly different wire placement.<sup>26</sup> This was designed originally to make it difficult to use other nails in Paslode's nail guns.<sup>27</sup> Paslode reported that other CR nails could be used in its most current nail guns without any modifications, and in its earlier models with minor modifications. Paslode also reported that its CR nails could be used in other manufacturers' nail guns.<sup>28</sup>

Purchasers did not agree on whether Paslode's CR nails could be used in other producers' nail guns and if other CR nails fit Paslode's nail guns. Of the 23 responding purchasers, 13 reported that Paslode's CR nails could be used interchangeably in other producers' nail guns, 9 reported that they could not, and reported it did not know.<sup>29</sup>

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<sup>24</sup> Hearing transcript, pp. 77-78.

<sup>25</sup> Some foreign producers produce both typical CR nails and those with a wire placement like Paslode's CR nails. For example, at the conference Mr. Rudolph Morrell of Georgia-Pacific reported "my company has in recent years imported a very small volume of these high wire nails for use in Paslode nailers," conference transcript, p. 94.

<sup>26</sup> Respondents also claim that Paslode's CR nails are collated at a 10- to 11-degree angle rather than 15-degree angle used on most other CR nails. The packaging for Paslode's CR nails states that the CR nails are at a 15-degree angle; the respondent, however, reported that analysis of Paslode's CR nails shows that they are at a 10-degree angle, posthearing brief of White and Case, exh. 4.

<sup>27</sup> Hearing transcript, p. 37. Paslode tested its CR nails in 5 different manufacturers' nail guns and found that they did not jam, posthearing brief, exh. 5. The respondent, however, reported test results showing that Paslode's CR nails did jam in their test on other manufacturers' nail guns, posthearing brief of White and Case, p. 9.

<sup>28</sup> Hearing transcript, p. 19.

<sup>29</sup> Mr. Heinlen of Paslode reported that some of the confusion over whether Paslode's CR nails worked in other firms' nail guns may have been created by purchasers who dealt exclusively with imports and who may have an interest in creating confusion over whether Paslode's CR nails are interchangeable. Hearing transcript, p. 113. Firms that reported purchasing CR nails from Paslode were more likely to report that Paslode's CR nails were interchangeable with other CR nails than firms that did not purchase Paslode CR nails. Of the 11 firms

(continued...)



Of the 23 responding purchasers, 15 reported that other CR nails could be used in Paslode's nail guns, 3 reported that other CR nails could not be used in Paslode's nail guns, 4 did not know, and 1 responded "yes and no".<sup>30</sup> Of the 15 that reported that other CR nails could be used in Paslode's nail guns, 5 qualified their answers: 3 reported that other CR nails worked in the newer nail guns but not in the old, 1 reported that other CR nails could be used with proper wire placement, and 1 reported that Paslode's nail gun needed to be modified. Purchasers were asked if they knew how to modify Paslode's nail gun to make it possible to use other brands of CR nails. Of the 23 purchasers responding, 14 reported they did not know how to modify Paslode's nail gun and 9 reported they did. Since late 1996, Paslode has been selling its nail gun with a modified feed claw so it can accept any producer's CR nails.<sup>31</sup>

Eight of the 24 responding purchasers reported that they require their suppliers to be certified or prequalified. Of these, \*\*\* required prequalification only for imported CR nails and \*\*\* required prequalification for CR nails sold in Dade County, FL. The remaining 6 that required prequalification required it for all nails. Three of the 8 purchasers that required prequalification reported that nails must meet building code specifications, 3 reported that they test for reliability, and 2 reported that they require nails manufactured by Paslode.<sup>32</sup> While only 8 firms reported that suppliers needed to be certified or prequalified, when a later question asked how long it took to qualify a supplier, 10 firms reported qualifying times ranging from \*\*\* days to one year.<sup>33</sup> Seven of the 23 responding purchasers reported that suppliers had failed their qualification test over the past 3 years. Two of these reported that Bostitch had been an unreliable supplier and 2 reported problems with Chinese nails.<sup>34</sup>

Fourteen of 25 responding purchasers reported that they have not changed suppliers or changed them only rarely or infrequently. Of the remaining 11 purchasers, 3 reported using multiple sources and 2 reported changing suppliers often.<sup>35</sup> A number of purchasers used this question to give reasons for changing suppliers. One reported that it changed suppliers when another supplier had a sale. One reported changing suppliers when dissatisfied with their old supplier. One reported changing suppliers once a year. One reported changing suppliers once or twice a year. The remaining two answers reported on specific changes in the supplier.

Purchasers were asked to name the three most important factors in their purchasing decisions. Twenty-one of 24 responding purchasers listed quality,<sup>36</sup> 19 purchasers listed price and 13 listed

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<sup>29</sup> (...continued)

purchasing from Paslode, 7 reported that Paslode's CR nails were interchangeable with other CR nails and 4 reported that they were not. Responses to purchasers' questionnaires, p. 13. At the hearing, Mr. Morrell of Georgia-Pacific reported that Paslode's nails shorter than 1¼ inch in length did not tend to jam in other nail guns, but that Paslode's CR nails 1¼ inch or longer tended to jam in other producers' nail guns and that these longer nails were 60 percent of the market. Hearing transcript, p. 86.)

<sup>30</sup> The one that reported "yes and no" reported that non-Paslode CR nails with the proper (high) wire placement can be used. Mr. Morrell of Georgia-Pacific reported selling some imported CR nails with the high wire placement as well as CR nails with the normal wire placement. Conference transcript, pp. 92-94.

<sup>31</sup> Paslode's prehearing brief, p. 7.

<sup>32</sup> \*\*\*.

<sup>33</sup> Four firms (\*\*\*) reported it took 1 month or less to qualify, \*\*\* reported it took from 3 to 4 months, \*\*\* reported it took 6 months, and \*\*\* reported it took up to a year.

<sup>34</sup> \*\*\* reported problems with many Chinese mills and with specific mills in Taiwan and Korea that had not followed \*\*\* quality controls. One firm reported poor quality nails from a U.S. broker and one did not provide details.

<sup>35</sup> Responses to purchaser questionnaires, p. 11.

<sup>36</sup> Users' main quality concern is whether the CR nails can be consistently used in a nail gun without jamming.

(continued...)

availability/reliability of supply as the most important factors considered. Only 3 of 24 responding purchasers stated that the lowest price offered for CR nails will always win a contract or sale.

Purchasers were asked to evaluate the importance of 14 factors in their purchase decisions for CR nails.<sup>37</sup> The 2 most important factors cited were quality and consistency. These were reported to be very important by 21 of the 23 firms reporting. The other very important factors were reliability of supply, availability, delivery time, and packaging; these were reported to be very important by 20, 18, 14, and 13 purchasers respectively.

### Comparison of Domestic Products and Subject Imports

Nineteen of the 21 responding purchasers reported that imported and domestic CR nails are used in the same applications, and the remaining 2 were uncertain. Only 4 of 22 responding importers reported that U.S.-produced and imported nails from China could not be used interchangeably. One importer reported that imports from Taiwan might not be interchangeable for use in Paslode's nail guns.

Purchasers were asked how much higher the price of imported CR nails would have to have been before they would have purchased domestic product. Three reported that Chinese prices would have to be on average 13 percent higher and 5 reported that the Taiwanese prices would have to be on average 22 percent higher. In addition, one firm reported that U.S.-produced CR nails would have to be priced within 5 percent of subject imports to be competitive.<sup>38</sup>

Lead times from U.S. warehouses were similar for domestic producers and subject importers, while lead times from China and Taiwan were much longer. Domestic producers reported lead times ranging from 2 days to 2 weeks if the product was in stock. \*\*\*, which reported that if out of stock, delivery might take "longer." Nine importers reported lead times of between 2 days and 2 weeks, shipping mainly from inventories.<sup>39</sup> The remaining 9 reported lead times of 2 to 5 months.

### China

Four purchasers compared U.S.-produced and Chinese CR nails by the 14 factors listed in the question posed to them. The majority of these reported that U.S. and Chinese-produced CR nails were comparable in minimum quantity requirements, packaging, and U.S. transportation costs. Most firms reported that U.S.-produced CR nails were superior in consistency, quality, product range, and technical support/service. Most also reported that U.S. product was higher in price and that its supply was less reliable. For delivery terms and delivery time, two firms reported that U.S. CR nails were superior, one reported that U.S. CR nails were comparable, and one reported that U.S. CR nails were inferior. Two firms reported that U.S. producers offered inferior discounts and two that U.S. and Chinese discounts were comparable. The U.S. transportation networks of U.S. producers were reported to be superior by two firms and comparable to the Chinese by two firms. Two firms reported that U.S. CR nails were less available, one reported they were comparable, and one that U.S. CR nails had superior availability.

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<sup>36</sup> (...continued)

According to Mr. Chuck Heinlen of Paslode, both the quality of the nails and the quality of the collation welds influence whether the CR nails jam the nail gun. Conference transcript, pp. 31, 56.

<sup>37</sup> These factors were availability, delivery terms, delivery time, discounts offered, lowest price, minimum quantity requirements, packaging, product consistency, product quality, product range, reliability of supply, technical support/service, transportation network, and U.S. transportation costs.

<sup>38</sup> One firm, \*\*\*, reported that this was irrelevant because U.S.-produced nails were not available.

<sup>39</sup> One of these, \*\*\*, in its importer questionnaire reported longer lead times if the item was out of stock.

## Taiwan

Seven purchasers compared U.S. and Taiwanese CR nails. The majority reported that the U.S. and Taiwanese CR nails were comparable in delivery terms, discounts offered, packaging, consistency, quality, product range, transportation network, and U.S. transportation costs. The majority also reported that the U.S. product had higher prices, inferior availability, and less reliable supply, but that the U.S. producers offered superior technical support/services. Three firms reported that U.S. CR nails had longer delivery times, one reported that delivery times were comparable, and two reported that U.S. producers had shorter delivery times. Three firms reported that the U.S. product had lower and three that U.S. and Taiwanese product had comparable minimum quantity requirements.

### Comparison of Chinese and Taiwanese CR nails

Importers were asked if CR nails from China and Taiwan could be used interchangeably. Of the 23 responding importers, 19 reported that they could be used interchangeably and 4 reported they could not. Most who reported that they were not interchangeable reported that this was due to the poor quality of the Chinese CR nails.<sup>40</sup> Of 22 responding importers, 11 reported no significant product differences between Chinese and Taiwanese CR nails, 8 reported differences, and 3 did not know. Of those reporting differences between Chinese and Taiwanese CR nails, 7 reported that Taiwanese product was better quality and one reported that he did not sell Chinese product.<sup>41</sup>

Five purchasers compared Chinese and Taiwanese CR nails' prices, and all reported that Taiwanese prices were higher.<sup>42</sup> Only two purchasers compared Chinese and Taiwanese CR nails in other questions.<sup>43</sup> Both found that Taiwanese CR nails had better quality and consistency and that the Chinese CR nails were less expensive. One firm reported that Taiwanese suppliers provided superior delivery terms, delivery time, packaging, reliability of supply, technical support/service, and transportation network, while the other reported that these were comparable. Both reported that Chinese and Taiwanese CR nails were used in the same applications and had comparable availability, discounts, minimum quantity requirements, product range, and U.S. transportation costs.

Most importers of subject CR nails either imported from only Taiwan (10 firms) or imported from both China and Taiwan (7 firms). Only \*\*\* reported importing subject CR nails only from China. There is no apparent difference in the U.S. geographic market area served by these importers.<sup>44</sup>

### Comparison of Domestic Products and Subject Imports to Nonsubject Imports

Importers also reported imports of CR nails from Korea, Canada, Indonesia, Mexico, and the United Arab Emirates. All purchasers and U.S. producers stated that CR nails from all sources (i.e., the United States, subject, and nonsubject sources) are used in the same applications.

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<sup>40</sup> One of the firms reporting that the Chinese and Taiwanese CR nails were interchangeable also reported that because of quality concerns some people won't accept Chinese nails. Three of those answering that Chinese and Taiwanese nails were not interchangeable reported this was due to poor quality and 1 reported that he did not know why they were not interchangeable. Importer questionnaires, p. 16.

<sup>41</sup> Responses to importer questionnaires, p. 18.

<sup>42</sup> Responses to purchaser questionnaires, p. 18.

<sup>43</sup> Responses to purchaser questionnaires, pp. 19 and 20.

<sup>44</sup> Responses to importer questionnaires, p. 14.

## ELASTICITY ESTIMATES

This section discusses the elasticity estimates used in the COMPAS analysis (appendix D).

### U.S. Supply Elasticity<sup>45</sup>

The domestic supply elasticity for CR nails measures the sensitivity of quantity supplied by U.S. producers to a change in the U.S. market price of CR nails. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced CR nails.<sup>46</sup> Analysis of these factors earlier indicates that the U.S. industry may have a limited ability to increase or decrease shipments to the U.S. market. Staff estimates that the supply elasticity is between 2 and 4.

Paslode reported that it has a greater ability to increase supply than is apparent from its capacity utilization figures and that it has had no difficulty supplying orders. According to Paslode, capacity utilization does not take into account its options to increase the number of production shifts or purchase new machinery. As a result, Paslode believes that the U.S.-produced CR nails supply is more elastic than staff estimates. Staff notes that while Paslode may face little difficulty increasing production if demand increases, \*\*\*. During the period of investigation, \*\*\*.

### U.S. Demand Elasticity

The U.S. demand elasticity for CR nails measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of CR nails. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of CR nails in the production of downstream products. Bulk roofing nails, plastic-collated roofing nails, and roofing staples are limited as substitutes for CR nails, and CR nails generally account for a small percentage of the final cost of the either a new home or roof repairs. Based on available information, demand for CR nails is likely to be inelastic, estimated to be in the range of -0.3 to -0.7.

### Substitution Elasticities

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.<sup>47</sup> Product differentiation, in turn, depends upon such factors as quality (e.g., ability to consistently work in tools without jamming) and conditions of sale (e.g., service and availability). All CR nails are used in the same applications regardless of country of origin, which increases the degree of substitutability between U.S. and imported CR nails. The differences in quality between U.S.-produced and subject imported CR nails and differences between Paslode nails and most subject imported nails, reduce the substitutability between domestic and imported nails. Chinese nails tend to be considered less substitutable for U.S.-produced CR nails than CR nails from Taiwan because of

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<sup>45</sup> A supply function is not defined in the case of a non-competitive market.

<sup>46</sup> Domestic supply response is assumed to be symmetrical for both an increase and a decrease in demand for the domestic product. Therefore, factors affecting increased quantity supplied to the U.S. market also affect decreased quantity supplied to the same extent.

<sup>47</sup> The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject product (or vice versa) when prices change.

concerns about their quality. Based on available information, the elasticity of substitution between U.S.-produced CR nails and subject imported CR nails is likely to be in the range of 2 to 4 for China and Taiwan, with China tending to the lower end of the range and Taiwan to the higher end of the range.



### PART III: CONDITION OF THE U.S. INDUSTRY

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of 3 firms that accounted for nearly 100 percent of U.S. production of CR nails during 1996.

#### U.S. PRODUCERS

In addition to the petitioner, which operates a single plant in White River, AR, two other firms produce CR nails in the United States: Stanley-Bostitch Inc. (wholly owned by Stanley Works, New Britain, CT), at a plant in East Greenwich, RI, and International Staple and Machine Co. (wholly owned by ATRO, Italy), at plants in Butler, PA, Southgate, CA (Air Nail Co.), and Merrin, IL (Container Stapling Co.).<sup>1</sup> \*\*\*.<sup>2</sup> Each of the three firms produces a complete line of CR nails and markets its lines nationally.<sup>3</sup> Paslode's plant is relatively new, built in early 1995 to replace an older plant in Pontotoc, MS. With the exception of the heading equipment (equipment used to form the nails' heads), the equipment used in CR nail plants is not strictly specific to CR nails, although for the most part these firms restrict the production of different types of nails and fasteners to different production lines.

In terms of production and shipments, Bostitch predominates,<sup>4</sup> accounting for \*\*\* of U.S. shipments (by quantity) in January-June 1997.<sup>5</sup> Paslode accounted for all but \*\*\* percent of the remainder.

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<sup>1</sup> Under a toll arrangement, a relatively small plant in Ferndale, WA--the Tree Island Fastener Division of Tree Island Industries Ltd., New Westminster, BC, Canada--collates small quantities of roofing nails produced by its parent firm in Canada. It collates approximately \*\*\* worth of roofing nails per year.

<sup>2</sup> Duo-Fast, a U.S. producer of plastic-collated roofing nails, \*\*\*. Keystone, a producer of bulk roofing nails, stated that it \*\*\*. The other known U.S. producers of bulk roofing nails \*\*\*.

<sup>3</sup> Bostitch and Paslode also produce the pneumatic tools for CR nail application, although they maintain that sales of these products are negotiated separately.

<sup>4</sup> Bostitch, the largest U.S. producer, supports the petition, but has held a low profile in the investigations. Its counsel limited his participation in the Commission's conference in the preliminary phase of the investigations to a short statement, which is presented below in its entirety. In the final phase of the investigations, Bostitch filed a prehearing brief but did not appear at the hearing and did not file a posthearing brief. Bostitch filed a questionnaire response in the preliminary phase of the investigations, but its data were \*\*\*. Bostitch filed a \*\*\* producers' questionnaire response in the final phase of the investigations, but \*\*\*. Counsel for Bostitch stated that Stanley-Bostitch Daxing's exports have been \*\*\*. (Telephone conversation with Steve Narkin, Esq., week of Oct. 13, 1997.)

At the Commission's conference, the Bostitch presentation consisted of the following: "Stanley-Bostitch is a U.S. producer of collated roofing nails. All of the roofing nails that Stanley produces are collated. We are especially sensitive to imports of this distinct product. Stanley-Bostitch supports the petition in this case as the proprietary questionnaire response shows several aspects of Stanley-Bostitch's operations related to collated roofing nails have been adversely affected by imports from the three subject countries. Import competition from those three countries has had about the same effect on Stanley-Bostitch as on the rest of the U.S. industry. Thus, we support the petition." In its questionnaire response in the final phase of the investigations, in explaining why it supports the petition, Bostitch stated \*\*\*.

<sup>5</sup> In July 1997, Stanley Works announced it was going to have a major reorganization, including closing of facilities and employment reductions. It is not known to what extent, if any, Bostitch's CR nails operations will be

(continued...)

Bostitch has supplemented its U.S. production with imports in recent periods \*\*\*.<sup>6</sup> It also \*\*\*.<sup>7</sup>

### U.S. PRODUCTION, CAPACITY, CAPACITY UTILIZATION,<sup>8</sup> SHIPMENTS, INVENTORIES, AND EMPLOYMENT

Data for the U.S. producers are shown in table III-1. In most categories the data increased from 1994 to 1996 and again from January-June 1996 to January-June 1997. Paslode installed new capacity in 1993 and built a new plant (shifting its production of CR nails from its plant in Pontotoc, MS) in early 1995. The capacity of this plant continued to increase in 1996; however, aggregate capacity of the reporting producers \*\*\* in 1996 because \*\*\*.<sup>9</sup> Exports are small relative to domestic shipments. No internal consumption or company transfers of CR nails were reported.

TABLE III-1

CR NAILS: U.S. PRODUCTION, AVERAGE PRACTICAL CAPACITY, CAPACITY UTILIZATION, SHIPMENTS, END-OF-PERIOD INVENTORIES, AND EMPLOYMENT-RELATED INDICATORS, 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997

\* \* \* \* \*

#### Bostitch's Capacity

\*\*\*. Data provided in Bostitch's questionnaire response appear to show \*\*\* capacity.<sup>10</sup> However, elsewhere Bostitch has indicated that it is producing CR nails \*\*\*, and some customers have indicated that Bostitch restricted shipments to them or otherwise couldn't serve all their needs.<sup>11</sup> In fact, Bostitch \*\*\*.<sup>12</sup>

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<sup>5</sup> (...continued)  
affected.

<sup>6</sup> Imports by Bostitch from \*\*\* were as follows: \*\*\*.

<sup>7</sup> Bostitch reported that \*\*\*. (Written answers to staff questions, Aug. 18, 1997.)

<sup>8</sup> In its opinion in the preliminary investigations, the Commission (USITC Pub. 3010, op. cit., p. 18, fn. 138) requested that in any final phase of the investigations, information be obtained "regarding the effect that low price levels for CR nails during the period of investigation had on the domestic industry's ability to increase capacity utilization." In response to a question on whether low prices for CR nails have affected their ability to increase capacity utilization, \*\*\*. (Questionnaire response).

<sup>9</sup> Bostitch questionnaire response and telephone conversation between Commission staff and Mr. Thomas Graham, Skadden, Arps, Slate, Meagher and Flow, counsel to Stanley-Bostitch, Oct. 2, 1997. \*\*\*.

<sup>10</sup> Bostitch reported that its capacity for CR nails was \*\*\* million pounds in 1994, \*\*\* million pounds in 1995, \*\*\* million pounds in 1996, \*\*\* million pounds in January-June 1996, and \*\*\* million pounds in January-June 1997; the data are based on allocations. Meanwhile, its reported production of CR nails was \*\*\* million pounds in 1994, \*\*\* million pounds in 1995, \*\*\* million pounds in 1996, \*\*\* million pounds in January-June 1996, and \*\*\* million pounds in January-June 1997, resulting in capacity utilization rates of \*\*\* percent in 1994, 1995, 1996, January-June 1996, and January-June 1997, respectively, based on unrounded data.

<sup>11</sup> For example, Georgia-Pacific and PrimeSource Building Products reported that they could not obtain all the CR nails they ordered from Bostitch (conference transcript, pp. 88, 98-99). In a statement dated \*\*\*, PrimeSource also reported that \*\*\*. (\*\*\*)

<sup>12</sup> Bostitch stated that \*\*\*. (Bostitch's written responses to staff questions, dated Aug. 18, 1997.) In its

(continued...)



In its prehearing brief, Bostitch addressed the apparent conflict between its \*\*\* reported capacity utilization for CR nails and its statement that it \*\*\* to meet customer demand in January-June 1997. Bostitch reported that its capacity data reflected its “demonstrated” capacity which in turn represents its “theoretical” capacity to produce CR nails if it were to divert to CR nail production capacity currently used to make \*\*\*.<sup>13</sup> However, since such a diversion “would not have made economic sense,” Bostitch claims it operated at \*\*\* in the period of investigation.<sup>14</sup> Bostitch also reported that “The explanation for the \*\*\* reported in Bostitch’s questionnaire response also lies in \*\*\* CR nail prices”<sup>15</sup> and that \*\*\*.<sup>16</sup>

Bostitch has also stated that \*\*\*.<sup>17</sup>

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<sup>12</sup> (...continued)

questionnaire response, Bostitch reported that \*\*\*.

<sup>13</sup> Bostitch’s prehearing brief, pp. 5, 6.

<sup>14</sup> Bostitch’s prehearing brief, p. 6.

<sup>15</sup> Bostitch’s prehearing brief, p. 5. In its postconference brief (p. 2), Bostitch stated that it \*\*\* because \*\*\*. It also stated \*\*\* (questionnaire response) and that “If imports from the three countries under investigation are priced fairly, then Stanley-Bostitch will be able to \*\*\* collated roofing nails, and will have an \*\*\*” (p. 2, postconference brief) and “Given that \*\*\*, Stanley-Bostitch could meet increased demand” (p. 3, postconference brief). Bostitch added that it \*\*\* in an effort to \*\*\* so as to make CR nail production \*\*\*. In the lost sales/lost revenues section of its questionnaire response, Bostitch stated \*\*\*.

<sup>16</sup> Bostitch’s written responses to staff questions, Aug. 18, 1997.

<sup>17</sup> Ibid.



## PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

The overwhelming bulk of CR nails imported into the United States are produced in China, Korea, and Taiwan. CR nails from other countries, such as Canada, Indonesia, Mexico, and the United Arab Emirates, have entered the United States, but to date only in small quantities and on a limited basis.<sup>1</sup> The petitioner estimates that imports from countries other than subject countries and Korea account for less than 5 percent of the subject product's consumption in the United States, and information received in response to Commission questionnaires supports this contention.

U.S. imports, by sources, are presented in table IV-1, and U.S. import shares, by sources, are presented in table IV-2. Questionnaire data received from U.S. importers were not usable, mainly because some importers were not able to separate their data by country of origin. Accordingly, the import data presented in the tables are based on questionnaire responses received from foreign exporters as well as on Commerce's official statistics, but certain estimates had to be made to Commerce's data on imports from Hong Kong and Macau (included in the data on China in the tables) in order to account for the fact that other collated nails are also included in the statistical reporting number in which imports of CR nails are classified.<sup>2</sup> Data on LTFV imports presented in the table are based on questionnaire responses from responding producers/exporters in the subject countries. A complete explanation of how the import data were obtained, by country, is presented in the following sections.

Commerce found *critical circumstances* (history of dumping and massive increases in imports) on imports from China other than from Top United and Qingdao Zongxun, and on imports from Romp and K. Ticho in Taiwan. Monthly import data for use in assessing the Commission's critical circumstances determinations are presented in appendix E.

Apparent U.S. consumption, based on U.S. producers' shipments plus import data, is shown in table IV-3. The respective ratios of imports and U.S. producers' shipments to apparent U.S. consumption are shown in table IV-4.

The vast majority of foreign-produced CR nails are imported by large, independent distributors which have also traditionally purchased from U.S. producers.

### CHINA

For China, it was necessary to present separate import data for "China LTFV" (consisting of imports from producers/exporters in China covered by Commerce's "all other" final dumping margin) and "China fair value" (consisting of imports from the two producers/exporters in China, Top United and Qingdao Zongxun, found by Commerce to have zero dumping margins). The "China fair value" data presented in the table consist of data on imports from Top United and Qingdao Zongxun, as reported for Top United and in Qingdao Zongxun's questionnaire response. The "China LTFV" data

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<sup>1</sup> Responses to Commission questionnaires.

<sup>2</sup> Staff estimated that 75 percent of the quantity and value of imports from Hong Kong and Macau under statistical reporting number 7317.00.55.05 consisted of CR nails. The 75-percent figure is based on petitioner's original estimate of the share of such imports accounted for by CR nails. Respondents did not raise objection to the 75-percent figure when asked. (Hearing transcript, pp. 91, 92.) (Imports from Macau may be overstated since \*\*\*). However, for imports from China, staff estimated that 100 percent of imports under statistical reporting number 7317.00.55.05 consist of CR nails, on the basis that questionnaire responses received from only 8 out of at least 13 apparent producers/exporters in China show that imports of CR nails from the 8 alone were higher than 75 percent of official statistics in January-June 1997.

TABLE IV-1

## CR NAILS: U.S. IMPORTS, BY SOURCES, 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997

Item	1994	1995	1996	January-June--	
				1996	1997
<i>Quantity (1,000 pounds)</i>					
China, LTFV	***	***	***	***	***
Taiwan, LTFV	***	***	***	***	***
Subtotal	13,647	16,551	21,742	9,540	11,289
China, fair value	***	***	***	***	***
Taiwan, fair value	***	***	***	***	***
All other	22,747	21,100	23,884	11,561	14,161
Subtotal	31,217	32,077	37,791	16,946	20,229
Total	44,864	48,628	59,533	26,486	31,518
<i>Value (1,000 dollars)</i>					
China, LTFV	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Taiwan, LTFV	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Subtotal	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
China, fair value	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Taiwan, fair value	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
All other	14,683	13,357	14,865	7,290	8,618
Subtotal	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Total	27,177	28,868	35,049	16,120	18,362
<i>Unit value (per pound)</i>					
China, LTFV	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Taiwan, LTFV	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Subtotal	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
China, fair value	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Taiwan, fair value	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
All other	\$0.65	\$0.63	\$0.62	\$0.63	\$0.61
Subtotal	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Total	0.61	0.59	0.59	0.61	0.58

<sup>1</sup> Not available.<sup>2</sup> Not applicable.

Note.--The data for China include Macau and Hong Kong. For China, Top United and Qingdao Zongxun were found by Commerce not to be selling CR nails at LTFV. For Taiwan, Unicatch and Lei Chu were found by Commerce not to be selling CR nails at LTFV. Unit values are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires and official statistics of the U.S. Department of Commerce.

TABLE IV-2

## CR NAILS: U.S. IMPORT SHARES, BY SOURCES, 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997

Item	1994	1995	1996	January-June--	
				1996	1997
<b>Quantity (1,000 pounds)</b>					
Total imports	44,864	48,628	59,533	26,486	31,518
<b>Share of total quantity (percent)</b>					
China, LTFV	***	***	***	***	***
Taiwan, LTFV	***	***	***	***	***
Subtotal	30.4	34.0	36.5	36.0	35.8
China, fair value	***	***	***	***	***
Taiwan, fair value	***	***	***	***	***
All other	50.7	43.4	40.1	43.6	44.9
Subtotal	69.6	66.0	63.5	64.0	64.2
Total	100.0	100.0	100.0	100.0	100.0
<b>Value (1,000 dollars)</b>					
Total imports	27,177	28,868	35,049	16,120	18,362
<b>Share of total value (percent)</b>					
China, LTFV	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Taiwan, LTFV	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Subtotal	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
China, fair value	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Taiwan, fair value	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
All other	54.0	46.3	42.4	45.2	46.9
Subtotal	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Total	100.0	100.0	100.0	100.0	100.0

<sup>1</sup> Not available.<sup>2</sup> Not applicable.

Note.---The data for China include Macau and Hong Kong. For China, Top United and Qingdao Zongxun were found by Commerce not to be selling CR nails at LTFV. For Taiwan, Unicatch and Lei Chu were found by Commerce not to be selling CR nails at LTFV.

Source: Compiled from data submitted in response to Commission questionnaires and official statistics of the U. S. Department of Commerce.

TABLE IV-3

CR NAILS: U.S. SHIPMENTS OF DOMESTIC PRODUCT, U.S. IMPORTS, BY SOURCES, AND APPARENT U.S. CONSUMPTION, 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997

Item	1994	1995	1996	January-June--	
				1996	1997
<b>Quantity (1,000 pounds)</b>					
Producers' U.S. shipments	***	***	***	***	***
<b>U.S. imports from--</b>					
China, LTFV	***	***	***	***	***
Taiwan, LTFV	***	***	***	***	***
Subtotal	13,647	16,551	21,742	9,540	11,289
China, fair value	***	***	***	***	***
Taiwan, fair value	***	***	***	***	***
All other	22,747	21,100	23,884	11,561	14,161
Subtotal	31,217	32,077	37,791	16,946	20,229
Total imports	44,864	48,628	59,533	26,486	31,518
Apparent consumption	***	***	***	***	***
<b>Value (1,000 dollars)</b>					
Producer's U.S. shipments	***	***	***	***	***
<b>U.S. imports from--</b>					
China, LTFV	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Taiwan, LTFV	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Subtotal	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
China, fair value	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Taiwan, fair value	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
All other	14,683	13,357	14,865	7,290	8,618
Subtotal	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Total imports	27,177	28,868	35,049	16,120	18,362
Apparent consumption	***	***	***	***	***

<sup>1</sup> Not available.

Source: Compiled from data submitted in response to Commission questionnaires and official statistics of the U.S. Department of Commerce.

**TABLE IV-4**

**CR NAILS: APPARENT U.S. CONSUMPTION AND RATIOS OF U.S. IMPORTS AND PRODUCERS' U.S. SHIPMENTS TO CONSUMPTION, 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\* \* \* \* \*

presented in the table consist of 100 percent of imports from China under statistical reporting number 7317.00.55.05 plus 75 percent of such imports from Hong Kong and Macau, minus the import data from Top United and Qingdao Zongxun.<sup>3</sup>

**TAIWAN**

For Taiwan, it was also necessary to present separate import data for LTFV and fair value imports. Commerce found two producers/exporters in Taiwan, Unicatch and Lei Chu, to have zero dumping margins. Accordingly, the "Taiwan fair value" data presented in the table consist of data on imports from Unicatch and Lei Chu, as reported in their questionnaire responses. The "Taiwan LTFV" data presented in the table consist of imports from Taiwan as reported by the 4 producers/exporters of LTFV product that submitted questionnaire responses.

**ALL OTHERS**

The data on "all others" presented in the table consist of data on imports of CR nails from only Korea, since imports from nonsubject sources other than Korea were minimal. For imports from Korea, staff used actual data on quantities reported by Korean producers/exporters in response to Commission questionnaires; for the value data on Korea, staff applied landed, duty-paid unit values based on Commerce data to the quantity data reported by Korean producers/exporters. The aggregate data reported by firms in Korea were actually higher than 100 percent of U.S. imports from Korea under statistical reporting number 7317.00.55.05.

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<sup>3</sup> Staff notes that exports from China to the United States of CR nails reported by 8 Chinese LTFV producers/exporters exceed the *China LTFV* data in table IV-1 in January-June 1997 and that the methodology used to obtain the *China LTFV* data in the table may understate imports from China in at least January-June 1997.





## **PART V: PRICING AND RELATED DATA**

### **FACTORS AFFECTING PRICING**

#### **Raw Material Costs**

The main input in production of nails is wire made from wire rod. The cost of wire was reported to be between \*\*\* percent of the total cost of CR nails. \*\*\*. \*\*\*. Longer nails require more wire; as a result, the cost of wire is reported to be a greater share of the cost of longer nails. The responding producers reported \*\*\* for wire prices. \*\*\*. \*\*\*.

#### **Transportation Costs and Import Duties**

Transportation charges from China and Taiwan to the U.S. market are estimated to be 16.6 and 8.2 percent of the c.i.f. values, respectively.<sup>1</sup> Six of 14 responding importers of CR nails indicated that U.S. inland transportation costs are between 1 and 5 percent of the total delivered costs. The remaining importers reported transportation costs ranging from 8 to 25 percent of total delivered costs. The 2 responding U.S. producers reported transportation costs of \*\*\* and \*\*\* percent of the total delivered costs of CR nails. CR nails are covered by subheading 7317.00.55 of the HTS with an MFN duty rate of 0.4 percent *ad valorem* in 1997.

#### **Exchange Rates**

##### **China**

Quarterly exchange rates reported by the International Monetary Fund (IMF) for China during the period January 1994-June 1997 are shown in figure V-1.<sup>2</sup>

##### **Taiwan**

Quarterly data reported by the Central Bank of China for the real and nominal value of the Taiwanese NT dollar during the period January 1994-March 1997 are shown in figure V-2.<sup>3</sup>

### **PRICING PRACTICES**

All the U.S. producers and 7 of 19 responding importers make sales based on price lists. The U.S. producers and 10 of 23 responding importers reported offering quantity or large-customer discounts off list prices. All U.S. producers and 15 of 20 importers reported that they sell only on a spot basis based on or from a price list. Two importers reported selling most of their product on a spot basis, selling 10 percent or less of their CR nails on contract, and 3 importers sold only on contract. All U.S. producers and 10 of

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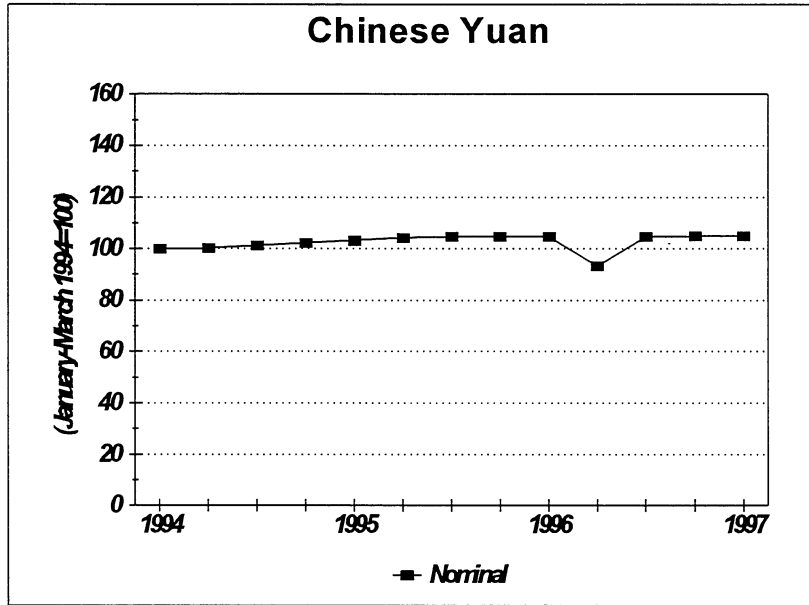
<sup>1</sup> These estimates are derived from official U.S. import data (under HTS subheading 7317.00.55) and represent the transportation and other charges included in imports valued on a c.i.f. basis.

<sup>2</sup> The real value of the Chinese yuan is not shown because producer price data for China are not available.

<sup>3</sup> Data for April-June 1997 are unavailable.

FIGURE V-1

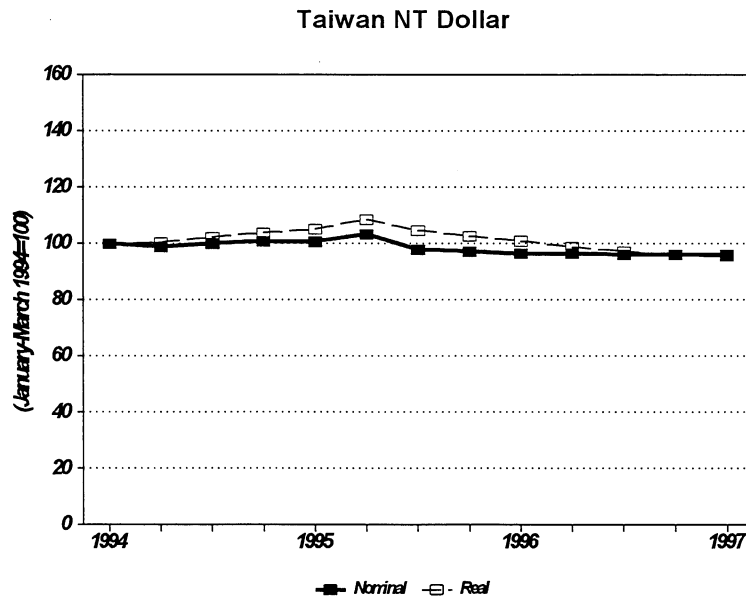
EXCHANGE RATES: INDEX OF THE NOMINAL EXCHANGE RATE OF THE CHINESE YUAN RELATIVE TO THE U.S. DOLLAR, BY QUARTERS, JAN. 1994-JUNE 1997



Source: International Monetary Fund, *International Financial Statistics*, August 1997.

FIGURE V-2

EXCHANGE RATES: INDICES OF THE NOMINAL AND REAL EXCHANGE RATES OF THE TAIWANESE NT DOLLAR RELATIVE TO THE U.S. DOLLAR, BY QUARTERS, JAN. 1994-MAR. 1997



Source: The Central Bank of China, *Financial Statistics, Taiwan District, the Republic of China*, April 1997.

22 responding importers reported selling on a f.o.b. basis. Eleven importers reported selling on a delivered basis and one sold on both delivered and f.o.b. bases. Typical terms of sales are net 30 days, but 3 of the 19 responding importers required payment within 15 days or sooner.<sup>4</sup>

### PRICE DATA

The Commission requested U.S. producers and importers to report the total net U.S. delivered value and quantity shipped for sales of 1-inch and 1-1/4-inch CR nails to unrelated U.S. customers in each quarter between January 1994 and June 1997. Importers were requested to provide quantity and value data only for nails sold to U.S. firms that resell the nails, and not to report data for CR nails importers sold directly to end users. Quarterly quantity and value data were requested and used to determine the average price for the following products:

- Product 1:** Galvanized steel roofing nails collated with two wires, 1 inch in length, price per 7,200-nail box.
- Product 2:** Galvanized steel roofing nails collated with two wires, 1-1/4 inches in length, price per 7,200-nail box.

Three U.S. producers and nine importers<sup>5</sup> provided usable pricing data for sales of the requested products in the U.S. market, although not necessarily for both products or all quarters over the period examined. Weighted-average price data are presented in tables V-1 and V-2 and figure V-3. Price data for each of the U.S. producers are presented in appendix F. Usable pricing data reported are estimated to account for \*\*\* percent of U.S. producers' shipments of domestic CR nails. Price data provided by importers purchasing from producers selling at LTFV were available for \*\*\* percent of the Chinese product sold at LTFV and \*\*\* percent of the LTFV CR nails from Taiwan.<sup>6</sup> The import prices reported in tables V-1 and V-2 and in figure V-3 consist only of prices of product imported from manufacturers that Commerce determined to have positive (i.e., not zero) dumping margins.

**TABLE V-1**  
**CR NAILS: WEIGHTED-AVERAGE NET DELIVERED PRICES (PER 7,200-NAIL BOXES) AND QUANTITIES FOR SALES TO UNRELATED U.S. CUSTOMERS FOR PRODUCT 1 REPORTED BY U.S. PRODUCERS AND IMPORTERS FROM LTFV SOURCES, AND MARGINS OF UNDER/(OVER)SELLING, BY QUARTERS, JAN. 1994-JUNE 1997**

\* \* \* \* \*

---

<sup>4</sup> \*\*\* reported net 60 days and \*\*\* in its importer questionnaire reported that when money was due depended on the type of purchaser and type of order.

<sup>5</sup> Seventeen importers provided price data for product from Taiwan and China; however, 8 of these were eliminated because they purchased from producers for which Commerce has determined final LTFV margins to be zero. The 9 importers for which price data were used were \*\*\*.

<sup>6</sup> One-inch nails made up \*\*\* percent of the nails for which pricing data were available.

TABLE V-2

CR NAILS: WEIGHTED-AVERAGE NET DELIVERED PRICES (PER 7,200-NAIL BOXES) AND QUANTITIES FOR SALES TO UNRELATED U.S. CUSTOMERS FOR PRODUCT 2 REPORTED BY U.S. PRODUCERS AND IMPORTERS FROM LTFV SOURCES, AND MARGINS OF UNDER/(OVER)SELLING, BY QUARTERS, JAN. 1994-JUNE 1997

\* \* \* \* \*

FIGURE V-3

CR NAILS: WEIGHTED-AVERAGE NET DELIVERED PRICES FOR SALES OF PRODUCTS 1 AND 2 TO U.S. CUSTOMERS REPORTED BY U.S. PRODUCERS AND IMPORTERS, BY QUARTERS, JAN. 1994-JUNE 1997

\* \* \* \* \*

### U.S. Producers' and Importers' Prices

#### U.S. Product

U.S. producers' prices for product 1 ranged from \*\*\* to \*\*\* per box over the period for which data were reported. U.S. producers' prices for product 2 ranged from \*\*\* to \*\*\* per box in that time period. Prices for products 1 and 2 followed similar trends. The price of product 1 was highest in the first quarter of 1994 and at its lowest in the second quarter of 1996. In the first two quarters of 1996, prices of product 1 fell below both 1994 and 1995 levels; prices from the third quarter of 1996 to the second quarter of 1997 rose above these lows but were still below prices from the first quarter of 1994 to the second quarter of 1995. Over the entire period of investigation, the price of product 1 fell by \*\*\* percent. The price of product 2 was highest in the first quarter of 1994 and lowest in the first quarter of 1996. The price rose in the second half of 1996 before falling again in 1997. Over the entire period of investigation, the price of product 2 fell by \*\*\* percent.

#### Chinese Product

Prices for Chinese product 1 were available only for 12 quarters from July 1994 through June 1997. Prices for product 1 ranged from a low of \*\*\* per box in July-September of 1995 to a high of \*\*\* per box in October-December 1994. Prices for product 2 ranged from a low of \*\*\* per box in January-March of 1994 to a high of \*\*\* per box in January-March 1996. The price of product 1 rose by 3.9 percent over the period of investigation, and the price of product 2 rose by 29.0 percent from an unusually low price of \*\*\* in January-March 1994 to \*\*\* in April-June 1997.

#### Taiwanese Product

Prices reported by importers of product 1 ranged from \*\*\* to \*\*\* per box. No overall price trend could be seen in these data; however, prices in 1996 tended to be below prices in other years. Product 1's price was at its maximum in July-September 1994 and was at its minimum in January-March 1996. The final price was 2.7 percent below the initial price. Reported prices for product 2 ranged from \*\*\* to \*\*\* per box. Prices were highest throughout 1994 but there were some large quarter-to-quarter fluctuations in other years. Prices fell by 5.4 percent over the period of investigation. The price was highest in July-September 1994 and lowest in April-June 1996.

## Price Comparisons

Tables V-1 and V-2 show the margins of under/overselling for LTFV CR nails from January-March 1994 through April-June 1997 for each of the countries. LTFV imports of both products 1 and 2 from Taiwan and China undersold domestic CR nails in all quarters for which data were available. For Chinese product 1, margins of underselling ranged from 22.4 percent in April-June 1996 to 31.3 percent in July-September 1994, and for product 2, margins of underselling ranged from 19.9 percent in October-December 1994 to 46.6 percent in January-March 1994. For Taiwanese product 1, margins of underselling ranged from 18.4 percent in July-September 1995 to 29.9 percent in January-March 1994, and for Taiwanese product 2, margins of underselling ranged from 20.5 percent in July-September 1995 to 30.7 percent in January-March 1995.

## LOST SALES AND LOST REVENUES

\*\*\*<sup>7</sup> and Paslode alleged lost sales and/or lost revenues due to imports of CR nails from China and/or Taiwan. Only Paslode provided enough information for staff to verify the information with purchasers. Paslode reported \*\*\* firms to which it allegedly lost sales,<sup>8</sup> in \*\*\* of these cases it also reported information on lost revenues (tables V-3 and V-4). Staff obtained comments from \*\*\* purchasers named as detailed below. Of 5 lost revenue allegations, 4 instances were denied, and it was not possible to get information for 1 sale. Of 16 specific lost sales allegations, 6 were confirmed or partially confirmed by the purchasers,<sup>9</sup> 8 were denied by the purchasers or the purchaser only purchased CR nails produced by firms that Commerce determined were not dumping, and it was not possible to get information for 2.

**TABLE V-3**

**CR NAILS: LOST REVENUE ALLEGATIONS REPORTED BY PASLODE**

\* \* \* \* \*

**TABLE V-4**

**CR NAILS: LOST SALES ALLEGATIONS REPORTED BY PASLODE**

\* \* \* \* \*

\*\*\* named \*\*\* in \*\*\*. \*\*\* wrote that Paslode's price was \*\*\* per box with a minimum purchase of \*\*\* boxes per order. Otherwise the price is \*\*\* per carton. He reported that Paslode did not reduce its price to \*\*\*.<sup>10</sup>

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<sup>7</sup> \*\*\*.

<sup>8</sup> \*\*\* firms were listed under lost sales in app. 24 of the petition. In addition, \*\*\* firms were listed as lost customers in app. 25. \*\*\* additional firms were provided via fax on Oct. 7, 1997. All of these are included in the lost sales allegations covered in this section.

<sup>9</sup> This includes purchases of CR nails in which it was not possible to determine who produced the imported nails and therefore may include some sales in which the nails were not dumped.

<sup>10</sup> Letter from \*\*\* dated Jan. 3, 1997.

\*\*\* named \*\*\* in a lost revenue allegation. \*\*\* of \*\*\* reported that the price was low because \*\*\* was trying to unload a large quantity quickly, not because of competition from imports.<sup>11</sup> \*\*\*

\*\*\* was named in \*\*\*. \*\*\* reported that \*\*\* purchased imported CR nails from \*\*\*.<sup>12</sup> \*\*\* purchased a total of \*\*\*; however, it purchased only \*\*\* boxes from \*\*\* which had a positive LTFV margin. \*\*\* reported that the domestic price was \*\*\* and the price of imports was \*\*\*.

\*\*\* was named in \*\*\*. \*\*\* reported that he purchased nails from China, Taiwan, Korea, and other sources because the prices of these nails were lower.<sup>13</sup>

\*\*\* was named in \*\*\*. \*\*\* reported that he purchases CR nails from \*\*\*.<sup>14</sup> In the past year he purchased \*\*\*<sup>15</sup> of nails from Taiwan, which he purchased from an \*\*\* dealer; all other nails came from \*\*\*. He reported that CR nails from \*\*\* cost between \*\*\* and \*\*\* per box.

\*\*\* was named in a lost sale allegation. According to \*\*\*, \*\*\* had switched from purchasing solely domestic CR nails to purchasing both domestic and Taiwanese CR nails in late \*\*\*.<sup>16</sup> \*\*\* reported that \*\*\* had purchased approximately \*\*\* boxes of Taiwanese CR nails, rather than domestic CR nails, to remain price competitive and retain customers. \*\*\* purchased CR nails from \*\*\*, which only purchased from Taiwanese firms with positive dumping margins.

\*\*\* was named in a lost sale allegation with Paslode claiming losses of \*\*\*. \*\*\* stated that \*\*\* sold about \*\*\* boxes of imported 1- and 1-1/4-inch nails so far this year.<sup>17</sup> He reported that \*\*\* purchased nails from Taiwan because they were of comparable quality to \*\*\* nails and were less expensive. \*\*\* reported that the nails he purchased were produced by \*\*\*.<sup>18</sup> This producer apparently would be included in those firms in Taiwan subject to the "all others" dumping margin.

\*\*\* was named in a lost sale allegation of \*\*\*. \*\*\* of \*\*\* reported that he has been selling nails from only one domestic source for a number of years.<sup>19</sup> He did not know whether these nails were imported or produced domestically. \*\*\*, which purchased imports both from producers with zero and with positive LTFV margins. \*\*\* did not respond to Commission inquiries to identify either the importer or the foreign producer of the nails it sold.

\*\*\* was named in \*\*\*. \*\*\* stated that \*\*\* had sold only domestic (Paslode) nails; however, customers requested other types of nails because Paslode's nails did not fit into other companies' nail guns.<sup>20</sup> He reported that \*\*\* purchased CR nails imported from China, Taiwan, and Korea and that these nails cost \*\*\* per box, and sometimes cost more than domestic nails. Price, he stated, was not the reason his firm switched to selling both imported and domestic nails.

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<sup>11</sup> Discussion with Commission staff, Dec. 12, 1996.

<sup>12</sup> Discussion with Commission staff, Oct. 8, 1997.

<sup>13</sup> \*\*\*. It was not possible to determine how much of this was sold at LTFV.

<sup>14</sup> Discussion with Commission staff, Dec. 12, 1996.

<sup>15</sup> A container would contain approximately 1,000 boxes of nails.

<sup>16</sup> Discussions with Commission staff, Dec. 12, 1996 and Oct. 1, 1997.

<sup>17</sup> Discussion with Commission staff, Dec. 9, 1996.

<sup>18</sup> He was not certain how this was spelled. Discussion with Commission staff, Oct. 6, 1997.

<sup>19</sup> Discussion with Commission staff, Dec. 9, 1996.

<sup>20</sup> The wires used to collate Paslode's nails are placed closer to the head of the nail than those used to collate other nails. As a result, according to \*\*\*, Paslode's nails are the only ones that fit into its nail guns. (Discussion with Commission staff, Dec. 12, 1996).

\*\*\* was named in an allegation of lost sales totaling \*\*\*. \*\*\* reported that branches of \*\*\* sold imports, but that the \*\*\* cited in the allegation did not purchase any imported CR nails because \*\*\* required domestic CR nails.<sup>21</sup>

\*\*\* was cited in an instance of alleged lost sales of approximately \*\*\*. \*\*\* stated that \*\*\* purchased only imported CR nails from Korea between \*\*\*.<sup>22</sup> He reported that \*\*\* sold approximately \*\*\* boxes per month, rather than the \*\*\*, and that \*\*\* now sold very few domestic nails because the price of imports was much lower.

\*\*\* was cited in a lost sales allegation. It reported that it had price quotes of \*\*\* from China and \*\*\* from Taiwan and that it purchased approximately \*\*\* boxes of CR nails from Korea and Taiwan.<sup>23</sup> It reported that imported nails were purchased because the roofing business is extremely competitive and users purchased the cheapest possible nails that work. \*\*\* reported that it prefers to purchase domestic nails but that the market dictates that it purchase less expensive, imported nails in order to remain competitive. \*\*\* did not respond to Commission inquiries to identify either the importer or the foreign producer of the nails it sold.

\*\*\* was alleged to be a customer with lost sales amounting to \*\*\*. \*\*\* of \*\*\* stated that he had stopped purchasing domestic nails for his branch because imports were priced so much lower.<sup>24</sup> He reported that he purchased imported CR nails for \*\*\* per box (or a little less) and that domestic nails were \*\*\* per box. Before switching to selling mainly imports, he reported that \*\*\* had sold \*\*\* boxes per month of \*\*\* CR nails. \*\*\* reported that roofers used to request domestic nails by brand name but now the price difference was so great they were no longer interested in domestic nails. He did not know the country of origin of the imported nails his firm sold and reported that he purchased from such a large number of importers he could not identify them; as a result it was not possible to determine if the CR nails in question were sold at LTFV.

\*\*\* alleged that it had lost sales to \*\*\*. \*\*\* of \*\*\* reported that in the last 7 years he had purchased \*\*\* of nails from \*\*\*.<sup>25</sup> \*\*\* purchases most of its nails from \*\*\* and these nails are mainly \*\*\*. \*\*\* reported that if \*\*\* sales to \*\*\* had fallen it may have been because \*\*\*.

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<sup>21</sup> Discussion with Commission staff, Dec. 9, 1996. \*\*\*. However, the petitioners argued at the hearing that imported nails did not comply with building codes. Mr. Heinlen, hearing transcript, p. 21. It is therefore unclear whether imported CR nails comply with codes.

<sup>22</sup> Discussions with Commission staff, Dec. 6, 1996 and Oct. 2, 1997.

<sup>23</sup> Information provided in writing, Dec. 16, 1996.

<sup>24</sup> Discussions with Commission staff, Dec. 9, 1996 and Oct. 2, 1997.

<sup>25</sup> Discussion with Commission staff, Dec. 12, 1996.





## PART VI: FINANCIAL EXPERIENCE OF THE INDUSTRY

### BACKGROUND

Three producers (Paslode, Bostitch, and International) of CR nails provided financial data. In interim 1997 Paslode, Bostitch, and International accounted for \*\*\* percent of reported production, respectively.

Paslode (the petitioner) is a division of Illinois Tool Works (ITW), a large publicly-held company. ITW produces a wide variety of industrial and consumer products and its sales were \$5.0 billion in 1996. All of its CR nails are produced at a new plant in White River, AR that initiated production in 1995. Previously it produced CR nails at its Pontotoc, MS plant.

Bostitch, the largest producer, a subsidiary of public company Stanley Works (SWK), manufactures CR nails at its East Greenwich, RI plant which is known as Stanley Fastening Systems. SWK produces a wide variety of cutlery, hand tools, and general hardware. Its sales were \$2.7 billion in 1996. SWK recently announced a major corporate restructuring. The following excerpt is from the company's 10-Q report for the period ending June 30, 1997.

“In the second quarter, the company announced plans to streamline its manufacturing, sales, distribution and administrative operations, removing redundancies. The company will reduce manufacturing and distribution facility locations from 123 to 70, selling 11 and closing 42. Many of the closures will be effected by consolidating operations into other Stanley facilities, others by outsourcing work to vendors.”<sup>1</sup>

\*\*\*.<sup>2</sup> \*\*\*. Separate results of operations for Bostitch and Paslode's all-nails operations are presented in appendix G. \*\*\*.

\*\*\*. Although Bostitch is a larger producer of CR nails than Paslode, its CR nail sales \*\*\*. Data showing net sales for the establishment, all nails, and CR nails for each producer in the January-June 1997 period are shown in the tabulation below (in thousands of dollars).<sup>3 4</sup>

<u>Net sales:</u>	<u>Bostitch</u>	<u>Paslode</u>
Establishment . . . . .	***	***
All nails . . . . .	***	***
CR nails . . . . .	***	***

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<sup>1</sup> Stanley Work's 10-Q report for the second quarter ending June 30, 1997, p. 6.

<sup>2</sup> \*\*\*.

<sup>3</sup> \*\*\*.

<sup>4</sup> \*\*\*.

## OPERATIONS ON CR NAILS

The results of operations for the CR nails producers are shown in table VI-1. Results of operations for the three producers, by firm, are shown in table VI-2. The aggregate reported profitability of the three producers \*\*\* during the period of investigation. As previously discussed, CR nails account for \*\*\*.<sup>5</sup>

**TABLE VI-1**  
**RESULTS OF OPERATIONS OF U.S. PRODUCERS IN THE PRODUCTION OF CR NAILS, FISCAL YEARS 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\*       \*       \*       \*       \*       \*       \*

**TABLE VI-2**  
**RESULTS OF OPERATIONS OF U.S. PRODUCERS, BY FIRM, IN THE PRODUCTION OF CR NAILS, FISCAL YEARS 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\*       \*       \*       \*       \*       \*       \*

\*\*\*<sup>6</sup> \*\*\*<sup>7</sup> \*\*\*<sup>8</sup>

\*\*\*. Paslode's value added in interim 1997 was computed by staff to be \*\*\* percent.<sup>9</sup> \*\*\*.<sup>10</sup>

At the hearing Paslode indicated that the current antidumping and countervailing duty investigations on certain steel wire rod could have an effect on the price of the key raw material component used to make CR nails. "So what we see is the pressures from the cost side may go up, while without relief on the price side, or the finished products coming in, it will present very serious problems for the industry."<sup>11</sup> It also said that the improvement in demand for CR nails in interim 1997 is "aberrational" and reflects the dumping action taken by the petitioner.<sup>12</sup>

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<sup>5</sup> \*\*\*.

<sup>6</sup> \*\*\*.

<sup>7</sup> \*\*\*.

<sup>8</sup> Posthearing brief, exh. 3, response to question 2.

<sup>9</sup> Value added is defined as conversion costs (direct labor and factory overhead divided by the cost of goods sold.)

<sup>10</sup> Illinois Tool Works, Paslode's parent company, reported that "depreciation of plant and equipment for financial reporting purposes is computed principally on an accelerated basis." Its range of useful lives is 10 to 40 years for buildings and 3 to 12 years for machinery and equipment. Electronic filing for Illinois Tool Work's 10-K, p. 29. \*\*\*. Prehearing brief of White & Case, pp. 22-23.

<sup>11</sup> Transcript of hearing, p. 8. There are current Commission investigations on certain steel wire rod from various countries, Invs. Nos. 701-TA-368-371 and 731-TA-763-766.

<sup>12</sup> Ibid, p. 9.

\*\*\* 13 \*\*\* 14 \*\*\* 15  
 \*\*\* 16 \*\*\*  
 \*\*\* 17  
 \*\*\* 18 \*\*\*

<u>Item</u>	January-June				
	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1996</u>	<u>1997</u>
	*	*	*	*	*

\*\*\*19 \*\*\* 20 \*\*\* 21 \*\*\*  
 \*\*\* 22 \*\*\*

Because of the \*\*\*, a variance analysis might not provide a reasonable indication of the interaction of prices, costs, and volume on changes in profitability.

**INVESTMENT IN PRODUCTIVE FACILITIES, CAPITAL EXPENDITURES,  
 AND RESEARCH AND DEVELOPMENT EXPENSES**

The value of fixed assets (property, plant, and equipment), capital expenditures, and research and development costs are shown in table VI-3. \*\*\* 23 \*\*\* 24 \*\*\* 25 \*\*\*

**TABLE VI-3  
 VALUE OF ASSETS, CAPITAL EXPENDITURES, AND RESEARCH AND DEVELOPMENT EXPENSES OF U.S.  
 PRODUCERS OF CR NAILS, FISCAL YEARS 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\* \* \* \* \*

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<sup>13</sup> Bostitch's prehearing brief, pp 2-5.

<sup>14</sup> \*\*\*

<sup>15</sup> \*\*\*

<sup>16</sup> Ibid, question 11. \*\*\*

<sup>17</sup> \*\*\*

<sup>18</sup> Subtitle D of Title VII of the Tariff Act of 1930, as amended, Sec. 771 (D) Product Lines. In cases where specific identification of the product under investigation "has no separate identity," the Commission may examine the narrowest product group that includes the domestic like product.

<sup>19</sup> Part III, footnote 15.

<sup>20</sup> Part III, footnotes 4, 8, and 12, and pp. III-2 and III-3.

<sup>21</sup> Part III, footnote 10.

<sup>22</sup> Prehearing brief, Skadden Arps, pp. 2-5. Also Skadden Arps letter of Aug. 28, 1997 to staff economist, Amelia Preece.

<sup>23</sup> \*\*\*. Posthearing brief of petitioner, p. 6.

<sup>24</sup> Paslode's questionnaire, p. 13.

<sup>25</sup> Posthearing brief, exh. 3, response to question 8.

## CAPITAL AND INVESTMENT

The Commission requested the producers to describe any actual or potential negative effects of imports of CR nails from China, and/or Taiwan on their growth, investment, ability to raise capital, and/or their development efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are as follows:

### Actual Negative Effects

Bostitch - \*\*\*

International - \*\*\*

Paslode - \*\*\*

### Anticipated Negative Effects

Bostitch - \*\*\*

International - \*\*\*

Paslode - \*\*\*

## PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V, and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. As far as it is known, the subject product produced in China and Taiwan is not subject to any antidumping-duty orders or any such investigations outside the United States.

### THE INDUSTRY IN CHINA

According to the petitioner, at least 2 firms (China Wuxi Zhenfen Screw Factory, Wuxi, and Shanghai Minmetals PuDong Corp., Shanghai) and one industrial group (Zhejiang Material Industry Group, Hangzhou) manufacture and/or export CR nails.<sup>1</sup> Other known producers include Stanley-Bostitch Daxing, a Bostitch subsidiary and the \*\*\*; Beijing Central Top Metal M.E. Co. Ltd., Beijing; Crown Champ Industries, owned by a Taiwanese producer (K. Ticho Industries Co., Ltd.); Cana (Tianjin) Hardwood Industry Co., Ltd.; and De Poan Pneumatic Corp. Table VII-1 presents data for production and shipments of 8 Chinese firms subject to Commerce's final LTFV margins that reported data in response to the Commission's questionnaire.

**TABLE VII-1**

**CR NAILS: CHINESE CAPACITY, PRODUCTION, INVENTORIES, CAPACITY UTILIZATION, AND SHIPMENTS, 1994-96, JAN.-JUNE 1996, JAN.-JUNE 1997, AND PROJECTED 1997-98**

\* \* \* \* \*

### THE INDUSTRY IN TAIWAN

The Commission sent questionnaires to 22 possible producers of CR nails in Taiwan and received 5 responses (K. Ticho is \*\*\*), 2 of which are not subject to Commerce's final positive LTFV margins: Unicatch Industrial Co., Ltd., Nantou City, and Lei Chu, Taichung. Table VII-2 gives production and shipment data for Romp and S&J Wire Products, the only producers of LTFV imports in Taiwan that submitted information to the Commission.

**TABLE VII-2**

**CR NAILS: TAIWANESE CAPACITY, PRODUCTION, INVENTORIES, CAPACITY UTILIZATION, AND SHIPMENTS, 1994-96, JAN.-JUNE 1996, JAN.-JUNE 1997, AND PROJECTED 1997-98**

\* \* \* \* \*

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<sup>1</sup> The Commission sent questionnaires to each of these firms, as well as 10 others; 8 firms returned completed questionnaires.

## U.S. IMPORTERS' INVENTORIES

Importers' end-of-period inventories of imported CR nails, summarized from questionnaire responses, are shown in table VII-3. Overall, the data show a general decline in inventories; however, the data reflect the operations of importers that represent only about 25 percent of the total imports reported in questionnaire responses; also, it is not certain to what extent the reported inventories are of product found to be sold at LTFV. Most importers were unable to provide this information, either because it was not readily retrievable or because variously-sourced CR nails were not inventoried separately. \*\*\*, but was not able to provide separate data by country of origin.

### TABLE VII-3

CR NAILS: U.S. IMPORTERS' END-OF-PERIOD INVENTORIES OF IMPORTS, 1994-96, JAN.-JUNE 1996,  
AND JAN.-JUNE 1997

\* \* \* \* \*

## U.S. IMPORTERS' CURRENT ORDERS

In response to a question on whether importers had ordered CR nails from China and/or Taiwan for delivery after June 30, 1997, the majority of importers responded "Yes" and listed varying amounts of imports. It is not certain to what extent the "Yes" responses are for product found to be sold at LTFV.

**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**





**INTERNATIONAL TRADE  
COMMISSION****Investigations Nos. 731-TA-757-759  
(Final); Collated Roofing Nails From  
China, Korea, and Taiwan**

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA-757-759 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China, Korea, and Taiwan of collated roofing nails,<sup>1</sup> provided for in subheading 7317.00.55 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.  
**EFFECTIVE DATE:** May 9, 1997.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202-205-3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).

**SUPPLEMENTARY INFORMATION:****Background**

The final phase of these investigations is being scheduled as a result of

<sup>1</sup> For purposes of these investigations, Commerce has defined the subject merchandise as "collated roofing nails made of steel, having a length of 1<sup>3</sup>/<sub>16</sub> inch to 1<sup>3</sup>/<sub>8</sub> inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires."

affirmative preliminary determinations by the Department of Commerce that imports of collated roofing nails from China, Korea, and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigations were requested in a petition filed on November 26, 1996, by the Paslode Division of Illinois Tool Works Inc., Vernon Hills, IL.

#### **Participation in the Investigations and Public Service List**

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

#### **Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

#### **Staff Report**

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 17, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

#### **Hearing**

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on September 30, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 23, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 25, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

#### **Written Submissions**

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 24, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 8, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 8, 1997. On October 27, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 29, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of

sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: May 20, 1997.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 97-13783 Filed 5-23-97; 8:45 am]  
BILLING CODE 7020-02-P

**AUTHORITY:** This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR § 201.10).

By order of the Commission.

Issued: October 9, 1997.

Donna R. Koehnke,  
*Secretary.*

[FR Doc. 97-27490 Filed 10-15-97; 8:45 am]

BILLING CODE 7020-02-P

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**INTERNATIONAL TRADE  
COMMISSION**

**[Investigation No. 731-TA-758 (Final)]**

**Collated Roofing Nails From Korea**

**AGENCY:** United States International Trade Commission, Commerce.

**ACTION:** Termination of investigation.

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**SUMMARY:** On October 1, 1997, the Department of Commerce published notice in the *Federal Register* of a negative final determination of sales at less than fair value in connection with the subject investigation (62 FR 51420). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning collated roofing nails from Korea (investigation No. 731-TA-758 (Final)) is terminated.

**EFFECTIVE DATE:** October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202-205-3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).



**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-583-826]

**Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan**

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

**EFFECTIVE DATE:** October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Everett Kelly at (202) 482-4194, or Brian Smith at (202) 482-1766, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 353, as the codified on April 1, 1997. Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296 (May 19, 1997) ("Final Regulations"), do not govern this investigation, citations to those regulations are provided, where appropriate, as a statement of current departmental practice.

**Final Determination**

We determine that collated roofing nails ("CR nails") from Taiwan are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the preliminary determination in this investigation (see *Notice of Preliminary Determination and Postponement of Final Determination: Collated Roofing Nails from Taiwan*, 62 FR 25904 (May 12, 1997)), the following events have occurred:

In June 1996, we attempted to verify the questionnaire responses of the following respondents: Unicatch Industrial Co. Ltd. ("Unicatch"), Lei Chu Enterprises Co., Ltd. ("Lei Chu"), S&J Wire Products Company, Ltd. ("S&J"), and Romp Coil Nail Industries ("Romp").

The Paslode Division of Illinois Tool Works Inc. ("Petitioner"), Unicatch, Lei

Chu, and Romp submitted case briefs on July 30, 1997, and rebuttal briefs on August 5, 1997. The Department held a public hearing on August 7, 1997.

**Scope of Investigation**

The product covered by this investigation is CR nails made of steel, having a length of  $1\frac{3}{16}$  inch to  $1\frac{13}{16}$  inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

**Period of Investigation**

The period of this investigation ("POI") for all respondents is October 1, 1995, through September 30, 1996.

**Facts Available****A. K. Ticho**

We did not receive a response to our questionnaire from K. Ticho, an exporter of the subject merchandise during the POI. Section 776(a)(2) of the Act requires the Department to base its determination on the facts available when interested parties withhold information specifically requested by the Department. Because K. Ticho failed to submit information that the Department specifically requested, we must base our determination for that company on the facts available. Section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department has determined that by failing to respond, K. Ticho has not acted to the best of its ability to comply with our request for information and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.

**Romp**

Romp reported sales and cost data based on unaudited financial statements. At verification, we were unable to reconcile Romp's financial statements to its tax return or any other independent source (see Romp Coil Cost Verification Report, July 18, 1997). In situations where a respondent does not have audited financial statements, the

Department may use the company's tax return as an independent source to substantiate the company's questionnaire responses (see *Final Results of Antidumping Administrative Review: Fresh Cut Flowers from Mexico*; 60 FR 49569-49572 (September 26, 1995)). In this instance, because we were unable to reconcile Romp's financial statements to its tax return, we determined that the financial statements were unreliable and unusable as we were unable to confirm the quantity and value reported as well as confirm that all sales made by Romp during the POI were reported to the Department. Section 776(a)(2)(D) of the Act requires the Department to base its determination on the facts available when information, but that information submitted by a party cannot be verified as provided in section 782(i). Accordingly, we must base our determination for Romp on the facts available.

Section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate to the best of its ability. We have determined that by failing to provide us the financial statements used to prepare Romp's tax return for purposes of testing the reliability and accuracy of reported costs, expenses, and the value of sales during the POI, Romp has not acted to the best of its ability in this investigation. Further, the information in the financial statements that Romp provided to the Department's verifiers cannot serve as a reliable basis for our final determination. While the Department attempts to work within the limitations presented by the respondent's normal accounting systems, as a threshold matter, the Department must ensure that the total amount of reported sales and costs during a particular investigation are fully captured in the information submitted to the Department. This is especially so in cases involving cost of production and constructed value, in which the Department must ensure that the total amount of the reported costs account for all actual costs incurred by the respondent in producing the subject merchandise during the period under examination. Despite prior notice by the Department of the intended verification procedures, Romp never notified the Department that it was unable to provide a reliable independent source to substantiate the data contained in its unaudited financial statements. Therefore, in light of the importance of this data to the Department's determination, we have determined that in selecting from among the facts

available, an adverse inference is warranted.

#### Selection of Adverse Facts Available Margin

As adverse facts available, we considered the highest margin contained in the petition (as recalculated by the Department at initiation) as the most appropriate information on the record to form the basis for dumping margins for K.Ticho and Romp. Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess at 870 (1994) ("SAA"), states that "corroborate" means to determine that the information used has probative value.

To corroborate the data contained in the petition, we examined the basis for the estimated margins. The petitioner based its allegation of export price on price quotes from two manufacturer/exporters of CR nails in Taiwan and import statistics. These price quotations were adjusted for movement expenses using customs data and IM-145 Import Statistics. See *Notice of Initiation of Collated Roofing Nails from Korea, Taiwan and the People's Republic of China*, 61 FR at 67307-08. As explained in *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey*, 61 FR 30309 (June 14, 1996), we consider information from independent public sources, such as import statistics, as having probative value. Furthermore, the two price quotes in the petition are consistent with export prices reported by the respondents on the record of this investigation. Therefore, we determine that the export price calculations set forth in the petition have probative value.

The petitioner based Normal Value ("NV") on Constructed Value ("CV"). See *Notice of Initiation*. To calculate CV, the petitioner used manufacturing costs based on its own production experience, its 1995 audited financial statements, and publicly available industry data. *Id.* The CV calculations in the petition are consistent with the CVs reported by the respondents on the record of this investigation. As such, we determine that the NV calculations have probative value. (see Memorandum, dated May 5, 1997.)

Based on our reexamination of the price information supporting the

petition, we determine that the highest margin in the petition, as recalculated by the Department corroborated within the meaning of section 776(c) of the Act.

#### Fair Value Comparisons

##### *Unicatch, Lei Chu, S&J*

To determine whether sales of the subject merchandise by Unicatch, Lei Chu, and S&J to the United States were made at less than fair value, we compared the Export Price ("EP") or Constructed Export Price ("CEP") to the NV, as described in the "Export Price" and "Constructed Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the "Scope of Investigation" section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Unicatch, Lei Chu, and S&J reported that they had no viable home market or third country sales during the POI. We therefore made no price-to-price comparisons. See the "Normal Value" section of this notice, below, for further discussion.

#### Level of Trade and CEP Offset

In the preliminary determination, where that we used each respondent's financial statements to derive SG&A and profit for the CV calculations, the Department determined that there was insufficient evidence on the record to justify a level of trade adjustment or CEP offset because we were unable to isolate the particular selling expenses associated with each respondent's NV. We found no evidence at verification to warrant a change from that preliminary determination. Accordingly, we have not made either a LOT adjustment or CEP offset for any of the respondents in this final determination.

#### Export Price and Constructed Export Price

We calculated EP and CEP, as appropriate, in accordance with section 772(a), (c) and (d) of the Act, where the CR nails were sold directly to the first unaffiliated purchaser in the United States prior to importation and where CEP was not otherwise warranted based on the facts of record. The calculation for each respondent was based on the same methodology used in the preliminary determination, with the following exceptions:

*Unicatch*—We made changes to the following fields based on Unicatch's pre-verification corrections and verification findings: Payment Date; Invoice Number; Quantity (Cartons); Gross Unit Price; Discounts; U.S. Inland Freight from port to warehouse and warehouse to customer; warranties; international freight, brokerage and handling (Taiwan); port charges; marine insurance; U.S. duties; Duty Drawback; Indirect Selling Expenses; Inventory Carrying Costs; Packing. In addition we deleted certain sales of non-subject merchandise and added sales found at verification. See Valuation Memorandum dated September 24, 1997.

*Lei Chu*—We made changes to the following fields based on Lei Chu's pre-verification corrections and verification findings: Payment Date; Sales Terms; Port Charges; Bank Charges; Marine Insurance; Invoice Number; Gross Unit Price; Sale Date; Taiwan Inland Freight from plant to port; International freight, Brokerage and Handling (Taiwan). See Valuation Memorandum dated September 24, 1997.

*S&J*—We made changes to the following fields based on S&J's pre-verification corrections and verification findings: Inland freight; Brokerage and Handling, International Freight. In addition, we included sales reported by S&J's affiliate New Lan Luang (see Comment 17). See Valuation Memorandum dated September 24, 1997.

#### Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Unicatch, Lei Chu, and S&J reported that they had no home market sales during the POI. Therefore, we have determined that none of the respondents have a viable home market. Because Unicatch, Lei Chu, and S&J also reported that they had no viable third country sales during the POI, we based NV on CV in accordance with section 773(a)(4) of the Act.

#### Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, Selling, General

and Administrative expenses ("SG&A"), profit and U.S. packing costs as reported in the U.S. sales listings. In this case, none of the respondents had home market selling expenses or home market profit upon which to base CV in accordance with section 772(e)(2)(A).

Section 773(e)(2)(B) of the Act sets forth three alternatives for computing profit and SG&A without establishing a hierarchy or preference among the alternative methods. We did not have the necessary cost data for method one (calculating SG&A and profit incurred by the producer on the home market sales of merchandise of the same general category as the exports in question), or method two (averaging SG&A and profit of other investigated producers of the foreign like product). The third alternative method (section 773(e)(2)(B)(iii) of the Act) provides that profit and SG&A may be computed by any other reasonable method, capped by the amount of profit normally realized on sales in the home market of the same general category of products. The SAA states that, if the Department does not have the data to determine amounts for profit under alternative method one and two or a profit cap under alternative method three, it may apply alternative three (without determining the cap) on the basis of "the facts available." SAA at 841. Therefore, as the facts available under section 773(e)(2)(B)(iii) of the Act, for Unicatch and S&J, we are using each respondent's overall profit and SG&A rate associated with its total sales as recorded in its most recent financial statement. Because the figures recorded in the financial statements are company-specific and contemporaneous with the POI, we determine this data to be a reasonable surrogate for SG&A and profit of the foreign like product. With respect to Lei Chu, because its financial statement includes sales of merchandise not related to the merchandise under investigation, e.g., not within the same general category of CR nails products, we determined that using Lei Chu's financial statement is not an appropriate basis for deriving SG&A and profit. Therefore, we are using the weighted average of the profit rate and SG&A of other respondents in this investigation for Lei Chu (see Lei Chu Calculation Memorandum, September 24, 1997). For a further discussion of this methodology, see Comment 2 below.

#### Price to CV Comparisons

Because we based SG&A on respondents' financial statements, where we compared CV to EP, we did not make any circumstance of sale adjustments for direct expenses and

commissions as we were unable to isolate these amounts from total SG&A.

#### Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks, see *Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan Dollar (NTD) did not undergo a sustained movement.

#### Critical Circumstances

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 773(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In the preliminary determination, we determined that there was no reasonable basis to believe or suspect that critical

circumstances existed with respect to imports of CR nails from Taiwan by Unicatch, Lei Chu, S&J, and Romp. This preliminary determination was based on a finding that there was no evidence of a history of dumping and no basis to impute knowledge of dumping and resultant material injury. As no interested party has challenged this determination and because the calculated final dumping margins for Unicatch, Lei Chu, and S&J do not exceed the benchmark amounts for establishing imputed knowledge (e.g. 15% for CEP sales and 25% for EP sales), we do not find that critical circumstances exist for any of these companies. Regarding all other exporters, because we do not find that critical circumstances exist for any of the investigated companies with calculated dumping margins, we also determine that critical circumstances do not exist for companies covered by the "All Others" rate. Based upon adverse facts available, however, we do find that critical circumstances exist with respect to exports by K. Ticho and Romp. (see Comment 20).

#### Verification

As provided in section 782(i) of the Act, we verified or attempted to verify the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

#### Interested Party Comments

##### *Comment 1: Indirect Selling Expenses*

Unicatch argues that the Department erroneously deducted its indirect selling expenses incurred in Taiwan from CEP. Unicatch states that it calculated its Taiwan indirect selling expenses as a percentage of total Unicatch sales because it was unable to specify whether any of the indirect selling expenses were directly related to its U.S. sales. Unicatch asserts pursuant to section 772(d) of the Tariff Act of 1930, as amended, that the Department has an established practice in which it does not deduct indirect selling expenses incurred by a foreign producer in the exporting country in calculating CEP. See *Notice of Final Determination: Pet Film from Korea*, 62 FR 38064, 38066 (July 16, 1997). Unicatch further contends that the Department has codified this established practice in the final regulations citing, 62 FR 27296, May 19, 1997 at section 351.402(b) which states that the Department "will not make adjustments for any expense

that is related solely to the sale to an affiliated importer in the United States." As a result, Unicatch contends the Department should not deduct any such indirect selling expenses incurred in Taiwan from CEP in the final determination.

Petitioner contends the Department was correct to deduct Unicatch's indirect selling expenses in constructing CEP as all deductions met statutory requirements. First, petitioner argues the Department verified that Unicatch's sales department provides general sales support services for U.S. sales including contacts with affiliates and customers. Second, petitioner argues that indirect selling expenses are expenses which do not result from a direct relationship with the subject merchandise. Thus, petitioner argues that Unicatch's claim that these expenses are not directly related to the sale of the subject merchandise is irrelevant. Finally, petitioner claims that the Department verified that the international sales division dealt with sales to various export markets, and although there is no sales division devoted to U.S. sales, given that a majority of Unicatch's sales are to the U.S., these expenses should be deducted from CEP.

#### DOC Position

We agree with the respondent and have not deducted Unicatch's indirect selling expenses incurred in Taiwan from CEP because the record evidence does not support a finding that these selling expenses are related specifically to economic activities in the United States. Consistent with the SAA and § 351.402(b) of the Final Regulations (62 FR 27411), we make deductions under section 772(d) of the Act only for selling expenses that relate to economic activity in the United States, which we deem to be expenses associated with the sale to the unaffiliated U.S. purchaser and not the sale to the affiliated U.S. importer. See, e.g., *PET Film from Korea*, 62 FR 38064, 38066 (July 16, 1997); *Grey Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17168 (April 6, 1997).

Unicatch's indirect selling expenses incurred in Taiwan are comprised of salary, travel, and entertainment expenses incurred by its international and domestic sales divisions. See Sales Verification Report for Unicatch, July 17, 1997 ("Unicatch Sales Verification Report") at 11. We verified that Unicatch does not have a sales staff dedicated entirely to U.S. sales, but rather its salespeople deal with sales to various export markets. *Id.* Further, we verified that none of the reported

indirect expenses can be tied specifically to sales to unaffiliated customers in the U.S. but rather are incurred by Unicatch to complete the sale to the affiliated purchaser. *Id.* Although Unicatch's third country sales are not viable (*i.e.*, greater than 5% of U.S. sales) for purposes of calculating NV, we verified that Unicatch did have POI sales in other export markets, which further demonstrates that its reported indirect selling expenses are not associated solely with U.S. sales to unaffiliated customers. Therefore, we disagree with petitioner's argument that because the overwhelming majority of Unicatch's export sales are to the U.S., we should deduct these expenses from CEP. See *Notice of Final Determination of Sales at Less Than Fair Value: Pasta from Italy*, 61 FR 30326, 30352 (June 14, 1996) (deducting inventory carrying costs incurred in Italy for enriched pasta because enriched pasta was sold in the United States during the POI).

#### Comment 2: Calculation of SG&A and Profit for All Respondents

Petitioner disagrees with the Department's decision in the preliminary determination to use each respondent's overall SG&A and profit rates contained in their financial statements because this data includes amounts obtained from sales of non-subject merchandise. Petitioner asserts that the only data pertaining to SG&A and profit specific to the product under investigation is the information provided by Lei Chu. Petitioner argues that one of the three alternative methods to determine SG&A and profit for CV is to weight-average the actual amounts realized on sales of the foreign like product by other producers of the subject merchandise. Because Lei Chu was the only company to provide the data specific to the subject merchandise, petitioner contends that Lei Chu's data is the weighted-average SG&A and profit rates for all Taiwan producers and should be used in all respondent's CV calculations.

Unicatch and Lei Chu counter that the profit rate petitioner asserts should be used in calculating CV was not verified by the Department. More importantly, the profit rate is Lei Chu's subcontractor's profit for processing wire into CR nails and does not reflect all costs of producing and selling CR nails. Both respondents contend that the Department should use the amounts derived from Unicatch and Lei Chu's financial statements because this data incorporates all appropriate costs and was verified by the Department. Moreover, respondents contend that where actual data is not available,

773(e)(2)(B)(i) of the Act authorizes the Department to use amounts generated from the "general category of products" as the subject merchandise. They cite *Shop Towels from Bangladesh* 61 FR 65025 (December 10, 1996) and *Forged Steel Crankshafts from the United Kingdom* 62 FR 16768 (April 18, 1997) as two cases in which the general category of merchandise was determined to be all products from textile mills and all types of crankshafts, respectively. In this case, Unicatch and Lei Chu assert the general category of merchandise encompasses nails and other fasteners and that both companies had sales of nails and other fasteners in the home market. Therefore, the companies contend, the Department should use the SG&A and profit from each company's financial statement because the financial statements encompass products within the same general category of merchandise.

Lei Chu argues that the Department erroneously used profit realized by its subcontractor to calculate the CV of CR nails in the preliminary determination of this investigation. Lei Chu contends the Department should use SG&A and profit verified by the Department from Lei Chu's financial statement to calculate CV for the sales of the subject merchandise because Lei Chu qualifies as the producer of CR nails. Lei Chu agrees that there were certain production processes of the subject merchandise performed by an affiliated subcontractor. However, Lei Chu states that the Department has found in past cases that the party contracting for processing services was the producer of the subject merchandise. In such instances, the Department applied SG&A and profit realized by the contracting party to calculate the CV of the subject merchandise and did not use the SG&A and profit of the subcontractor, citing *Notice of Final Determination: Chrome Plated Lug Nuts from Taiwan*, 56 FR 36130, 36131 (July 31, 1991).

According to Lei Chu, the Department verified that Lei Chu organized the production of CR nails and performed certain production processes during the POI. In addition, Lei Chu states the Department verified that it purchased steel wire rods, maintained them as inventory, retained title over the materials to produce the CR nails and retained ownership over the CR nails throughout the production process. Further, Lei Chu states that the Department verified that it never sold or purchased wire to or from the subcontractor, and there were no sales transactions between the two. Lei Chu claims the Department verified that it



only paid a processing fee to the subcontractor. Finally, Lei Chu argues that the fee and the profit from the subcontractors' financial statement reflects only the costs of processing wire into CR nails. Lei Chu believes its financial statement incorporates the full costs of CR nails. As a result, Lei Chu argues that the Department should use its 1996 financial statements to calculate profit and SG&A.

Petitioner argues that Lei Chu and its subcontractor should be collapsed and the Department was correct in using the profit of Lei Chu's subcontractor to calculate CV. Petitioner contends that the subcontractor is the producer of the subject merchandise because it performs more than minor additions needed to complete the production of CR nails. Further, petitioner contends the case cited by Lei Chu, *Chrome Plated Lug Nuts*, is not applicable because the two parties involved in that case were not affiliated, and the respondent to that investigation had more production responsibilities than Lei Chu. Therefore, petitioner contends the Department properly calculated CV using the profit of Lei Chu's subcontractor.

#### *DOC Position*

Neither Lei Chu, Unicatch, nor S&J had a viable home market upon which to calculate NV; therefore, none of the respondents had home market selling expenses and profit for sales of the foreign like product upon which to base CV. As a result, in the preliminary determination, pursuant to section 773(e)(2)(B)(iii) of the Act and consistent with the SAA, we used each respondent's overall profit and SG&A associated with total sales as recorded in its most recent financial statements as facts available to derive SG&A and profit.

For Unicatch and S&J, for this final determination, we have continued to use the SG&A and profit contained in their most recent financial statements. For both companies, we verified that these amounts reflected expenses and profit associated with overall sales of other types of nails and similar steel products, such as fasteners, which we deem to be within the same general category of products as CR nails. We are satisfied that using the financial statements is a reasonable methodology for calculating each company's SG&A and profit because this data is company-specific, contemporaneous with the POI, and is the most appropriate information on the record. For the reasons discussed below, we disagree with petitioner's argument that we use the amounts contained in Lei Chu's financial statements for all respondents in lieu of

using this verified company-specific data.

For Lei Chu's SG&A in the preliminary determination, we used its financial statements and its affiliated subcontractor's financial statements (see Calculation Memorandum dated September 24, 1997). For Lei Chu's profit, we used its subcontractor's financial statements. However, our findings at verification demonstrated that the amount recorded on the subcontractor's financial statements is not reflective of profit for the sale of the foreign like product or related merchandise but rather is a "tolling fee" for its services (see Lei Chu Cost Verification Report at pg 3). Further, the SG&A and profit recorded in Lei Chu's financial statements are for amounts generated on sales of merchandise completed unrelated to the subject merchandise, e.g., not within the same general category of CR nails products. We also note that Lei Chu's recorded net profit is zero. Although the URAA and subsequent revisions to U.S. law eliminated the use of minimum profit, we do not believe that it eliminated the presumption of a positive profit element in the calculation of CV. Unlike sections 773(e)(2)(A) and 773(e)(2)(B)(i) or (ii), section 773(e)(2)(B)(iii) specifically excludes the use of the term "actual profit," and instead directs us to use any other reasonable method that does not exceed the amount normally realized by the industry in the same general category of products. The SAA states that there is no hierarchy between the alternatives in section 773(e)(2)(B), indicating that in some instances, it may be more appropriate for the Department to ignore "actual profit" available under the two other alternatives and opt instead for some other reasonable method to obtain a profit amount. Therefore, if a company has no home market profit or has incurred losses in the home market, the Department is not instructed to ignore the profit element, include a zero profit, or even consider the inclusion of a loss; rather, the Department is directed to find an alternative home market profit. A clear reading of the statute indicates that a positive amount for profit must be included in CV. See *Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 62 FR 37869, 37877 (July 15, 1997).

Therefore, we reject Lei Chu's argument and have not used its company-wide SG&A and profit rates in our CV calculations. Instead, as facts available, we used the weighted average of the SG&A and profit from the financial statements of the other

respondents in this investigation (see Valuation Memorandum dated September 24, 1997). Because this data represents POI-wide expenses and profit associated with sales of merchandise in the same general category as CR nails products, we find this data to be the most appropriate information on the record to derive Lei Chu's SG&A and profit.

#### *Comment 3: Unicatch's Steel Scrap*

Unicatch argues that the Department should subtract its revenue on steel scrap sales from the cost of manufacture (COM) of CR nails as this information was presented to the Department in a timely manner at the commencement of verification. Further, Unicatch states that the Department was able to verify all information presented at the commencement of verification including revenue from steel scrap and its values per kilogram per CR nails. Thus, Unicatch suggests that consistent with the Department's past cases, the value of steel scrap should be subtracted from normal value, citing *Brake Drums and Rotors from the PRC*.

Petitioner contends that the disclosure by Unicatch of the revenue from steel scrap was not minor or timely. However, petitioner suggests that if the Department makes the adjustment, and given that the revenue is so small, it should make an adjustment in determining allocated expenses and profit.

#### *DOC Position*

We agree with Unicatch that it is the Department's practice to deduct from total COM revenue earned on the sale of scrap resulting from the production of the subject merchandise. See *Elemental Sulphur from Canada; Final Results of Antidumping Administrative Review*, 61 FR 8239, 8245 (March 4, 1996). Because we determined that Unicatch submitted this data in a timely manner (see Comment 4) and we were able to verify these amounts, we have deducted steel scrap revenue from Unicatch's total COM.

#### *Comment 4: Unicatch's and Lei Chu's Corrections and Facts Available*

Unicatch and Lei Chu argue that the Department should incorporate the corrections submitted at the commencement of their verifications in the final margin calculations because the corrections were submitted in a timely manner and verified by the Department. Both respondents contend that the Department should not use facts available for two reasons: (1) Making adverse assumptions and applying facts available are not synonymous and (2)

neither respondent has done anything in this investigation that would justify using adverse inferences. Both respondents argue that there were few instances in the corrections that the Department was unable to verify, and, further, both companies penalized themselves with errors as often as they benefitted. Both respondents state that there is no evidence on the record to suggest that either failed to cooperate by not acting to the best of its ability to comply with Department's requests for information. Lei Chu and Unicatch state that the Department should weigh the record evidence to determine what type of change, if any, would be probative of the issue under consideration. However, both recommend that if the Department chooses to use facts available, adverse inferences not be applied.

Petitioner contends that the Department should not incorporate respondents' corrections because the corrections are not minor and the number of errors reported by the respondents' raise serious doubts about whether the companies acted to the best of their ability to provide accurate information. In addition, petitioner notes that the Department discovered numerous other errors at verification. Therefore, petitioner suggests that the Department resort to "facts available" employing "adverse inferences" to portions of the respondents' calculations.

#### *DOC Position*

We agree with Unicatch and Lei Chu and have accepted the corrections for computing the final margin of the companies. The Department's practice is to permit respondents to provide minor corrections to submitted information at the commencement of verification. See *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan*, 62 FR 1726, 1729 (Jan. 13, 1997). Unicatch and Lei Chu provided the Department with their corrections at the beginning of their respective verifications. Lei Chu's corrections included sales and production quantity, material costs, and fixed overhead. Unicatch's corrections included production quantity, plating costs, scrap, packing, selling expenses and steel wire costs. These revisions corrected data already on the record and did not introduce new issues not previously reported on the record. In sum, the corrections submitted by Unicatch and Lei Chu were typical of the minor corrections routinely accepted by the Department at the commencement of verification.

Accordingly, we determine that resorting to facts available is unwarranted in this particular case. The Department's use of facts available is subject to section 782(d) of the Act. Under section 782(d), the Department may disregard all or part of a respondent's questionnaire responses when the response is not satisfactory or it is not submitted in a timely manner. The Department has determined that neither of these conditions apply. The Department was able to verify the responses, thus rendering them satisfactory, and the types of revisions submitted by Unicatch and Lei Chu met the deadline for such corrections. Under section 782(e), the Department shall not decline to consider information that is (1) timely, (2) verifiable, (3) sufficiently complete in that it serves as a reliable basis for a determination, (4) demonstrated to be provided based on the best of the respondent's ability, and (5) can be used without undue difficulties. Lei Chu and Unicatch have met these conditions. Therefore, we find no basis to reject Lei Chu's and Unicatch's responses, and thus, no basis to rely on the facts otherwise available for our final determination.

#### *Comment 5: Plating Thickness*

Petitioner argues that the plating thicknesses reported by respondents do not meet U.S. Federal or regional building codes. Moreover, petitioner claims that the actual plating thicknesses were not verified by Department. Therefore, petitioner contends that the Department should assume that respondents were aware of the building codes and produced CR nails that did not comply with the codes. The Department should use the information contained in the petition to calculate NV based on CR nails that meet the U.S. building codes.

Unicatch and Lei Chu contend that the Department verified that all costs attributable to plating were included in the CV database. Therefore, both respondents argue that whether or not the subject merchandise complies with U.S. building codes is irrelevant because the purpose of this investigation is to accurately value respondents' production costs of CR nails, not to examine the quality of their CR nails.

#### *DOC Position*

We agree with Unicatch and Lei Chu that we have captured all costs incurred in producing CR nails. During the cost verifications of all respondents, we examined whether all material costs (including plating costs) associated with the subject merchandise were reported completely and accurately in the CV

databases. We noted no discrepancies regarding the material costs with the exception of minor errors, which have now been corrected (see Cost Verification Reports for Lei Chu, Unicatch, and Romp dated July 18, 1997, and Cost Verification Report for S&J dated July 23, 1997). Thus, for each respondent with a calculated dumping margin we have verified all material costs. Any alleged misrepresentation concerning compliance with U.S. building codes is not within the purview of the antidumping statute because such misrepresentation would have no impact on our calculations.

#### *Comment 6: Allocation Methodologies*

Petitioner contends that respondents' allocation methodologies with respect to the following expenses were incorrect.

##### (i) Shipping Related Expenses

Petitioner claims that any shipping related expenses should be based on volume because the expenses are generally incurred based on volume, rather than on gross packed weight. Petitioner argues that allocating shipping expenses based on weight results in under-reported transportation costs.

Unicatch and Lei Chu counter that basing shipping related expenses on weight is acceptable when volume-based information is unavailable. In this case, weight is the only allocation factor on the record. Both respondents cite to *Industrial Belts and Components Thereof from Japan*, 58 FR 30018, 30022 (May 25, 1993) in support of this position.

#### *DOC Position*

We agree with respondents that a weight-based allocation methodology for reporting shipping expenses is acceptable. Although the Department prefers sale-specific movement expenses, the Department's practice is to accept allocation methodologies for movement expenses at the most specific level permitted by the respondent's books and records kept in the ordinary course of business. See *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan*, 62 FR 1726, 1730 (Jan. 13, 1997). Moreover, where multiple items were included in a shipment, we instructed each respondent to report expenses using an allocation methodology on the basis incurred, e.g., weight. Both Unicatch and Lei Chu reported that a weight-based allocation methodology was necessary because their shipments included non-subject merchandise. See Unicatch and Lei Chu's Section C

response dated March 18, 1997. For S&J, the bill of lading records both weight and volume figures without distinguishing between the two.

Therefore, we determine that allocating freight on weight is acceptable for our final margin calculation (see S&J Sales Verification Exhibit 16).

(ii) Production Related Expenses, Factory Overhead, and Indirect Selling Expenses

Petitioner argues that the allocation methodology of production, factory overhead, and indirect selling expenses should be revised to reflect the inclusion or exclusion of scrap, depending on the processing stage in which the expense was incurred. Petitioner suggests, for example, that post-scrap production stages, such as packing, should be based on the weight of the product without the scrap.

Unicatch and Lei Chu counter that allocating over finished goods, which includes scrap, only increases the per-unit costs. Furthermore, both respondents argue that petitioner's methodology will distort costs downward by not accounting for scrap.

*DOC Position*

We agree with respondents that allocating expenses over the weight of the finished good necessarily accounts for all costs related to scrap. If the Department were to allocate certain expenses over a weight which included scrap, the denominator of the calculation would be greater than the weight of the finished product and would result in understating the per-unit expense. Thus, we reject petitioner's argument and will continue to allocate expenses over the total amount of finished product.

(iii) Duty Drawback

Petitioner argues that the duty drawback allocation should be based on the net weight of the CR nails.

Unicatch and Lei Chu counter that they did allocate duty drawback by the net weight of the CR nails.

*DOC Position*

We agree with respondents that duty drawback was properly allocated based on the net weight of the CR nails. As stated in the Unicatch Sales Verification Report at 8-9, the total duty drawback associated with shipments to TCI or Unitech (Unicatch's affiliated U.S. importers) were divided by the total net weight of the shipment to arrive at a per-unit amount for duty-drawback. This same methodology was followed for Lei Chu (see Lei Chu Sales

Verification Report dated June 23, 1997).

(iv) Physical Weights

Petitioner contends that the Department should physically weigh the subject merchandise and base all allocations on physical weights rather than gross weights reported by the respondents.

Unicatch and Lei Chu counter that petitioner's request is untimely and unreasonable. Both respondents argue that the weight-based methodologies used are reasonable and consistent with past practice and urge the Department to reject petitioner's contention.

*DOC Position*

At verification the Department examined the reported product weights for Lei Chu and Unicatch and noted no discrepancies. Therefore, we have used each company's verified weights in our calculations.

*Comment 7: Value Added Taxes (VAT)*

Petitioner argues that the Department should not assume that all sales and expenses reported net of VAT were correct. Accordingly, petitioner believes unless the Department verified all figures, the Department must not assume that all figures are net of VAT.

Lei Chu and Unicatch contend that the sales reported were net of VAT because under Taiwan law VAT is rebated on all export sales. Because all respondents reported their sales as being export sales, both respondents argue that the Department should reject petitioner's claim.

*DOC Position*

In the preliminary determination, Unicatch or Lei Chu reported brokerage and handling and international freight net of VAT. At verification, we found that both respondents incur five percent VAT on these expenses (see Unicatch Sales Verification Report at 7; Lei Chu Sales Verification Report at 8). Since Lei Chu and Unicatch were unable to provide supporting documentation to show that this VAT had been rebated according to Taiwan law, we have applied a five percent VAT to brokerage and handling and international freight for all sales by these two companies (see Valuation Memorandum dated September 24, 1997). However, we found no indication at verification that VAT was incurred on export sales for either Unicatch or Lei Chu.

*Comment 8: Multinational Corporation Rule (MNC)*

Petitioner argues that the MNC provision of the Act should be applied

to Unicatch and Top United (a manufacturer of CR nails in the People's Republic of China). Petitioner cites to section 773(d) of the Act, alleging that the conditions outlined are fulfilled by Unicatch and Top United. Further, petitioner cites to *Melamine Institutional Dinnerware Products from the People's Republic of China* 61 FR 43337 (August 22, 1996), in which the Department determined that the MNC provision applies to cases involving non-market economies.

Unicatch counters that the allegation is untimely and unsupported by evidence on the record of this investigation. Finally, Unicatch argues that the petitioner has failed to demonstrate that two of the three conditions necessary to apply the MNC rule are present, *i.e.*, (1) the petitioner has failed to demonstrate that the PRC market is not viable; and (2) petitioner has failed to demonstrate that the normal value for Taiwan nails is higher than the normal value for PRC nails.

*DOC Position*

We agree with Unicatch that petitioner's MNC allegation is untimely. As stated in the preamble to the final regulations: "[t]here are a variety of analyses called for by section 773 that the Department typically does not engage in unless it receives a timely and adequately substantiated allegation from a party \* \* \* the Department does not automatically request information relevant to a multinational corporation analysis under section 773(d) of the Act in the absence of an adequate allegation." Final Regulations, 62 FR at 27357, citing *Certain Small Business Telephones and Subassemblies Thereof from Taiwan*, 54 FR 31987 (August 3, 1989).

In this case, petitioner alleged for the first time in its case brief that the Department should apply the MNC rule to Unicatch and Top United. Determining NV under the MNC provision is a complex analysis that necessitates collection of information and calculation of sales and cost data from companies who may or may not be subject to investigation. Presenting the allegation after the preliminary determination does not allow the Department sufficient time to collect and analyze the information necessary to make a MNC determination at an appropriate point in the proceeding. For this reason, the Department has specifically rejected the notion that absent a timely and adequate allegation, we are obligated to examine information that is quantitatively and/or qualitatively different from the information normally gathered as part of

its standard antidumping analysis because to do so would significantly impair the Department's ability to comply with its statutory deadlines. See Final Regulations, 62 FR at 27357. Therefore, we reject petitioner's MNC allegation as untimely.

*Comment 9: Reconciliation of Unicatch Sales to Financial Statements*

Petitioner argues that the Department was unable to tie: (1) the reported sales volume totals for all of Unicatch's sales directly to the financial statements, and (2) Unicatch's general ledger to its 1995 income statement. As a result, petitioner asserts that Unicatch's reported sales should not be deemed reliable as some sales may have been excluded. Accordingly, petitioner suggests that the Department apply facts available with adverse inferences because of the potential of unreported sales.

Unicatch contends that because its CEP and EP sales included the resale of CR nails by its affiliates, the Department was unable to complete a total sales reconciliation using its financial statement only. Unicatch states that reconciliation required tying relevant sales to its affiliates' financial statements. Unicatch contends that the Department verified the quantity and value of the resales at its affiliates' headquarters using each affiliate's financial statement and was able to clarify the differences from Unicatch's financial statement without any discrepancies. Therefore, Unicatch contends that facts available with adverse inferences is not warranted.

*DOC Position*

We disagree with petitioner's argument that use of adverse facts available is warranted in this case. Contrary to petitioner's claim, we verified Unicatch's total sales volume and value. As stated in its sales verification report, "we were unable to tie the reported sales and volume and value totals for all of Unicatch sales, or for its EP sales directly to the financial statements because the sales value reported in the financial statement included the sales values for those sales to Unicatch affiliated parties." Unicatch Sales Verification Report at pg 3. However, when we verified Unicatch's affiliates, we were able to tie the quantity and value reported to their financial statements, clarifying any differences in Unicatch's financial statement and reported sales volume (see Unicatch CEP Sales Verification Report (July 23, 1997)). Therefore, we have determined there is no evidence on the record to suggest Unicatch had any

unreported POI sales and resort to facts available is not warranted.

*Comment 10: Reliability of Unicatch's Reported Costs*

Petitioner argues that the cost methodologies used by Unicatch were inappropriate because costs were not properly determined where steel was processed through affiliated parties. Petitioner argues that Unicatch's cost of materials should be measured against a "market value" enabling the Department to determine that prices of the steel are reasonable. In addition, petitioner states the Department should assure that all costs associated with the affiliated parties' costs were reported.

Unicatch contends that at the commencement of verification, it provided the Department with sufficient information, including a sales price from an unaffiliated supplier of wire rod, that enabled the Department to test whether the steel price from an affiliated supplier was reasonable. Unicatch states that it showed an example of an unaffiliated supplier's price lower than transfer prices charged by Unicatch's affiliates, even though the cost of production for those affiliates was higher. Therefore, Unicatch contends that the cost of production for steel is appropriate for its cost calculation methodologies. Further, Unicatch contends that the Department verified all reported costs associated with the affiliates' production of steel wire (*i.e.*, material, labor, overhead, SG&A and interest) and did not find any discrepancies.

*DOC Position*

We disagree with petitioner and have determined that there is no evidence of the record to suggest Unicatch's cost calculation methodologies were incorrect. We verified the two methodologies used by Unicatch to determine material costs for steel wire and welding wire. The first methodology was based on the transfer price from its affiliates and the second methodology was based on the cost of production for wire purchased from its affiliates (see Unicatch Cost Verification Report at 3-4). Although Unicatch had some purchases of steel wire from an unaffiliated supplier, we verified that this unaffiliated purchase price was lower than the reported transfer prices charged by its affiliated suppliers. (*Id.* at Ver. Exh. 1). Therefore, since the costs of production from Unicatch's affiliates were higher than the transfer prices, in accordance with section 773(f)(3), we have used the affiliates' COP data to calculate the actual material cost of the wire inputs.

*Comment 11: Corrections to Unicatch's Questionnaire Responses*

Petitioner argues that the corrections submitted by Unicatch at the time of verification are unacceptable because the Department was not granted time to review the information and consider the appropriate methods for verifying it. Petitioner believes that the Department should re-examine the following changes submitted at verification: (1) interest expenses; (2) SG&A; (3) packing costs; (4) existence of U.S. affiliates; (5) ocean freight; (6) warranty expense; (7) selling expense; (8) inland freight; (9) duty drawback; and (10) marine insurance.

Specifically, petitioner states that Unicatch may have underreported its interest expense because it may have been offset by loans or other money transfers. Further, petitioner claims that Unicatch's packing cost should have been reported separately according to the Department's questionnaire, and the records about Unicatch's affiliates were not accurate and thus, cannot be relied upon by the Department. Therefore, petitioner suggests that the Department reject Unicatch's submissions entirely based on adverse inferences and apply the largest expense found to all of Unicatch's sales transactions, as adverse facts available.

Unicatch contends that the corrections reported at the commencement of its verification were not numerous and should not affect the integrity of its response. Further, Unicatch states that the Department was able to verify all corrections submitted. Unicatch contends that the revisions submitted were typographical errors and other minor data entry errors to the sales databases. Unicatch contends that the Department should use the interest expenses recorded in its verified financial statement to calculate CV and, since Unicatch did not separate packing cost, the packing labor percentage would have been inflated upward without having a major effect on the margin calculation. Finally, Unicatch admits that some errors reported would warrant the use of facts available but there is no instance in which adverse inferences are warranted.

*DOC Position*

We agree with Unicatch and have accepted the corrections submitted at the beginning of verification and the explanation for the discrepancies. We verified all corrections submitted and noted only minor discrepancies. In addition, we reviewed the allocation methodologies used by Unicatch to compute its reported expenses (*i.e.*,

interest expense, warranty expense, duty drawback) and noted no discrepancies (see Unicatch Sales Verification Report at 6-9; Unicatch Cost Verification Report at 2).

Section 782(e) of the Act states that the Department shall not decline to consider information that does not meet all of its requirements if: (1) The information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties. Unicatch's information meets all of these requirements. Accordingly, we have no basis to conclude that the earlier responses distorted the Department's analysis and warrant the use of adverse facts available.

*Comment 12: Whether Lei Chu and its Affiliate Should Be "Collapsed"*

Petitioner argues that Lei Chu and its affiliate are sufficiently intertwined and should be collapsed and treated as one. Petitioner states that Lei Chu has submitted information on the record that it is affiliated with the Taichung Production Division ("TPD") and one of its suppliers and controls the sales and production activities of its suppliers. Petitioner believes that if the Department does not collapse the two companies Lei Chu could shift all of its production and exports of the subject merchandise to TPD or TPD's supplier. Further, petitioner argues that since the two companies should have been collapsed, Lei Chu should have submitted a consolidated response to the Department's questionnaire, and their failure to do so mandates the use of facts available.

Lei Chu argues that if the Department determines that it should be collapsed with its affiliate, the Department must use Lei Chu's profit to calculate the profit of other Taiwan respondents because it reflects the consolidated performance of Lei Chu.

*DOC Position*

We determine that the facts in this case do not warrant resort to our collapsing practice because neither TPD nor Lei Chu's affiliated CR nails supplier are separate producers. First, TPD is merely a production division of Lei Chu, not a separate entity. Lei Chu

Sect. A Supp. QR, April 14, 1997, at 1. Although Lei Chu has ceased production of CR nails at its TPD division, the evidence on the record demonstrates that Lei Chu continues to produce CR nails through a subcontractor. Pursuant to the contractual arrangement, Lei Chu purchases wire rod and drawing materials and provides these materials to its subcontractor who then produces the CR nails (see Lei Chu Cost Verification Report, at 3). Lei Chu pays this affiliate a processing fee and maintains title over the raw materials and completed CR nails throughout the production process. *Id.* By its own admission, Lei Chu controls the sales and production activities of this entity. Further all CR nails production by the subcontractor is the property of Lei Chu and is sold by Lei Chu. Thus, consistent with the Department's current practice with respect to tolling operations (see e.g., section 351.401(h) of the Final Regulations, 62 FR at 27411), the subcontractor is not considered the producer. Lei Chu is the producer of CR nails. In essence, the subcontract relationship represents a single, vertically integrated production operation rather than two separate producers in a position to potentially evade a potential antidumping duty order by shifting production from one facility to another.

*Comment 13: Lei Chu Sales Below Fair Value*

Petitioner argues that since Lei Chu's 1996 financial statement does not show a profit during the POI, Lei Chu sold the subject merchandise at less than fair value.

Lei Chu contends that there is nothing in the statute or the Department's past determinations that supports petitioner's view and as a result, the Department should reject, petitioner's argument.

*DOC Position*

We disagree with petitioner because there is nothing stated in the statute or in past determinations to suggest that a company not showing a profit is necessarily selling the subject merchandise at less than fair value.

*Comment 14: Lei Chu's Packing List Weights Are Not Reliable*

Petitioner argues that the Department should not rely on the packing list weights to determine the weights of the subject merchandise for Lei Chu, because they are not accurate. Therefore, petitioner suggests the Department weigh the subject

merchandise and use the results to compute CV.

Lei Chu contends the packing weights reported by Lei Chu are reliable and were verified by the Department, citing, Lei Chu Cost Verification report at 8. Therefore, Lei Chu suggests that the Department reject petitioner's argument and continue to use the verified packing list weights to compute CV.

*DOC Position*

We disagree with petitioner and have determined there is no evidence on the record to suggest the weights reported on the packing list are unreliable. In addition, we reviewed Lei Chu's packing methodologies and did not note any discrepancies (see Lei Chu Cost Verification Report at 8-9). Therefore, we will use Lei Chu's reported weights to compute CV.

*Comment 15: S&J Untimely Submissions*

Petitioner argues that during the investigation, S&J failed to provide copies of all of its submissions to all interested parties. Further, petitioner claims S&J submitted documents incorrectly according to the Administrative Protective Order (APO) regulations. Therefore, petitioner suggests that the Department reject S&J submissions in total and employ adverse inferences and use facts available.

*DOC Position*

We disagree with petitioner. We have determined that there is no indication or evidence on the record to suggest that S&J did not serve all documents to interested parties in a timely manner or according to APO regulations.

*Comment 16: S&J Omissions and Errors to the Questionnaire Responses*

Petitioner argues that S&J made numerous omissions and errors in its questionnaire responses according to the Department's verification report. These errors included unreported sales and unaccountable bank charges. Therefore, petitioner suggests that in view of the large number of errors and omissions, the Department should reject S&J's submission in its entirety or apply facts available with adverse inferences to the unreported sales.

*DOC Position*

We disagree with petitioners. We verified that S&J did not include bank charges in its Section C response because it was unable to separate bank charges from the other miscellaneous charges included in the general ledger category ("Export Expense") (see S&J Sales Verification Report at 10). We

applied a bank charge percentage to all of S&J sales (see Valuation Memorandum dated September 24, 1997). Therefore, although certain discrepancies and omissions in S&J's reported sales and cost data were discovered during verification, the discrepancies and omissions do not warrant the use of adverse facts available. It is acceptable to address and correct such errors individually, as was done in this case, where appropriate. Such errors were addressed and corrected individually. (See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review* 61 FR 18558 (April 26, 1996).)

*Comment 17: Collapsing of S&J and New Lan Luang*

Petitioner argues that the Department should collapse S&J and New Lan Luang because the parties effectively operate as one. Further, petitioner contends that if the Department does not collapse the two companies it would provide a loophole for future investigations.

*DOC Position*

In order for the Department to collapse two producers, i.e., treat them as a single entity, (1) the producers must be affiliated under section 771(33) of the Act, (2) the producers must have production facilities that are sufficiently similar so that a shift in production would not require substantial retooling, and (3) there must be a significant potential for manipulation of price or production. See *Grey Portland Cement and Clinker From Mexico; Final Results of Antidumping Administrative Review*, 62 FR 17148, 17155 (April 9, 1997); section 351.401(f) of the Final Regulations, 62 FR at 27410. When based on a review of the totality of the circumstances, the Department determines that two affiliated producers are sufficiently related so as to warrant treatment as a single enterprise, collapsing these entities prevents evasion of the antidumping duty order. See *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (Aug. 19, 1996). Applying the criteria of our collapsing inquiry as set forth above, we find (1) S&J and New Lan Luang are affiliated under § 771(33) of the Act, (2) a shift in production would not require substantial retooling, and (3) there is a significant potential for price or production manipulation due to, among other factors, evidence of intertwined business operations and common management of the production and sales decisions of both companies.

Based on this an analysis of the record evidence, we have determined that it is appropriate to treat S&J and New Lan Luang as a single entity for purposes of calculating a dumping margin in this investigation.

First, we find that because S&J owns greater than 5% of New Lan Luang, these companies are affiliated under § 771(33)(E) of the Act. Second, the record evidence demonstrates that although not a current producer of CR nails (New Lan Luang ceased production of CR nails in 1994), New Lan Luang is capable of producing CR nails. See S&J Sect. A Supp. QR, April 8, 1997, at 12; S&J Verification Report, at 2. Based on these facts, it is reasonable to infer that a substantial retooling of New Lan Luang's production facilities would not be necessary if S&J were to shift production to New Lan Luang.

We also determine that the third criterion of our collapsing inquiry is met. In determining whether there is a significant potential for manipulation of price or production, the Department considers factors such as (1) the level of common ownership, (2) interlocking board of directors and common management, and (3) intertwined business operations as evidenced by shared sales information, involvement in production and pricing decisions, or significant transactions between the two enterprises. See *Certain Welded Carbon Steel Pipes and Tubes From India; Final Results of New Shippers Antidumping Duty Administrative Review*, 62 FR 47632, 47638 (Sept. 10, 1997) ("*Pipes and Tubes from India*"); § 351.401(f) of the Final Regulations, 62 FR at 27410. All of these criteria need not be met in a particular case, but rather serve as a reliable basis on which the Department may judge whether the affiliated producers are sufficiently related to create the potential of price or production manipulation. *Pipes and Tubes from India*, 62 FR at 47638.

S&J's General Manager is also in charge of New Lan Luang. See S&J Sect. A Supp. QR, at 2; S&J Verification Report, at 2. S&J explained that its General Manager is responsible for sales and production decisions and determines the prices of S&J's CR nails. See S&J Sect. A QR, Feb. 26, 1997, at 5. At verification we discovered that the Chairman of New Lan Luang is also the founder, former general manager, and current advisor to S&J. See S&J Verification Report, at 2. This individual is also the father of the S&J's current General Manager. *Id.* Additionally, S&J officials explained that the two entities share employees and S&J has on occasion transferred

sales order to New Lan Luang for completion. *Id.* The totality of the circumstances presented by these facts indicate that the two companies operate under common control of the same individual/family with respect to sales and production decisions. Although both S&J's General Manager and New Lan Luang's Chairman are only minority shareholders in both companies, we conclude that their positions of legal and operational control in their respective companies create a significant potential for price or production manipulation. We therefore have treated S&J and New Lan Luang as a single entity for purposes of calculating a dumping margin in this investigation.

To construct a consolidated sales response for S&J/New Lan Luang, we have included New Lan Luang's POI sales in our final margin calculations. S&J reported New Lan Luang's total quantity and value data for its U.S. sales during the POI; however, because we did not specifically request S&J to report additional information on New Lan Luang's POI sales, we do not have a complete sales database upon which to calculate a dumping margin. Therefore, it is necessary to resort to facts available in accordance with section 776(a)(1) of the Act for this missing information. As facts available, we have used a simple average of the amounts reported for the fields not included in the sales database (i.e. exchange rate, foreign inland freight, brokerage) (see Calculation Memorandum dated September 24, 1997).

Additionally, at verification, we discovered additional POI sales by New Lan Luang that S&J failed to report. (see S&J Sales Verification Report at 2). For those sales, we have applied adverse facts available because we deem S&J's failure to provide us with complete information that we specifically requested as a failure to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, for these unreported sales, we used the highest margin calculated for any individual product (see Calculation Memorandum dated September 24, 1997).

*Comment 18: S&J Unaudited Financial Statements*

Petitioner argues that the absence of audited financial statements means that S&J's financial information is not reliable. Petitioner argues that the reliance on the accounting system used for the preparation of the audited financial system is a vital part of the Department's determination that the company's sales and constructed value

data are credible. Therefore, the Department should rely on adverse facts available for S&J.

#### DOC Position

At verification we were able to reconcile S&J unaudited financial statements to its 1996 tax return (see S&J Cost Verification Report (July 23, 1997)). Therefore, because we were able to tie S&J's financial statements to an independent outside source, we have determined that there is no evidence on the record to indicate the information on the financial statements is unreliable. See *Mexican Flowers*, 60 FR at 49569.

#### Comment 19: Non-Mandatory Respondents

Petitioner suggests that the Department calculate a margin for non-mandatory respondents using the results of each of the four mandatory respondents, except those with zero dumping margins.

#### DOC Position

Non-mandatory respondents will be subject to the "all others" deposit rate, which we have calculated based on the weighted average of margins calculated for mandatory respondents—excluding zero and *de minimis* margins. (see March 13, 1997, Decision Memo)

#### Comment 20: Critical Circumstances

Petitioner argues that the Department should find that critical circumstances exist with respect to K. Ticho. Petitioner contends that a timely allegation of critical circumstances was made in the petition and that K. Ticho failed to respond to the Department's questionnaire. Therefore, as facts available, the Department should determine that critical circumstances exist with respect to K. Ticho.

#### DOC Position

We agree with petitioner. Because K. Ticho failed to respond to the Department's questionnaire, we have used the facts available as the basis for determining whether critical circumstances exist. The facts available margin (40.28%) exceeds the threshold for imputing knowledge of dumping to the importers of the merchandise. In addition, we have adversely inferred, as the facts available, a massive increase in imports from K. Ticho. We, therefore, determine that critical circumstances exist for K. Ticho, and will issue appropriate instructions to the Customs service.

We also determine that critical circumstances exist for Romp. As with K. Ticho, the final dumping margin for Romp exceeds 15%, the minimum

benchmark established sales to impute importer knowledge of dumping and resultant injury. Also, because we have determined that the reported quantity and value of POI sales are unreliable, we are also adversely inferring, as facts available, a massive increase in imports from Romp.

#### Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of CR nails from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after May 12, 1997 (the date of publication of the preliminary determination in the *Federal Register*), except as noted below. With respect to entries of CR nails from Taiwan, manufactured and exported by K. Ticho or Romp in accordance with section 735(c) of the Act, we are directing Customs Service to continue suspension of liquidation on all entries that are entered, or withdrawn from warehouse, for consumption on or after February 10, 1997, which is 90 days prior to the date of publication of the preliminary determination. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below.

In accordance with section 735(a)(4) of the Act, because we have calculated zero or *de minimis* rates for Unicatch, and Lei Chu, we will instruct Customs to terminate suspension of liquidation of entries of CR nails manufactured by these companies and to liquidate such entries without regard to antidumping duties. We note that pursuant to 19 CFR 353.21, these companies will be excluded from any antidumping order resulting from an affirmative finding of material injury by the International Trade Commission. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage	Critical circumstances
Unicatch .....	0.00	No.
Lei Chu .....	0.07 (De Minimis)	No.
S&J .....	5.36	No.
Romp .....	40.28	Yes.
K. Ticho .....	40.28	Yes.
All Others .....	5.36	No.

Pursuant to section 733(d)(1)(A) and section 735(c)(5) of the Act, the Department has not included zero or *de minimis* weighted-average dumping margins, or margins determined entirely under section 776 of the Act, in the calculation of the "all others" rate.

#### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: September 24, 1997.

Robert S. LaRussa,  
Assistant Secretary for Import Administration.

[FR Doc. 97-26045 Filed 9-30-97; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE****International Trade Administration  
[A-570-850]****Notice of Final Determination of Sales  
at Less Than Fair Value: Collated  
Roofing Nails From the People's  
Republic of China****AGENCY:** Import Administration,  
International Trade Administration,  
Department of Commerce.**EFFECTIVE DATE:** October 1, 1997.**FOR FURTHER INFORMATION CONTACT:**  
Everett Kelly or Brian Smith, Import  
Administration, International Trade  
Administration, U.S. Department of  
Commerce, 14th Street and Constitution  
Avenue, N.W., Washington, D.C. 20230;  
telephone: (202) 482-4194 or (202) 482-  
1766, respectively.**The Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce regulations are to the regulations at 19 CFR Part 353 (April 1997).

***Final Determination***

We determine that collated roofing nails ("CR nails") from the People's Republic of China ("PRC") are being sold in the United States at less than fair



value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

#### Case History

Since the preliminary determination (Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails from the People's Republic of China), 62 FR 25899 (May 12, 1997), the following events have occurred:

In May, 1996, we attempted to verify the responses to the antidumping questionnaire of respondents Shenzhen Top United Steel Co., Ltd. ("Top United"), Suzhou Junhua Metal Products Co., Ltd. ("Junhua"), and Qingdao Zongxun Nail Products Co., Ltd. ("Zongxun"). On May 12, 1997, respondent Shanghai Minmetals Pu Dong Corporation ("Pu Dong") informed the Department that it could not permit verification of its questionnaire response. The Paslode Division of Illinois Tool Works Inc. ("Petitioner") and respondents submitted case briefs on July 29, 1997, and rebuttal briefs on August 5, 1997.

#### Scope of Investigation

The product covered by this investigation is CR nails made of steel, having a length of  $1\frac{3}{16}$  inch to  $1\frac{13}{16}$  inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 7317.00.55.06. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

#### Period of Investigation

The period of this investigation ("POI") comprises each exporter's two most recent fiscal quarters prior to the filing of the petition. In this case, the POI is April 1, 1996, through September 30, 1996.

#### Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country ("NME") in all past antidumping investigations (see, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's

Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Neither respondents nor petitioner have challenged such treatment. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base normal value ("NV") on the NME producers' factors of production, valued, to the extent possible, in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed in the NV section of this notice, below.

#### Separate Rates

Top United and Zongxun have each requested a separate company-specific antidumping duty deposit rate.<sup>1</sup> With respect to Junhua, Pu Dong and Wuxi, please see the "facts available" section below. Top United is a joint venture between a PRC company "owned by all the people," a company in Hong Kong, and a company in the British Virgin Islands. Zongxun is a joint venture between a PRC collective-owned enterprise, and a Taiwan company.

Zongxun's business license notes that this PRC company is a foreign trade joint venture which owns the production and export facilities used to manufacture and export the subject merchandise it sells to the United States.

In other cases involving the PRC, joint ventures between "collective"-owned enterprises and foreign investors have not been precluded from consideration of a separate rate (see, e.g., Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 54472 (Oct. 23, 1995) ("Drawer Slides"). Furthermore, as stated in Silicon Carbide, ownership of a company by all the people does not require the application of a single, PRC-wide rate. Therefore, for purposes of our final determination, both Top United and Zongxun are eligible for a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers

<sup>1</sup>The Department's starting point in NME proceedings is a rebuttable presumption that all companies are government controlled and therefore subject to a single, countrywide antidumping duty deposit rate.

from the People's Republic of China, 56 FR 20588 (May 6, 1991) and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. De Jure Control

The respondents have placed on the record a number of documents to demonstrate absence of *de jure* control, including laws, regulations, and provisions enacted by the State Council of the central government of the PRC. They have also submitted documents which establish that CR nails are not included on the list of products that may be subject to central government export constraints. In addition, respondents submitted the "Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures" (April 13, 1988). The articles of this law authorize joint venture companies to make their own operational and management decisions. Further, Zongxun submitted the "Regulations Governing Rural Collective Owned Enterprises of the PRC" (July 1, 1990). The articles of this law authorize collective-owned enterprises to make their own operational and management decisions.

In prior cases, the Department has analyzed the very laws which the respondents have submitted in this investigation and found that they establish an absence of *de jure* control. (See Drawer Slides.) We have no new information in this proceeding which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (See, e.g., Silicon Carbide.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether Top United and Zongxun are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

#### 2. De Facto Control

The Department typically 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 subject to, the approval of a governmental authority; (2) whether the respondent has authority to

negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its 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 (see, e.g., Silicon Carbide).

During verification, our examination of correspondence and sales documentation revealed no evidence that either Top United's or Zongxun's export prices are set, or subject to approval, by any governmental authority. That Top United and Zongxun have the authority to negotiate and sign contracts and other agreements independent of any government authority was evident from our examination of correspondence and written agreements and contracts. Finally, we have determined that Top United and Zongxun have autonomy from the central government in making decisions regarding the appointment of management. We also noted that Top United and Zongxun retained proceeds from their export sales and made independent decisions regarding disposition of profits and financing of losses (based on our examination of financial records and purchase invoices).

Consequently, we determine that these exporters have met the criteria for the application of separate rates.

#### Facts Available

##### A. Non-Responding Exporters

Because some companies did not respond to our questionnaire, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC (except the two fully participating exporters) based on our presumption that the export activities of the companies that failed to respond are controlled by the PRC government. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* 61 FR 19026 (Apr. 30, 1996) ("*Bicycles*").

This PRC-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that "if an interested party or any other person— (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such

information but the information cannot be verified as provided in section 782(i), the administering authority \* \* \* shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. The exporters that decided not to respond in any form to the Department's questionnaire have failed to act to the best of their ability in this investigation. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rates determination. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. As adverse facts available, we are assigning the higher of the petition margin or the margin calculated for any participating respondent in this investigation. Because the margins in the petition (as recalculated by the Department at initiation) were higher than any of the calculated margins for a respondent, we used the highest margin stated in the *Notice of Initiation*, 118.41%, as total adverse facts available for the PRC-wide rate.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the "SAA"), states that "corroborate" means to determine that the information used has probative value. See SAA at 870.

In the petition, the petitioner based its allegation of export price on price quotations from two manufacturer/exporters of CR nails in the PRC. These price quotations were adjusted for movement expenses using customs data and IM-145 Import Statistics. See *Notice of Initiation*, 61 FR at 67307-08. As we stated in *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey*, 61 FR 30309 (June 14, 1996), we consider price quotations as information from independent sources. The export price calculations were based upon independent sources and Import Statistics, both sources which we consider to require no further

corroboration by the Department. Therefore, we determined at initiation, and continue to find, that the calculations set forth in the petition have probative value.

The petitioner based its allegation of NV on the factors of production. See *Notice of Initiation*, 61 FR at 67308. To calculate the factors of production, the petitioner used manufacturing costs based on its own production experience, its 1995 audited financial statements, and publicly available industry data. *Id.* The factors of production amount for the most significant raw material input (*i.e.*, steel wire) in the petition is consistent with the factors of production amount reported by the respondents on the record of this investigation. As such, we determine that the NV calculations have probative value. (See memorandum to the file dated May 5, 1997.)

Based on our pre-initiation analysis and reexamination of the price information supporting the petition, we determine that the highest margin stated in the *Notice of Initiation* is corroborated within the meaning of section 776(c) of the Act.

##### B. Wuxi

As stated in our preliminary determination, Wuxi failed to file its questionnaire responses with the Department in the proper manner and to serve its responses on the other interested parties in this investigation. The Department afforded Wuxi numerous opportunities to remedy these deficiencies. In addition, Wuxi's submissions did not provide adequate information for determining that Wuxi is sufficiently independent from government control to be entitled to a separate rate. As such, we determine that Wuxi is not entitled to a separate rate. We, therefore, have included Wuxi in the "PRC-wide" rate.

##### C. Pu Dong

As noted above, Pu Dong refused verification of its questionnaire response. Because of Pu Dong's failure to allow the Department to carry out its verification procedures, the Department was unable to verify whether Pu Dong is sufficiently independent from government control to be entitled to a separate rate. Further, none of the other data in Pu Dong's questionnaire response can be used because Pu Dong refused verification. We, therefore, have included Pu Dong in the "PRC-wide" rate. Because we are including Pu Dong in the PRC-wide rate, we will not address any of the other issues concerning Pu Dong.

**D. Junhua**

We find that Junhua did not provide a complete reporting of all of its "affiliated parties," as requested in the antidumping questionnaire (see *Questionnaire*, p. A-4). Specifically, the existence of several PRC subsidiaries of Junhua's Hong Kong parent only came to light at verification. The Department was not able to evaluate the extent of government control with respect to Junhua's affiliates, nor could the Department confirm that these affiliates were not involved in the production or sale of subject merchandise. Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also SAA at 870. Junhua's failure to provide complete and accurate information in a timely manner demonstrates that Junhua has failed to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available for Junhua, an adverse inference is warranted. As adverse facts available, we determine that Junhua is not entitled to a separate rate, and will be subject to the PRC-wide rate. Because we are including Junhua in the PRC-wide rate, we will not address any of the other issues concerning Junhua.

**Fair Value Comparisons**

To determine whether sales of the subject merchandise by Top United and Zongxun to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

**Export Price/Constructed Export Price****Top United**

We used CEP in accordance with section 772(b) of the Act, because the sales to unaffiliated purchasers were made after importation. We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions: we corrected Top United's response in light of errors discovered during preparations for verification with respect to gross unit prices, payment dates, discounts, and movement expenses; we adjusted Top United's handling and brokerage charges, which were based on pre-POI

data, to reflect POI levels; we adjusted the margin calculations, where necessary, to reflect weighted-average prices for U.S. sales of identical merchandise.

**Zongxun**

We used EP in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated customers before importation and because CEP methodology was not indicated by the facts of record. We calculated EP based on the same methodology used in the preliminary determination, with the following exception: we adjusted Zongxun's handling and brokerage charges, which were based on pre-POI data, to reflect POI levels.

**Normal Value****A. Surrogate Country**

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, 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, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Sri Lanka, Egypt, and Indonesia are countries comparable to the PRC in terms of overall economic development (see Memorandum dated March 24, 1997). According to the available information on the record, we have determined that Indonesia is a significant producer of merchandise that is comparable to CR nails. Accordingly, we have calculated NV using Indonesia import prices—except, as noted below, in the "Factors of Production" section of this notice, in certain instances where an input was sourced from a market economy—for the PRC producer's factors of production. We have obtained and relied upon publicly available information ("PAI") wherever possible.

**B. Factors of Production**

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced CR nails for the exporters which sold CR nails to the United States during the POI. As in the preliminary determination, we calculated NV based on factors of production reported by the respondents.

To calculate NV, the verified per-unit factor quantities were first multiplied by Indonesia values; the resulting products were then summed. We then added amounts for overhead, general expenses

(including interest) ("SG&A"), profit, and packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

**Top United**

We calculated NV based on the same methodology used in the preliminary determination, with the following exceptions: we corrected Top United's response in light of errors discovered during preparations for verification with respect to unreported raw materials, transportation distances, and certain incorrectly reported raw material amounts; we also corrected for errors discovered by the Department during verification with respect to the reported values of sodium hydrosulfate, diesel fuel, and labor allocation; we subtracted the value of Top United's steel scrap from the calculated NVs for Top United's sales of CR nails; for transportation distances used for the calculation of freight expenses on raw materials, we added to CIF surrogate values from Indonesia a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory; and we used more contemporaneous data for the Indonesia surrogate values for welding wire and rubber bands.

**Zongxun**

We calculated NV based on the same methodology used in the preliminary determination, with the following exceptions: we corrected Zongxun's response in light of errors discovered during preparations for verification with respect to the values for steel scrap and cardboard carton; we subtracted the value of Zongxun's steel scrap from the calculated NVs for Zongxun's sales of CR nails; for transportation distances used for the calculation of freight expenses on raw materials, we added to CIF surrogate values from Indonesia a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory; and we used more contemporaneous data for the Indonesia surrogate values for welding wire and rubber bands.

**Critical Circumstances**

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i)

There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order on CR nails in the United States or elsewhere to be sufficient. See, e.g., *Preliminary Determinations of Critical Circumstances: Brake Drums and Rotors from the People's Republic of China*, 61 FR 55269 (Oct. 25, 1996); *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Rotors from the People's Republic of China*, 62 FR 9160 (Feb. 28, 1997) ("*Brake Drums and Rotors*"). Currently, no countries have outstanding antidumping duty orders on CR nails from the PRC. The petitioner alleged a history of dumping based upon an antidumping order on steel wire nails from the People's Republic of China, the scope of which covered CR nails, the scope of which covered CR nails. See *Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order; Certain Steel Wire Nails from the People's Republic of China*, 52 FR 33463 (Sept. 3, 1987). However, because the issue has no effect on our determination of critical circumstances, we are not addressing it for this final determination.

In this investigation, there is no dumping margin for either Top United or Zongxun. Therefore, they will be excluded from any antidumping duty order, and thus it is unnecessary to determine whether critical circumstances exist with respect to these two companies.

Regarding firms covered by the "PRC-wide" rate, we have used the "facts available" as the basis for determining whether critical circumstances exist. In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers margins over 25% for EP sales and 15% for CEP sales to impute knowledge of dumping and of resultant material injury. *Brake Drums and Rotors*, 62 FR at 9164-65. The "facts available" margin for these exporters exceeds the threshold for

imputing knowledge of dumping to the importers of the merchandise. In addition, because we do not have verified, company-specific data on shipments of CR nails following the filing of the petition, we must adversely assume, as the "facts available," a massive increase in imports from these non-responding exporters. We, therefore, determine that critical circumstances exist for all non-responding exporters.

#### Verification

As provided in section 782(i) of the Act, we attempted to verify the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, and original source documents provided by respondents.

#### Interested Party Comments

Because the Department decided to base its final determination for Junhua and Pu Dong entirely on facts available, comments pertaining to other issues have not been addressed for Junhua and Pu Dong.

#### *Comment 1: Offset to NV for Steel Scrap By-Product*

Top United and Zongxun assert that the Department should subtract the value of their steel scrap from the calculated NV for CR nails. They state that during verification, the Department verified that the steel scrap was generated during the production of CR nails, and further verified the volume of the steel scrap that respondents sold to third parties during the period of this investigation. They refer to other proceedings involving PRC companies, during one of which the Department stated that "it is Department practice to subtract the sales revenue of by-products such as steel scrap from the production costs of the subject merchandise." *Brake Drums and Rotors*. They also refer to *Sebacic Acid From the PRC*, 59 FR 28053, 28056 (May 31, 1994), in which the Department stated that "this treatment of by-products is consistent with generally accepted accounting principles."

Petitioner does not object to an adjustment to NV for steel scrap as long as (i) Top United and Zongxun's claims relate to steel scrap which is directly tied to the production of the subject merchandise, (ii) the scrap is sold directly by the factory, and (iii) the Department verified the claim.

#### *DOC Position*

We agree with Top United and Zongxun. We verified that the scrap produced during the manufacture of CR nails is sold by the factory. The proper adjustment is a reduction in the cost of manufacture, which is consistent with the Department's practice in other NME investigations (see, e.g., *Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440, March 30, 1995). We have accordingly subtracted the value of Top United and Zongxun's steel scrap from the calculated NVs for their CR nails, using as surrogate information *Biro Pusat Statistik's* "Foreign Trade Statistical Bulletin" to value reported steel scrap amounts.

#### *Comment 2: Calculation of Surrogate Freight Costs in Valuing Materials*

Top United and Zongxun claim that the Department double-counted the surrogate freight costs for certain PRC-sourced materials in its preliminary calculations. They contend that when using CIF prices as surrogate values, the Department should presume that the factory would purchase specific materials from the closest source—be it the port or the domestic supplier's factory—and that the Department should value freight accordingly.

Top United and Zongxun cite *Sigma Corp. v. United States*, No. 95-1509, 96-1036, 95-1510, 96-1037, 1997 U.S. App. LEXIS 16506 (Fed. Cir. July 7, 1997), in which the United States Court of Appeals for the Federal Circuit ("CAFC") held that the calculated freight costs for PRC-made materials may not exceed the calculated freight costs of shipping the material from respondents' importing seaports in the PRC to their factories. Top United and Zongxun believe that this decision clearly prohibits the Department from adding surrogate freight costs exceeding the freight costs from the manufacturer's importing seaport to its factory.

Petitioner contends that Top United and Zongxun have not indicated why, or to what extent, any inland freight expense should be adjusted in line with *Sigma*. Petitioner indicates that although the principle of *Sigma* is clear, Top United and Zongxun's claim in the instant case is not clear. The major factor input is steel, for which the Department used market economy prices. Therefore, petitioner believes that the Department's calculations do not include any expense for the inland freight within the PRC for the imported steel and, thus, do not warrant any adjustments.

*DOC Position*

We agree with Top United and Zongxun. The CAFC's decision in *Sigma* requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are based in CIF import values in the surrogate country. Accordingly, we have added to CIF surrogate values from Indonesia a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory.

*Comment 3: Respondents' Corrections Presented at Verification*

Top United and Zongxun contend that the Department's final dumping calculation should incorporate corrections of errors discovered in their questionnaire responses. They cite the Department's *Memoranda on Verification Agenda*, which state that respondents may submit corrections at the start of verification. Top United and Zongxun further state that these corrections to their questionnaire responses were timely submitted and verified, and that the Department should therefore include these corrections in the calculation of respondents' dumping margins in the final determination.

Petitioner contends that the Department should not use Top United and Zongxun's corrections, because most of the errors contained in their questionnaire responses were not minor. Petitioner argues that based on the number of errors reported by Top United and Zongxun at the start of verification, the companies did not act to the best of their ability in providing accurate information. Petitioner asserts that the Department should therefore apply adverse facts available in the areas where respondents were not cooperative.

**DOC Position**

We agree with Top United and Zongxun and have accepted the corrections for computing the final margin calculations of the companies. The revisions corrected data already on the record and did not introduce new information not previously reported. Accordingly, we determine that resorting to facts available is unwarranted in this particular case. The Department's use of facts available is subject to section 782(d) of the Act. Under section 782(d), the Department may disregard all or part of a respondent's questionnaire response when the response is not satisfactory or it is not submitted in a timely manner.

The Department has determined that neither of these conditions apply. The Department was able to verify the responses, thus rendering them satisfactory, and the types of revisions submitted by respondents met the deadline for such changes. Under section 782(e), the Department shall not decline to consider information that is (1) timely, (2) verifiable, (3) sufficiently complete that it serves as a reliable basis for a determination, (4) demonstrated to be provided based on the best of the respondent's ability, and (5) can be used without undue difficulties. In general, Top United and Zongxun have met these conditions.

Accordingly, we find no basis to reject Top United's and Zongxun's responses, and thus, no basis to rely on the facts otherwise available for our final determination.

*Comment 4: Averaging U.S. Sales of Identical Merchandise in Calculating Dumping Margins*

Top United and Zongxun request that the Department ensure that U.S. sales of identical merchandise, *i.e.*, sales having the same Matching Control Number, are averaged in calculating respondents' dumping margins in the final determination. They assert that the average-to-average comparison is the Department's established practice in calculating dumping margins in investigations, citing section 777A(d)(1)(A)(i) of the Act.

Petitioner opposes this request, stating that Top United and Zongxun do not cite any example where they disagree with the Department's preliminary calculations. Petitioner believes that the Department should have the flexibility to use a different comparison basis, to the extent that the facts indicate a different method of comparison.

*DOC Position*

We agree with Top United and Zongxun. The margin calculations have been adjusted, where necessary, to reflect weighted-average prices for U.S. sales of identical merchandise.

*Comment 5: The Use of India, Not Indonesia, as the Surrogate Country*

Petitioner asserts that the Department should use India as the surrogate country for the final determination. Petitioner cites to section 773(c)(4) of the Act, which requires the surrogate country to be a market economy country that (1) is at a level of economic development comparable to that of the NME, and (2) is a significant producer of comparable merchandise. While petitioner agrees that both India and

Indonesia are economically comparable to the PRC, petitioner argues that the combined production of the Indian producers, as established by an affidavit in the petition, exceeds the amount of U.S. imports from Indonesia. Petitioner argues that although the Department selected Indonesia because the U.S. import statistics reflect minimal imports of "collated nails" from Indonesia, but none from India, the statute and regulations do not support giving greater weight to import statistics over a petitioner's information. Petitioner claims that since there is no information on the record that either country manufactures CR nails, the Department should " \* \* \* give Petitioner's information preferred weight, since it is the foundation upon which the petition is based, and was used by the Department as adverse facts available for non-cooperating parties."

Top United and Zongxun argue that the Department correctly used the Indonesia data to value their material inputs, factory overhead, SG&A, and profit, in accordance with evidence presented before the Department. They contend the petition does not include any supporting data, such as production or sales data, with respect to the India nail industry which shows that India is a significant producer of CR nails. They refer to the comments on the surrogate values, dated April 9, 1997, which include the U.S. import statistics for 1996, and demonstrate a substantial volume of collated nails exported from Indonesia, whereas India exported no collated nails to the United States during the same period. They assert that an absence of exports to the United States raises a question as to whether India ever produced CR nails, based on the fact the United States is the largest consumer of collated nails in the world. Moreover, Top United and Zongxun cite to an affidavit provided in their April 7, 1997, submission from Tachikawa & Co., stating that P.T. Intan Swarkartiaka, an Indonesian producer, produces CR nails and exports them to the United States. Finally, they argue that the Indonesia data, which are concurrent with the POI, are more contemporaneous than the India data, which do not cover the POI; and that the Indonesia data are nail industry specific, while India data are on a metal-industry-wide basis.

*DOC Position*

We agree with Top United and Zongxun. The PAI showed that Indonesia produced collated nails during the POI, whereas there is no PAI showing that India produced any collated nails. The Indonesia data are

more contemporaneous and specific to CR nails than the India data, which are on a metal-industry-wide basis (see *Memorandum to the File*, dated September 24, 1997).

*Comment 6: SG&A, Factory Overhead, and Profit Used in Calculating Plating Costs*

Petitioner asserts that in calculating NV for Zongxun, the Department improperly used only factor inputs for plating, and did not include any amount for SG&A, factory overhead, or profit for the subcontractor. Petitioner argues that any subcontractor would include those three items in its price. Petitioner cites *Certain Helical Spring Lock Washers From China*, 58 FR 48833 (September 20, 1993), in which the Department verified and used the subcontractor's factors of production in calculating NV, which included materials costs, plus total direct labor, overhead expenses, general expenses, and profit. Petitioner contends that the Department should add those three elements for plating in the final determination, based on either plating expenses from other investigations, or data for the Indonesia nail industry.

*DOC Position*

We disagree with petitioner. In our preliminary determination, the overhead, SG&A, and profit rates were applied to the aggregate of the plating and nail factors of production. The amounts for SG&A, factory overhead, and profit for plating are therefore already included in the calculations. Thus, no recalculations for plating costs are necessary.

*Comment 7: Import Prices Used to Calculate Steel Values*

Petitioner alleges that the Department's calculation of steel input values based on prices from market economy countries artificially lowers the factory's costs because it utilizes the lower price for the input. Petitioner argues that the Department's " \* \* \* established policy of evaluating inputs in NME cases based on market prices paid by the manufacturer for inputs purchased from a market-economy source \* \* \*", as stated in *Tapered Roller Bearings and Parts thereof, Finished and Unfinished, From China*, 62 FR 6189 (February 11, 1997), questions commercial reality. Petitioner asserts that the Department should not use one import price to value 100% of the steel inputs where a factory in the PRC imports less than 100% of its production requirement for the POI. Instead, the Department should adopt a standard which involves assigning a

value to the input actually used. Petitioner challenges the Department's rationale in the use of market price inputs, and argues that the Department's policy is wrong as a matter of law.

Top United and Zongxun refute petitioner's claim, stating that petitioner's arguments are contrary to the Department's established practice, court decisions, the proposed and final regulations, and the Act. They cite *Lasko Metal Products v. United States*, 43 F. 3d 1442, 1443 (Fed. Cir. 1994), stating that the CAFC upheld the Department's established practice of using actual imported prices to value material inputs in NME cases. They cite section 351.408(c)(1) from the Department's regulations which states that "where a portion of the factor is purchased from a market economy source \* \* \* the Secretary normally will value the factor using the price paid to the market economy supplier." They also cite to 19 U.S.C. 1677b(c)(1), asserting that the import price is the best available information in a market economy to value the NME producer's factors of production. They also cite to *Chrome Plated Lug Nuts from the PRC*, 56 FR 46153 (September 10, 1991), in which the Department stated that import prices are superior to the surrogate country's price because "accuracy, fairness, and predictability are enhanced." They believe that the Department legitimately valued their entire wire rod input using imported prices, and should continue to do so in the final determination without adjusting the reported import prices.

*DOC Position*

We agree with Top United and Zongxun. When steel was purchased from a market economy, we used the prices paid to market economy suppliers to value this input, even though the producer did not purchase 100 percent of the steel from a market economy. We believe that it is normally appropriate to use those prices in lieu of values of a surrogate, market-economy producer, because the actual prices are market-driven and reflect the producer's actual experience. In most cases, there is nothing to be gained in terms of accuracy, fairness, or predictability in using surrogate values when market-determined values exist for the input used. Indeed, where we determine that a NME producer's input prices are market determined, accuracy, fairness, and predictability are enhanced by using those prices (see *Chrome Plated Lug Nuts from the PRC*, 56 FR 46153 (September 10, 1991)).

*Comment 8: Values for Other Factor Inputs*

*Labor*

Petitioner asserts that the Department's one figure to value both skilled and unskilled labor is unreasonably low, in comparison with the labor rates in India and those actually paid in the PRC. Petitioner also claims that this value lacks adjustments for benefits such as medical care and housing, which are generally provided in the PRC at no cost. Petitioner proposes that the Department find separate values for skilled and unskilled workers for its final determination.

Top United and Zongxun reject petitioner's argument, stating that the Indonesia labor rates that the Department used in the preliminary determination are comparable with the India labor rates available to the Department. They assert that petitioner did not provide any information showing separate values for skilled and unskilled labor, and that such data is not available to the Department. Finally, they argue that PRC labor rates are not usable in any respect because they are NME values, which are "not accurate, reliable measures" of normal value. See *Oscillating Fans and Ceiling Fans From PRC*, 56 FR 25664, 25667 (June 5, 1991).

*DOC Position*

We agree with Top United and Zongxun. As in several previous PRC investigations, e.g. *Polyvinyl Alcohol from the PRC*, 60 FR 52647 (October 10, 1995), we used data from the Yearbook of Labor Statistics to value labor. This source did not identify the skill level of this labor rate. As determined in other cases, such as *Honey from the PRC* (preliminary determination), 60 FR 14725, 14729 (March 20, 1995) and *Manganese Sulfate from the PRC* (final determination), 60 FR 52155, 52159 (October 5, 1995), there is no basis to assume the skill level of this particular surrogate labor value. Thus, for purposes of the final determination, we applied a single labor value to all reported labor factors.

*Water*

Petitioner suggests that the Department treat water as a factor input, not as overhead. Petitioner states that water is used in the plating process as a factor input since it is used in the chemical baths, and thus becomes part of the plating materials.

Top United and Zongxun argue that the Department will double-count water if it values the water separately because the costs for water were included in overhead for Zongxun and as diesel oil

for Top United, which maintains its own wells. They believe that this double-counting was correctly avoided by assuming water to be included in the surrogate value factory overhead. Based on how the water was used in the production process, respondents assert that the water is not incorporated into the finished product, and that the Department should accordingly follow its preliminary determination and not value water consumed by respondents as a separate factor in the final determination.

#### *DOC Position*

We agree with Top United and Zongxun that water should be considered to be included in factory overhead. Because it is a normal practice to assume that water is included in factory overhead, we find it reasonable to presume that water is included in the Indonesia overhead value we used. Therefore, if we were to assign a separate value to water, we would be double-counting the cost (see *Saccharin From the People's Republic of China*, 59 FR 58818 (November 15, 1994)).

#### *Brokerage and Handling*

Petitioner claims that there is no indication in the record that the Department inflated the handling and brokerage charges to reflect POI pricing levels. Petitioner notes that the Department has made such an adjustment in the past and should make this adjustment in the final determination.

Top United and Zongxun assert that the Department did inflate the brokerage and handling charges to reflect POI pricing levels, and that petitioner disregarded the Department's efforts to accurately calculate the surrogate value.

#### *DOC Position*

We agree with petitioner, and have adjusted handling and brokerage charges to reflect the POI pricing levels.

#### *Inland Transportation for Imported Steel*

Petitioner claims that the record does not indicate that the Department included the cost of transporting the imported steel wire rod to the factory. Petitioner suggests that the Department include these costs in its final determination.

Top United and Zongxun counter that the Department *did* add the entire freight costs for transporting imported wire rod from their importing seaports to their production sites.

#### *DOC Position*

We agree with Top United and Zongxun. As stated in the Calculation Memorandum (May 5, 1997, p. 1), we "\* \* \* adjusted the reported unit values based on the purchased price to reflect the terms of sale for the purchase of the material input (e.g., CIF, FOB) from a market-economy supplier." Therefore, the imported steel prices have already been adjusted to reflect inland transportation costs, and require no further calculations.

#### *Transportation Expenses Between Factory and Plating Company*

Petitioner alleges that the cost of transportation between the plating company and the factory is not indicated in the record. Petitioner states that in previous cases, the Department has looked to whether the factory or the plating company used their own trucks or an independent hauler.

Top United and Zongxun argue that the Department correctly determined not to value transportation costs between their nail production sites and their plating subcontractors in the preliminary determination. They claim that doing so would double-count the transportation costs, as these costs are included in surrogate value factory overhead. They refer to the surrogate value for factory overhead, which includes expenses such as fuel, electricity, gas machinery and equipment, and other industrial services, all of which are associated with the operation of trucks. Since Zongxun demonstrated that they transported roofing nails to and from their plating factories using their own trucks, the Department properly determined that these truck expenses are included in the surrogate factory overhead value. Citing *Helical Spring Lock Washers from the PRC*, they refer to the Department's determination to include the costs for trucking in the surrogate value for factory overhead. Finally, they note that this issue does not apply to Top United, as Top United plated its CR nails in its own factory.

#### *DOC Position*

We agree with Top United and Zongxun. As in the preliminary determination, we determined that the costs associated with this type of transportation are included in the surrogate value for factory overhead. This is similar to the Department's determination in *Helical Spring Lock Washers*. Therefore, we did not calculate a separate transportation cost for trucking the CR nails to and from the plating subcontractor.

#### *Imports From NME Countries in Indonesia Import Data*

Petitioner contends that the Department should exclude data from NME countries in the Indonesia import data for welding wire. Citing *Helical Spring Lock Washers*, petitioner states that the Department has consistently excluded such data from surrogate values and should correct this aspect of the preliminary determination.

Top United and Zongxun reject this request, claiming that petitioner failed to provide information that would enable the Department to exclude imports from NME countries from the Indonesia import data. They assert that the Department should continue to use the same Indonesia surrogate value data in the final determination, as this data constitutes "the best available information" (19 U.S.C. 1677b(c)(1)) to value a NME producer's material inputs.

#### *DOC Position*

We agree with petitioner that it is the Department's normal methodology to disregard data from NME countries in calculating surrogate factor values. In this case, we have removed the total quantity and value from NME countries from the import data (see Calculation Memorandum, dated September 23, 1997).

#### *Comment 9: Treatment of Below-Specification Products*

Petitioner asserts that the Department should adjust NV for plating thickness. Petitioner claims that Top United and Zongxun's reported plating thicknesses do not meet U.S. federal or regional, building code standards. Petitioner states that since the plating thickness was not verified, the Department should assume that Top United and Zongxun were aware of these codes and would produce merchandise that complied with the codes. Petitioner alleges that there is a significant cost differential between the plating thicknesses reported by Top United and Zongxun and those required by U.S. codes, and suggests that the Department use the information in the petition as the best available information with which to recalculate NV.

Top United and Zongxun argue that the Department correctly valued all plating chemicals that they used in production of CR nails during the POI. They claim that the Department verified that respondents correctly reported the total consumption of plating chemicals, as well as the plating thickness of their CR nails, which contradicts petitioner's allegation. They further contend that it is irrelevant to this investigation

whether or not their CR nails satisfy the building code requirements alleged by petitioner, as the purpose of this investigation is to accurately value their production costs of CR nails, not to examine the quality of their CR nails. They assert that the Department should ignore the petitioner's allegation.

#### *DOC Position*

We agree with Top United and Zongxun. At each verification, we examined whether quantities and types of materials associated with the subject merchandise were reported accurately and completely. We noted no discrepancies regarding the material quantities, with the exception of minor errors which have now been corrected (see verification reports for Zongxun and Top United dated June 26, 1997, and July 23, 1997, respectively). Petitioner's claim that Top United and Zongxun were aware of U.S. building codes and would produce merchandise that complied with the codes is not germane to this issue as there is no question of inaccurate product comparisons and we have verified that all material quantities were included in the response.

#### *Comment 10: Steel Prices*

Petitioner asserts that the Department should value Top United's steel using a surrogate value, because the Department has not confirmed that the imported steel is actually used to produce the subject merchandise. Petitioner claims that at verification Top United's own officials admitted that steel other than imported steel may have been used to produce subject merchandise. Petitioner also states that the record shows that the PRC producer may not have paid for the steel inputs.

Top United refutes petitioner's claim, stating that it indeed used imported wire rods to produce CR nails, and that the imported wire rod price was actually paid, both of which were verified by the Department. Top United declares that its officials never indicated that the company did not use imported wire rod, and that petitioner misconstrued the statement in the verification report.

#### *DOC Position*

We agree with Top United. Verification supported Top United's claim that it used imported steel wire rod in the production of CR nails. Accordingly, we have continued to base the value of wire rod on average costs for the imported grade of wire rod used.

#### *Comment 11: The MNC Rule*

Petitioner alleges that all the conditions for application of the MNC provision are satisfied by Top United. Petitioner refers to section 773(d) of the Act, which contains the MNC provision, and cites *Melamine Institutional Dinnerware Products from the People's Republic of China*, 61 FR 43337, 43340 (August 22, 1996), in which the Department stated that this provision applies to cases in which the statutory criteria are met, regardless of whether it involves a market or non-market economy.

Top United contends that the Department should reject this claim because there is no information on the record indicating that Top United's NV is lower than the Taiwan prices or constructed value of its Taiwan affiliate, Unicatch. Top United further argues that petitioner is barred from introducing new information into this investigation in its case brief, citing § 351.301(b)(1) (62 FR 27405), which states that a submission of factual information is due no later than " \* \* \* seven days before the date on which the verification of any person is scheduled to commence \* \* \*". Finally, Top United argues that petitioner offered no recommendation on how to apply the MNC provision to this investigation, and without any factual evidence on the record, the Department should reject the allegation.

#### *DOC Position*

We agree with Top United. On May 19, 1997, the Department published new regulations (62 FR 27296, May 19, 1997). Although this proceeding is not governed by those regulations, they are instructive where they describe current Department practice and policy. Section 351.404 of the new regulations, 62 FR at 27412, describes the Department's current policy regarding the selection of the market to be used as the basis for NV for purposes of calculating a dumping margin. As stated in the preamble to the Final Regulations 62 FR 27357 (May 19, 1997):

There are a variety of analyses called for by section 773 that the Department typically does not engage in unless it receives a timely and adequately substantiated allegation from a party \* \* \* the Department does not automatically request information relevant to a multinational corporation analysis under section 773(d) of the Act in the absence of an adequate allegation.

In this case, petitioner alleged for the first time in its case brief that the Department should apply the MNC rule to Top United. Most significantly, the record of this investigation does not contain information regarding the third

condition of determining a company to be part of a multinational corporation, *i.e.*, the normal value of the foreign like product produced in one or more facilities outside the exporting country is higher than the normal value of the foreign like product produced in the facilities located in the exporting country. Presenting the allegation at this point in the investigation did not allow the Department sufficient time to collect and analyze the information necessary to make a determination regarding the applicability of the MNC rule. Therefore, we reject petitioner's MNC rule allegation as untimely and unsupported by the record evidence.

#### *Zongxun*

#### *Comment 12: Adverse Facts Available for Unreported Sales*

Petitioner contends that the Department should use adverse facts available in determining the dumping margin for Zongxun due to possible unreported sales discovered during verification. Specifically, petitioner contends that the presence in Zongxun's records of certain foreign currency receipts and of CR nail sales to other PRC companies may be evidence of unreported sales. Petitioner claims that when sales cannot be accounted for, particularly where a foreign currency receipt is involved, the Department should presume the sale was an unreported sale for exportation to the United States, and the Department should use adverse facts available and use the highest margin possible. Citing 19 CFR § 351.308(a), petitioner emphasizes that the Department may make a determination on the basis of the facts available when an interested party or any other person " \* \* \* withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information \* \* \*". Petitioner asserts that Zongxun's refusal to cooperate with verifiers to clarify the foreign currency receipts and associated transactions warrants the use of facts available in determining the appropriate margins.

Zongxun refutes petitioner's allegation. Zongxun cites the Department's verification report, which found "no indication of export sales of subject merchandise having been improperly included in, or excluded from, Zongxun's listing of POI sales." With respect to its sales to PRC companies, Zongxun asserts that, even in the event that the Department determined these transactions were export sales, they could not be



considered in this investigation because they were paid in Renminbi, a NME currency. Zongxun argues that the verification report never stated that any of its domestic sales were paid in a foreign currency. Zongxun claims that the foreign currency noted in the verification report refers to a loan that is properly recorded as "payable" in its accounting records. Zongxun argues that a sale would be recorded as a "receivable." Zongxun attests to their full cooperation during verification, and advises the Department to reject petitioner's allegation.

#### *DOC Position*

We agree with Zongxun. As stated in the verification report, nothing that we examined suggested that the foreign currency receipts were unreported sales. Therefore, we determine that these receipts do not warrant any adverse inferences for the final determination and the verified information has been used for the final determination.

#### *Comment 13: Affiliation of Zongxun and its PRC Parent*

Petitioner contends that Zongxun and its PRC parent are sufficiently related so that the Department should collapse them and treat them as a single entity for purposes of assigning a dumping margin in this investigation. Petitioner cites 19 CFR 351.401(f), and then refers to certain factors that the Department may consider when identifying the potential for manipulation of price or production, including: level of common ownership; whether managerial employees or board members of one of the affiliated producers sit on the board of directors of the other affiliated producer; and whether operations are intertwined, such as through the sharing of facilities or employees, or significant transactions between the affiliated parties. Petitioner also cites to the *Preliminary Determination of Sulfanilic Acid from the PRC* 62 FR 25917 (May 12, 1997) in which the Department found that two companies were "affiliated" parties, where substantial retooling would not be necessary to restructure manufacturing priorities and potential price and production manipulations between the two producers. Petitioner alleges that the verification report shows a commonality of interests and ownership, and that the failure of Zongxun and its parent to submit a consolidated response mandates the Department's use of facts available.

Zongxun rebuts this allegation, insisting that no conditions were met to collapse it and its parent, because it has been verified that its parent did not produce or export CR nails during the POI and thus is not a producer and cannot be collapsed with Zongxun. Zongxun states that the Department may collapse affiliated producers, but that petitioner's allegation is not supported by the record, and should therefore be rejected.

#### *DOC Position*

We agree with Zongxun, in part. During verification, the Department reviewed Zongxun's parent's 1996 financial statements. These financial statements did not indicate that any income had been derived from export sales of CR nails. If Zongxun's parent were to sell the subject merchandise under its own name, it would be subject to the PRC-wide rate.

#### *Comment 14: Critical Circumstances*

Petitioner alleges that the petition provided a reasonable basis to suspect that critical circumstances exist with respect to imports of subject merchandise. Petitioner cites section 733(e)(1)(A)(i) of the Act, which refers to a " \* \* \* history of dumping \* \* \* ". In particular, petitioner maintains that the revoked antidumping order on steel wire nails from China, *Certain Steel Wire Nails From China*, 52 FR 33463 (September 3, 1987), provides a sufficient basis to find a history of dumping.

#### *DOC Position*

As noted above (see "Critical Circumstances" section of this notice), it is not necessary to reach a conclusion regarding a history of dumping in this case. Insofar as Top United and Zongxun do not have margins, critical circumstances do not exist with respect to these exporters. Critical circumstances do exist with respect to all other exporters based on other factors.

#### **Continuation of Suspension of Liquidation**

For Top United and Zongxun, we calculated a zero margin. Consistent with *Bicycles*, merchandise that is sold by these producers but manufactured by other producers will be subject to the order, if issued. Entries of such merchandise will be subject to the "PRC-wide" margin.

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise—except those exported and manufactured by Top United or Zongxun—that are entered, or withdrawn from warehouse, for consumption on or after February 12, 1997, which is the date three months prior to the date of publication of our preliminary determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Top United/Top United .....	0
Qingdao Zongxun/Qingdao Zongxun .....	0
PRC-wide Rate .....	118.41

The PRC-wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

#### **ITC Notification**

In accordance with section 735(f) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation. This determination is published pursuant to section 735(d) of the Act.

Dated: September 24, 1997.

Robert S. LaRussa,  
Assistant Secretary for Import Administration.

[FR Doc. 97-26046 Filed 9-30-97; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE****International Trade Administration****[A-580-827]****Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails From Korea**

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

**EFFECTIVE DATE:** October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Everett Kelly at (202) 482-4194 or Brian Smith (202) 482-1766, Group II, Office Five, Antidumping Countervailing Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to the regulations, as codified at 19 CFR Part 353 (1997).

**Final Determination**

We determine that collated roofing nails ("CR nails") from Korea are not being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Termination of Suspension of Liquidation" section of this notice.

**Case History**

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Collated Roofing Nails from Korea*, 62 FR 25895 (May 12, 1997)), the following events have occurred:

In June 1996, we verified questionnaire responses for Kabool Metals ("Kabool") and Senco Korea Company, Ltd., Senco Products Incorporated, and Je Il Steel Company, Ltd. (collectively "SENCO"). Paslode Division of Illinois Tool Works Inc. ("Petitioner"), respondents, and Stanley Bostich ("Stanley"), an interested party in this investigation, submitted case briefs on August 7, 1997, and rebuttal briefs on August 12, 1997. The Department held a public hearing on August 13, 1997.

**Scope of Investigation**

The product covered by this investigation is CR nails made of steel, having a length of  $1\frac{3}{16}$  inch to  $1\frac{13}{16}$  inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

**Fair Value Comparisons**

To determine whether sales of the subject merchandise by Kabool and SENCO to the United States were made at LTFV, we compared the Export Price ("EP") or Constructed Export Price ("CEP") to the Normal Value ("NV"), as described in the EP, CEP, and NV sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

Kabool reported that it had no viable home market or third country sales during the POI. Therefore, we made no price-to-price comparisons for Kabool. See the NV section of this notice, below, for further discussion.

**Level of Trade and CEP Offset**

In the preliminary determination, the Department determined that no difference in level of trade ("LOT") existed between home market and U.S. sales for either Kabool or SENCO. None of the parties have contested that determination. Accordingly, the Department has not investigated further into this issue. Therefore, we determine that all of SENCO's sales are made at a single LOT and no LOT adjustment or CEP offset is warranted.

As explained below, we based the NV for Kabool entirely on constructed value ("CV"). The CV LOT is that of the sales from which we derive SG&A and profit. We derived selling, general, and administrative expenses ("SG&A") and profit from Kabool's sales of all types of nails in the home market. However, the record contains insufficient information to analyze the selling activities associated with those sales. Therefore, as facts available, we are drawing the inference that there is no distinction between the CV and U.S. LOTs. This

inference is consistent with the fact that neither petitioner nor Kabool alleged a difference in LOT. Therefore we determine that a level of trade adjustment is not warranted.

**Export Price and Constructed Export Price****Kabool**

We used EP in accordance with section 772(a) of the Act because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on the same methodology used in the preliminary determination, with the following exceptions: adjustments to brokerage expenses; duty drawback; and other corrections were made based on verification findings. (For details, see September 24, 1997, final determination calculation memorandum for Kabool, hereafter "Kabool calculation memo.")

**SENCO**

We used EP in accordance with section 772(a) of the Act where the subject merchandise was sold to unaffiliated customers prior to importation because the CEP methodology was not indicated by the facts of record. We used CEP in accordance with section 772(b) of the Act where the subject merchandise was sold to unaffiliated customers after importation. We calculated CEP and EP based on the same methodology used in the preliminary determination, with the following exceptions: adjustments to packing expenses; rebates; early payment discounts; advertising expenses; and inland freight were made based on verification findings. For CEP we also adjusted reported indirect selling expenses and inventory carrying costs to exclude Korean incurred components and applied them to transfer prices rather than starting prices. Furthermore, we are no longer using facts available for foreign inland freight expenses.

In addition, verification revealed that SENCO's CEP sales listing included non-subject merchandise that SENCO had purchased from Taiwan and Mexico. Although SENCO did not record the country of origin for specific sales, the Department was able to determine for each model reported the percentage of total CR nail purchases accounted for by subject CR nails and to adjust SENCO's sales listing as appropriate. For example: if for model "A" Senco Products Incorporated ("SPI") purchased 57 percent of its CR nails from Korea, the Department

multiplied the reported quantity by 57 percent for all sales of model "A" within SENCO's CEP sales listing. (For details, see September 24, 1997, final determination calculation memorandum for SENCO, hereafter "SENCO calculation memo.")

#### Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

#### SENCO

SENCO reported that it had no home market sales during the POI. Therefore, in accordance with section 773(a)(1)(B)(ii), we based NV for Senco Korea on sales to its largest third country market, Canada. We calculated NV based on the same methodology used in the preliminary determination, with the following exceptions: adjustments were made to packing expenses; and domestic brokerage and handling based on verification findings. In addition, SENCO corrected omissions in the third country sales listing used for the preliminary determination. For purposes of calculating the final margin, we are no longer applying facts available for the certain U.S. sales that had no third country matches. (For details, see SENCO calculation memo).

#### Kabool

Kabool reported that it had no viable home or third country market during the POI. Therefore, in accordance with section 773(a)(4) of the Act, we based NV for Kabool on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the costs of materials, labor, overhead, SG&A, profit and U.S. packing costs. We adjusted U.S. packing costs based on our findings at verification.

Section 773(e)(2)(A) states that SG&A and profit are to be based on the actual amounts incurred in connection with sales of a foreign like product. In the event such data is not available, section 773(e)(2)(B) of the Act sets forth three alternatives for computing profit and SG&A without establishing a hierarchy or preference among the alternative methods. The alternative methods are: (1) calculate SG&A and profit incurred by the producer based on the sales of

merchandise of the same general type as the exports in question; (2) average SG&A and profit of other producers of the foreign like product for sales in the home market; or (3) any other reasonable method, capped by the amount normally realized on sales in the foreign country of the general category of products. In addition, the Statement of Administrative Action ("SAA") states that, if the Department does not have the data to determine amounts for profit under alternatives one and two, or a profit cap under alternative three, it still may apply alternative three (without the cap) on the basis of the "facts available." SAA at 841.

In this case, we based Kabool's SG&A and profit on the actual amounts incurred and realized in connection with the production and of the same general category of merchandise as described in alternative one, above (see Comment 1, below, for further discussion).

#### Price to CV Comparisons

Where we compared CV to EP for Kabool, we made circumstance of sale adjustments pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR section 353.56(a)(2). We made circumstance of sale adjustments, where appropriate, for differences in bank charges and credit expenses. We adjusted bank charges based on findings at verification. (For details, see Kabool calculation memorandum).

#### Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the

benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96-1: Currency Conversions* (61 FR 9434, March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because neither the Korean Won nor the Canadian Dollar underwent a sustained movement.

#### Critical Circumstances

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A) (i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In this case, our final determination is negative. Accordingly, a critical circumstances determination is irrelevant because there is no possibility of retroactive suspension of liquidation.

#### Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

### Interested Party Comments

#### *Comment 1: SG&A and Profit Calculations*

Petitioner opposes the Department's use of Kabool's company-wide SG&A and profit, arguing that the company-wide data includes lower export prices, which decreases the profit rate and, consequently, artificially lowers dumping margin. Instead, petitioner contends that Kabool's SG&A and profit should be based only on sales of merchandise that belong to the same general category of "collated nails" and not "all nails" (i.e., collated and non-collated). According to petitioner, basing SG&A and profit on both collated and non-collated nails is inappropriate because collated nails require significantly different capital investment and are sold to different markets.

Stanley agrees with petitioner, arguing that the use of Kabool's company-wide SG&A and profit artificially lowers the dumping margin. Stanley also notes that, because of the significant investment and overhead costs attributable to CR nails, the same general category of merchandise cannot be broader than collated nails for purposes of calculating profit. Further, Stanley contends that Kabool has the ability to separate the profit for collated nails from the company-wide profit rate, but simply chose not to do so. Therefore, Stanley argues that the Department should apply facts available in calculating the dumping margin for Kabool.

Kabool asserts that the Department should use the profit rate based on Kabool's sales of collated and non-collated nails, which was provided in its April 16, 1997, supplemental Section D response, as corrected and verified by the Department at verification. Kabool argues that both collated and non-collated nails are processed in the same facility using the same equipment and the same production processes. Moreover, Kabool notes that the Department previously held that the "class or kind" of merchandise in a case involving steel wire nails included all steel wire nails—without distinguishing between collated and non-collated nails. Finally, Kabool argues that petitioner's claim that the Department should use a profit rate specific to collated nails was only raised in petitioner's case brief and, thus, too late in this proceeding to request such information. Kabool also notes that although the Department's questionnaire never requested information regarding the profit on home market sales of collated and non-collated nails, Kabool submitted

information on its profit for nail products in the home market. Therefore, Kabool contends that the Department should reject petitioner's and Stanley's arguments and determine that the same general category of merchandise upon which to base SG&A and profit is collated and non-collated nails.

#### *DOC Position*

We agree with Kabool. Kabool does not have a viable home market or third country market for a foreign like product. Section 773(e)(2)(B) of the Act states that if actual SG&A and profit data on home market sales of the subject merchandise are not available, the Department may use the SG&A and profit rates incurred by the producer on the sales of the same general category of merchandise as the exports in question (see Kabool's NV section for a discussion of the three alternative methodologies). In this instance, we verified the aggregated SG&A and profit data on Kabool's sales in the home market of both collated and non-collated nails that it submitted. We determined that collated and non-collated nails are of the same general category of merchandise. (Cf. *Certain Steel Wire Nails From Korea: Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order*, 50 FR 40045 (Oct. 1, 1985) (all steel wire nails found to constitute a single class or kind of merchandise). Accordingly, consistent with section 773(e)(2)(B), the Department has used the verified SG&A and profit rate reported by Kabool on its sales of all nails in the home market.

#### *Comment 2: Facts Available*

Petitioner contends that the Department should use adverse facts available for SENCO's and Kabool's dumping margins. Petitioner argues that the numerous verification corrections, whether disclosed by the respondents or found by Department officials, indicate that both Kabool and SENCO have failed to act to the best of their abilities. Petitioner specifies four examples of problems with SENCO's responses: (1) errors in the reporting of purchases of CR nails from Je Il Steel Company Ltd. ("JISCO"); (2) inability to explain discrepancies in reported trucking freight charges; (3) discrepancies noted by the Department when reconciling quantity and value figures to SPI's financial statements; and (4) failure to include POI sales to Canada in the third country database. Further, petitioner argues that SENCO did not provide a complete explanation of its relationship with its distributor in Canada.

SENCO states that petitioner correctly summarizes the instances in which SENCO's submissions, prior to the preliminary determination, warranted the use of facts available by the Department. However, SENCO contends that it has corrected all the deficiencies in its June 2, 1997, response to the Department's second supplemental antidumping questionnaire. Because the corrected deficiencies have been verified by the Department, SENCO claims that the Department should use the information provided by SENCO to make the final determination in this investigation.

Kabool contends that the petitioner has not indicated which corrections and errors actually merit the use of adverse facts available. Kabool claims that the corrections it has submitted do not warrant wholesale rejection of its responses. Kabool states it was cooperative in providing information throughout the investigation. Kabool further states that petitioner has not identified a single instance of a pattern or systematic misstatement of fact in Kabool's submissions. Accordingly, Kabool contends that there is no basis for the Department to reject Kabool's submissions or to rely on adverse facts available. Rather, Kabool claims that the Department's final determination in this investigation should be based on the information it has submitted.

#### *DOC Position*

We agree with both respondents. The facts on the record of this investigation demonstrate that the respondents answered the Department's questionnaire to the best of their ability. The corrections and errors found in the responses to the Department's questionnaire and at verification do not warrant the use of facts available. The Department's practice is to permit respondents to provide minor corrections to submitted information at the commencement of verification. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan*, 62 FR 1726, 1729 (January 13, 1997). Kabool and SENCO provided the Department with their corrections in a timely manner at the beginning of their respective verifications (cost verification report for Kabool dated July 28, 1997; sales verification reports for Kabool, Senco Korea, and SPI dated July 7, 1997, and July 30, 1997, July 29, 1997, respectively). In sum, the corrections submitted by Kabool and SENCO were typical of the minor corrections routinely accepted by the Department at the commencement of verification.

Accordingly, we determine that resorting to facts available is unwarranted in this particular case. We, therefore, used all verified information for both respondents in the final margin calculations.

#### *Comment 3: Plating Thickness*

Petitioner argues that the plating thicknesses of CR nails reported by respondents do *not* meet U.S. Federal or regional building codes. Moreover, petitioner claims that the actual plating thicknesses were not verified by the Department. Therefore, petitioner contends that the Department should assume that respondents were aware of the U.S. building codes and produced CR nails that complied with the codes. Petitioner urges the Department to use the information contained in the petition to calculate NV based on CR nails that meet the U.S. building codes.

Kabool argues that petitioner's statements regarding plating thickness are unsubstantiated and do not provide any basis for rejecting or even questioning Kabool's submissions. Kabool states that, because its NV was based on CV, there is no question of incorrect product comparison. Further, Kabool contends that it reported actual costs incurred in producing (and plating) the CR nails exported to the United States, thereby accounting for all of its materials and fabrication costs incurred in the process of plating CR nails. Kabool also states that the costs reported by Kabool were verified by the Department. Accordingly, there is no basis for rejecting Kabool's submissions.

SENCO argues that there is no indication in the petitioner's case brief as to where or when the issue of substandard plating thickness of CR nails was previously raised on the record. SENCO states that there is nothing on the record to suggest that its CR nails do not meet applicable standards. Accordingly, SENCO contends that there is no basis for rejecting SENCO's submissions.

#### *DOC Position*

We agree with Kabool that we have captured all costs incurred in producing CR nails. During the cost verification of Kabool, we examined whether all material costs (including plating costs) associated with the subject merchandise were included in the CV databases. We noted no discrepancies regarding the material costs with the exception of minor errors, which have now been corrected (see cost verification report for Kabool dated July 28, 1997). Thus, we have verified all of Kabool's material costs. With respect to SENCO, we noted no discrepancies regarding its reported

product characteristics. Any alleged misrepresentation concerning compliance with U.S. building codes is not within the purview of the antidumping statute because such misrepresentation would have no impact on our calculations.

#### *Comment 4: Allocation Methods*

Petitioner contends that respondents' allocation methods were distortive because they were based on incorrect and unsupported expenses in the following areas:

(1) *Shipping Expenses.* International freight expenses were improperly based on gross weight instead of volume. Because CR nails weigh less per cubic foot than bulk nails, respondents' shipping expenses were thus systematically under-reported.

(2) *Production Expenses, Factory Overhead, and Indirect Selling Expenses.* The allocation method for production-related expenses, factory overhead, and indirect selling expenses should be based on weight that includes scrap. However, the post-scrap production expenses, such as packing, should be allocated based on weight of the CR nails without scrap.

(3) *Duty drawback.* The duty drawback expense allocation method should be based on the net weight of CR nails.

(4) *Actual Weighing.* The Department should rely on actual physical weighing of the CR nails, not the reported gross weight for all allocation methods based on weight.

In rebuttal, Kabool argues that petitioner's assertions, which are enunciated for the first time in petitioner's case brief, are untimely. Moreover, Kabool emphasizes that the allocation methods used are consistent with the Department's past practice and the proposed modification would produce insignificant changes. Therefore, any modification of Kabool's current allocations is without merit. Specifically, Kabool addresses the following allocations:

First, Kabool argues that petitioner's assumption that Kabool's shipments regularly include both bulk nails and CR nails is inaccurate. Kabool states that it reported actual ocean freight costs for its U.S. sales on a shipment-by-shipment basis. Moreover, Kabool contends that allocation of ocean freight costs based on weight, rather than volume, is consistent with the Department's normal practice. Moreover, an alternative allocation based on volume would not have been practical since the documents do not state the volume of each shipment. Thus, there is no basis to revise the freight allocations.

Second, Kabool states that petitioner's proposed allocations for production-related expenses, factory overhead, and indirect selling expenses are factually incorrect and contrary to the law. Kabool claims that most of these items were not allocated based on weight. For instance, Kabool's indirect selling expenses were allocated based on sales value. Kabool asserts that the only overhead allocation based on weight was the fabrication costs for polishing and coating. According to Kabool, any new allocation would result in insignificant changes.

Third, Kabool argues that it did allocate duty drawback based on the net weight of the CR nails.

Finally, Kabool states that it reported its shipping expenses, production-related expenses, factory overhead, indirect selling expenses, and duty drawback in accordance with Korea's generally accepted accounting principles ("GAAP") and its own cost accounting system. Kabool claims that the statute requires the Department to follow the methodologies used in the company's normal accounting system. Moreover, Kabool argues that to allocate expenses based on a weight that includes scrap is nonsensical as this would result in allocating a portion of the product costs to scrap and not to the finished product. Accordingly, there is no reason to allocate these expenses in the manner petitioner has proposed.

SENCO claims that petitioner failed to adequately identify in its case brief what type of shipping expenses should be subject to a different allocation methodology. SENCO also notes that its methodologies for calculating freight expenses were verified by the Department and generally accepted as appropriate. In addition, SENCO states that it reported that it received no duty drawback on the exportation of CR nails.

#### *DOC Position*

The Department normally accepts the company's recording of costs, provided that it reasonably reflects the cost of producing subject merchandise and it is in accordance with the home country's GAAP. See section 773(f)(1)(A); SAA at 834-35; *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses from Japan*, 61 FR 38139 (July 23, 1996). We have determined that the allocations of the expenses, challenged by petitioner, are reasonable for the reasons stated below.

(1) *Shipping Expenses.* We found no discrepancies with respect to the allocation methodology used by respondents. (See Sales Verification Reports for Kabool at 7 and Senco Korea

at 10 dated July 7, 1997, and July 30, 1997, respectively.) Respondents' cost accounting systems, which are consistent with Korean GAAP, only record the weight of their shipments to customers, not the volume. Thus, the allocation method used was the most specific method feasible. In addition, it does not cause distortions or inaccuracies in our calculations. Therefore, the Department has not changed the freight methodology for the final determination.

(2) *Production Related Expenses, Factory Overhead, and Indirect Selling Expenses.* Allocating expenses over the weight of the finished goods necessarily accounts for all costs related to scrap. If the Department were to allocate certain expenses over a weight which included scrap, the denominator of the calculation would be greater than the weight of the finished product and would result in understating the per-unit expense.

Further, most of Kabool's items were not allocated based on weight. Indirect selling expenses were allocated based on sales value. The only overhead allocation based on weight was the fabrication costs for polishing and coating. Therefore, any new allocation would have been insignificant. Thus, we reject petitioner's argument and will continue to allocate expenses over the total amount of finished product.

(3) *Duty Drawback.* As stated in the sales verification reports dated July 9, 1997, and July 30, 1997, the Department verified that Kabool allocated duty drawback on the net weight of the CR nails and that Senco Korea received no duty drawback on the exportation of CR nails.

(4) *Physical Weights.* At verification, the Department examined the weights of the products in order to confirm certain allocation factors. We found no discrepancies. We will use each company's verified weights in our calculations.

Respondents reported all of the aforementioned expenses in accordance with Korea's GAAP and their own cost accounting systems (see Section 773(f)(1) of the Act). The methodologies for calculating these expenses were verified by the Department and accepted as appropriate. Accordingly, the Department did not change the allocation methodologies for these expenses. Further, as noted above, because few factors were allocated on the basis of weight any changes in the allocations would not have a significant impact.

*Comment 5: Constructed Value Calculation—Kabool*

Petitioner argues that Kabool's cost methodology for CV was not appropriate because the cost of materials obtained from non-affiliated suppliers should be determined through a price comparison against independent Korean market values to ensure that prices are reasonable.

*DOC Position*

We disagree with petitioner. The Department verified Kabool's cost of materials. Kabool's material purchases constituted arm's-length transactions and reported costs were tested against Kabool's cost accounting systems. Because the prices that Kabool paid for its materials reflect market values, it is neither necessary nor appropriate for the Department to benchmark Kabool's material costs against other "independent" market values.

*Comment 6: Collapsing Senco Korea and its Affiliate*

Petitioner claims that Senco Korea and its affiliate should be collapsed for purposes of the final determination. Petitioner states that in identifying the potential for manipulation of price or production the Department may consider the following factors: (1) Level of common ownership; (2) shared management; (3) intertwined operations, shared facilities and/or employees, and significant transactions between affiliated parties. Petitioner cites *Sulfanilic Acid From China: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 25917 (May 12, 1997), in which the Department found that two companies were affiliated when substantial retooling of either company would not be necessary to restructure their collective manufacturing priorities, and that there was a potential for price manipulation between the two producers. Petitioner claims that the same principle should be applied to Senco Korea and its affiliates.

SENCO argues that petitioner fails to identify Senco Korea's alleged affiliate, but states that SENCO assumes that petitioner is referring to JISCO. SENCO states that it has readily acknowledged on the record that JISCO is affiliated with Senco Korea. However, SENCO contends that because the Department verified that JISCO had no independent sales of CR nails, Senco Korea has reported all of its sales of CR nails.

*DOC Position*

The Department has treated Senco Korea, JISCO, and SPI as affiliated parties throughout the entire

investigation. The companies submitted a consolidated questionnaire response and verification revealed no material errors or omissions that could not be corrected. See section 771(33)(E) of the Act and SENCO's February 28, 1997, submission of section "A" response to the Department's antidumping questionnaire. Accordingly, the Department has treated these companies as one entity. Because we are dealing with a single producer, the type of collapsing analysis suggested by petitioner is not relevant.

*Comment 7: SENCO Indirect Selling Expenses*

Petitioner makes two points with respect to SENCO's reported indirect selling expenses. First, petitioner argues that certain U.S.-incurred indirect selling expenses, such as salaries and benefits for the heads of customer service and distribution services, which SENCO proposed to exclude from reported indirect selling expenses, should be deducted from CEP. However, petitioner states that "the Department should make an offsetting adjustment to SG&A."

Second, petitioner contends that SENCO inappropriately revised its reporting of Korean-incurred indirect selling expenses and inventory carrying costs by allocating these items over transfer price instead of gross price.

SENCO claims that it properly reported and allocated its indirect selling expenses. Prior to verification, SENCO revised its indirect selling expenses to excluding certain expenses related to selling activities in the United States. SENCO argues that this correction was appropriate because these expenses are incurred in Korea. SENCO also asserts that SG&A expenses should not have been included in the indirect selling expenses incurred in Korea and that the corrected amounts were reviewed at verification.

SENCO contends that basing indirect selling expenses on the transfer price, rather than the resale price originally reported, constituted an appropriate correction that was explained to the Department at verification.

*DOC Position*

With respect to petitioner's first argument, we agree. We have not accepted SENCO's proposal to exclude from the indirect selling expenses deducted from CEP certain selling expenses incurred at SPI because those expenses relate to economic activity in the United States. Because Senco Korea's margin calculation is based on a price-to-price comparison, there is no

need to correct SG&A as that figure is not used in the calculation.

With respect to the allocation of Korea-incurred selling and inventory carrying expenses, the Department does not need to address this question because these expenses have not been determined to be associated with economic activity in the United States and thus are not being deducted from CEP or otherwise taken into account.

*Comment 8: Correct Reporting of Affiliated Parties*

Petitioner contends that sales made between Senco Korea and its customer in Canada do not appear to be at arm's length. Accordingly, petitioner urges the Department to use facts available in its final determination in this investigation.

Stanley claims that SENCO failed to provide complete information regarding its affiliations (or "relationships with its customers"). Stanley states that Senco Korea's distributor for CR nails in Canada is affiliated with the corporate entity that controls SPI. Because of the lack of complete information with respect to SENCO's affiliates, Stanley contends that the Department is not able to determine whether Senco Korea's reported third country sales are arm's-length transactions. Accordingly, Stanley contends, the Department is required to use facts available for making SENCO's final determination in this investigation.

SENCO argues that it has no affiliates in Canada and that it properly excluded from its sales listing CR nails sales made by its unaffiliated distributor. According to SENCO, its customer in Canada is an unaffiliated distributor and the independent relationship of many of SPI's various distributors was verified by the Department.

*DOC Position*

We agree with SENCO. At verification, we noted that SPI has a large number of formal business relationships with many distributors and resellers throughout the world and the majority of these relationships do not meet the Department's requirements for affiliation (see SPI verification report at 3, July 29, 1997). Specifically, there was no indication noted by the Department that SPI was affiliated with its customer in Canada. Accordingly, there is no basis to conclude that the third country sales listing is flawed, and use of facts available for the Department's determination is not warranted. Moreover, we note that petitioner and Stanley first raised this concern in their case briefs—far too late in this proceeding for a detailed analysis

of potential affiliation between a supplier and its customer.

*Comment 9: Critical Circumstances*

Petitioner alleges that the petition provided a reasonable basis to suspect that critical circumstances exist with respect to imports of subject merchandise. In particular, petitioner maintains that the revoked antidumping order on steel wire nails from Korea, *Certain Steel Wire Nails From Korea*, 50 FR 40045 (Oct. 1, 1985), provides a sufficient basis to find a history of dumping (a requirement of section 733(e)(1)(i) of the Act). Accordingly, petitioner believes that there is a reasonable basis to suspect that critical circumstances exist with respect to imports of subject merchandise.

Kabool contends the Department should affirm its preliminary determination that critical circumstances do not exist in this case for Kabool. Kabool asserts that petitioner neglected to mention three facts: (1) The steel wire nails final determination cited by petitioner was published in 1980, which is more than 15 years ago; (2) the same steel wire nails antidumping order was revoked in October 1985; (3) Kabool was not investigated in that proceeding, and it was never found to be dumping steel wire nails or any other product. For the above reasons, Kabool claims that petitioner's argument should be rejected.

SENCO states that nothing has changed since the preliminary determination to alter the Department's conclusion that the first prong of section 733(e)(1) pertaining to history of dumping, or knowledge on the part of importers, has not been met. Furthermore, SENCO submits that the second prong of that provision cannot be satisfied because the change in the quantity of shipments of CR nails by Senco Korea to the United States from the post-petition period over the pre-petition period does not indicate that imports were massive. Because neither prong of section 733(e)(1) has been satisfied, SENCO argues that there is no basis to find that critical circumstances exist.

*DOC Position*

Because our final determination is negative, it is not necessary to address whether critical circumstances exist as there is no possibility of retroactive suspension of liquidation.

*Comment 10: Unverified CEP Expenses*

SENCO claims that the Department should accept its reported data for the following expenses: U.S. inland freight,

U.S. customs duties, credit expenses, advertising expenses, and inventory carrying costs incurred in the United States. Although the Department was unable to verify these expenses, SENCO notes that the verification process was generally complete. SENCO contends it demonstrated a willingness to cooperate with the Department by responding to the antidumping questionnaires in a timely manner. Accordingly, the application of adverse facts available would be inappropriate.

Petitioner contends that the Department's inability to verify the CEP expenses was not minor. Petitioner argues that the treatment of these expenses directly affects the Department's calculation methodology for the final determination. Petitioner claims that the Department is required to verify all information relied upon in its final determination. Accordingly, for these unverified expenses, petitioner urges the Department to use facts available.

*DOC Position*

Due to limitations of time and resources, the Department is rarely able to verify every single piece of data submitted in a response. See *Monsanto Co. v. United States* 698 F. Supp. 275, 281 (1988) ("Verification is a spot check and is not intended to be an exhaustive examination of the respondent's business.") Verification is an opportunity for the Department to test the accounting and business systems of the respondent to a level of detail that gives the Department a reasonable indication as to the integrity of the response. See *Micron Technology, Inc. v. United States*, 117 F.3d 1386, 1396 (1997) (ITA performs selective verification of reported data until it is satisfied that the data supplied by the foreign respondent is accurate). For the information that was verified, the Department found no significant problems. While we would have preferred to have an opportunity to verify these expenses, based on the results of verification, we find SENCO's data to be reliable overall. Moreover, we find that the level of SENCO's cooperation with our requests for information would not warrant an adverse inference. Nor have we found any reason based on other information on the record to conclude that the information in question is erroneous. Thus, even though not specifically verified, SENCO's reported expense information is the most appropriate facts available to the Department for the calculation of SENCO's margin. Accordingly, the Department has used

SPI's CEP expenses for purposes of the final determination.

*Comment 11: Treatment of Relocation Costs for CV*

Kabool states that it made a substantial investment in relocating its production facilities. Kabool states that production levels were limited by technical factors and contends that production during and immediately after relocation constitutes a start-up operation under the statute. Kabool contends that the Department should reduce CV to account for this relocation, either by granting a start-up adjustment or by determining that these costs are extraordinary.

Kabool contends that the plant relocation was clearly unusual in nature and infrequent in occurrence, thus satisfying the criteria for an expense to be considered extraordinary.

Petitioner contends that Kabool's plant relocation does not require special treatment by the Department. Petitioner further states that Kabool did not supply the necessary data to effect the requested adjustment. Furthermore, Kabool did not establish (as the statute requires) that the startup period extended "beyond the POL."

*DOC Position*

We agree with petitioner that it is not appropriate to make an adjustment, under the startup provision of section 773(f)(1)(C)(ii) of the Act, to account for the costs incurred by Kabool during the relocation of its production facility. To qualify for an adjustment for startup operations, the producer must show that (1) it is using new production facilities or producing a new product that requires substantial additional investment, and (2) the production levels are limited by technical factors associated with the initial phase of commercial production. See 773(f)(1)(C)(ii). The SAA explains that "new production facilities" means substantially complete retooling of an existing plant that involves a replacement or rebuilding of nearly all production machinery. See SAA at 836. A product is "new," according to the SAA, if it requires "substantial additional investment," or if the producer incurs substantial additional cost because of revamping or redesigning its existing product. Id.

In this case, Kabool reported in its April 16, 1997, supplemental section D response that all of the production machinery used in Kabool's new plant was transferred from its old plant. Kabool thus did not replace or rebuild

nearly all of its machinery, but merely relocated its production facility. Kabool's technology for producing CR nails has not changed and there is nothing on the record to indicate that a new product is being produced in the new facility. Because Kabool merely relocated its production facility without replacing or rebuilding nearly all of its machinery, and the record evidence does not show that the relocation involved a substantial investment in connection with the revamping or redesigning of CR nails, the first condition for the start up adjustment is not satisfied.

Because Kabool does not meet the requirements outlined in the first prong of the start-up provision, the Department is not required to address whether or not Kabool's production levels were limited by technical factors associated with the initial phase of commercial production during the relocation of its facilities. In sum, the Department has determined to reject Kabool's claim for startup adjustment because it did not demonstrate that its production facility was new, or that it would involve a production of a new product under section 773(f)(1)(C)(ii) of the Act.

As in the preliminary determination, Department did not make an adjustment for Kabool's relocation costs based on the Department's practice of adjusting CV for extraordinary costs. The Department maintains that additional expenses stemming from Kabool's relocation do not constitute, in the words of the SAA at page 832, "an unforeseen disruption in production," which is beyond the management's control." (See also *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses, from Japan*, 61 FR 38139, 38153, July 23, 1996). Accordingly, because the relocation was not an unforeseen event, the Department will include all the expenses associated with the relocation of Kabool's nail production facilities for purposes of calculating CV.

*Comment 12: Indirect Selling Expenses—Kabool*

Kabool claims that the revised home-market indirect selling expense calculation set forth in the sales verification report incorrectly allocates all of Kabool's home-market indirect selling expenses (which related to sales of all of its products) over the sales of CR nails sales instead of company wide sales. Accordingly, the Department should make the correction of the calculation error.

Petitioner states that the Department should include indirect selling expenses for the same general category of products (i.e. collated nails) as the Department should select for SG&A and profit. Petitioner argues that by including indirect selling expenses allocated for sales in the same general category, the Department will be making the most precise calculation of CV.

*DOC Position*

We agree with Kabool. The Department made a calculation error in the recalculation of the home-market indirect selling expense (see the Department's July 28, 1997, cost verification report, page 13). Accordingly, the Department has corrected the calculation as illustrated on page 15 of Kabool's August 6, 1997, case brief. For reasons outlined in our response to comment 1 we are calculating indirect selling expenses based on sales of the same general category of nails as provided by Kabool.

**Termination of Suspension of Liquidation**

In accordance with section 735(c)(2) of the Act, we are directing the Customs Service to terminate suspension of liquidation and release any bond or other security and refund any cash deposit.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Senco .....	0
Kabool .....	0

Because our determination is negative, the investigation will be terminated upon publication of this notice and no order will be issued.

**International Trade Commission Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our determination.

This determination is published pursuant to section 735(d) of the Act.

Dated: September 24, 1997.

Robert LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97-26047 Filed 9-30-97; 8:45 am]



**APPENDIX B**  
**CALENDAR OF THE PUBLIC HEARING**



Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

**Subject:** COLLATED ROOFING NAILS FROM CHINA AND  
TAIWAN

**Invs. Nos.:** 731-TA-757 and 731-TA-759 (Final)

**Date and Time:** September 30, 1997 - 9:30 a.m.

Sessions were held in connection with the investigations in Room 101 (Main Hearing Room) of the United States International Trade Commission, 500 E Street, SW, Washington, DC.

**IN SUPPORT OF THE IMPOSITION OF ANTIDUMPING DUTIES:**

Creskoff, Doram & Hume, L.L.P.  
Washington, DC  
on behalf of

Paslode Division of Illinois Tool Works, Incorporated

**Charles Heinlen**, Selling Unit Manager, Paslode Division of Illinois Tool Works,  
Incorporated

**Larry Miller**, Paslode's Plant Manager, White River Plant, Paslode Division of Illinois  
Tool Works, Incorporated

**Stewart Hudnut**, General Counsel, Illinois Tool Works, Incorporated

**Craig Hindman**, General Manager, Paslode Division of Illinois  
Tool Works, Incorporated

**IN SUPPORT OF THE IMPOSITION OF ANTIDUMPING DUTIES:** Continued

**Michael Lynch**, Director of Public Affairs, Paslode Division of  
Illinois Tool Works, Incorporated

**John Manfroni**, Sales Manager, Gotham Staple Company,  
Cleveland, Ohio

**Mark Pozzuto**, Logistics Manager, International Staple and  
Machines

**Robert T. Hume** )--OF COUNSEL  
**Stephen M. Creskoff** )

**IN OPPOSITION TO THE IMPOSITION OF ANTIDUMPING DUTIES:**

White and Case  
Washington, DC  
on behalf of

CANA (Tianjin) Hardware Industrial, Limited  
Wuxi Jiangchao Metalwork Company, Limited  
Beijing Central Top Metal M.E. Company, Limited

**Ralph Morrell**, National Product Manager, Metal Products,  
Georgia-Pacific Corporation

**John Reilly**, Economist, Nathan and Associates

**Oasmu Umejima** )--OF COUNSEL

**APPENDIX C**  
**SUMMARY TABLES**



**TABLE C-1**

**CR NAILS: SUMMARY DATA CONCERNING THE U.S. MARKET, 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\* \* \* \* \*

**TABLE C-2**

**CR NAILS AND PLASTIC-COLLATED ROOFING NAILS: SUMMARY DATA CONCERNING THE U.S. MARKET, 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\* \* \* \* \*

**TABLE C-3**

**CR NAILS AND BULK ROOFING NAILS: SUMMARY DATA CONCERNING THE U.S. MARKET, 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\* \* \* \* \*

**TABLE C-4**

**TOTAL ROOFING NAILS: SUMMARY DATA CONCERNING THE U.S. MARKET, 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\* \* \* \* \*





**APPENDIX D**  
**COMPAS PRESENTATION**



## ASSUMPTIONS

The COMPAS model is a supply and demand model that assumes that domestic and imported products are less than perfect substitutes. Such models, also known as Armington models, are relatively standard in applied trade policy analysis and are used extensively for the analysis of trade policy changes both in partial and general equilibrium. Based on the discussion contained in Part II of this report, the staff selects a range of estimates that represent price-supply, price-demand, and product-substitution relationships (i.e., supply elasticity, demand elasticity, and substitution elasticity) in the U.S. CR nails market. The model uses these estimates with data on market shares, Commerce's estimated margins of dumping, transportation costs, and current tariffs to analyze the likely effect of unfair pricing of subject imports on the U.S. domestic like product industry.

## FINDINGS<sup>1</sup>

Estimated effects of the LTFV imports from China on the U.S. CR nails industry are as follows: \*\*\* percent to \*\*\* percent reduction in revenue, \*\*\* percent to \*\*\* percent reduction in output, and \*\*\* percent to \*\*\* percent reduction in price. Estimated effects of the LTFV imports from Taiwan on the U.S. CR nails industry are as follows: \*\*\* percent to \*\*\* percent reduction in revenue, \*\*\* percent to \*\*\* percent reduction in output, and \*\*\* percent to \*\*\* percent reduction in price. Estimated effects of the LTFV imports from China and Taiwan combined on the U.S. CR nails industry are as follows: \*\*\* percent to \*\*\* percent reduction in revenue, \*\*\* percent to \*\*\* percent reduction in output, and \*\*\* percent to \*\*\* percent reduction in price.

More detailed effects of the dumping and the modeling assumptions used for the full range of scenarios are shown in tables D-1, D-2, and D-3. The first table shows the effects of those imports which were exported by the Chinese companies subject to Commerce's positive dumping margins (i.e., subject to the "PRC-wide" rate). Commerce found two margins for Taiwanese firms trading at LTFV, 2.98 percent and 40.28 percent. The effects of these margins are presented separately in tables D-2 and D-3. Table D-2 shows the impact of firms that exported at the 2.98 margin. Table D-3 shows the impact of firms that exported at the 40.28 percent margins.

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<sup>1</sup>Estimates are based on 1996 data, the year which corresponds closest with Commerce's periods of investigation (October 1995-September 1996 for Taiwan and April 1996-September 1996 China).

**TABLE D-1**

**THE EFFECTS OF LTFV PRICING OF IMPORTS FROM FIRMS SUBJECT TO THE CHINA-WIDE RATE**

\* \* \* \* \*

**TABLE D-2**

**THE EFFECTS OF LTFV PRICING OF IMPORTS FROM TAIWAN BY FIRMS OTHER THAN ROMP AND K. TICH0**

\* \* \* \* \*

**TABLE D-3**

**THE EFFECTS OF LTFV PRICING OF IMPORTS FROM TAIWAN BY ROMP AND K. TICH0**

\* \* \* \* \*

**APPENDIX E**  
**MONTHLY IMPORT STATISTICS FOR CHINA AND TAIWAN**



**TABLE E-1**

**CR NAILS: U.S. IMPORTS FROM K. TICHU, ROMP, AND CHINA, BY MONTHS, JAN. 1996-JUNE 1997**

\* \* \* \* \*

**FIGURE E-1**

**CR NAILS: U.S. IMPORTS FROM K. TICHU, ROMP, AND CHINA, BY MONTHS, JAN. 1996-JUNE 1997**

\* \* \* \* \*





**APPENDIX F**  
**PRICES OF CR NAILS BY FIRM**



**TABLE F-1**

**CR NAILS: WEIGHTED-AVERAGE NET DELIVERED PRICES (PER 7,200-NAIL BOXES) AND QUANTITIES FOR SALES TO UNRELATED U.S. CUSTOMERS FOR PRODUCTS 1 AND 2 REPORTED BY EACH U.S. PRODUCER, BY QUARTERS, JAN. 1994-JUNE 1997**

\* \* \* \* \*

**FIGURE F-1**

**CR NAILS: WEIGHTED-AVERAGE NET DELIVERED PRICES FOR SALES OF PRODUCTS 1 AND 2 TO U.S. CONSUMERS REPORTED BY EACH OF THE DOMESTIC PRODUCERS, BY QUARTERS, JAN. 1994-JUNE 1997**

\* \* \* \* \*



**APPENDIX G**

**RESULTS OF ALL-NAILS OPERATIONS FOR  
PASLODE AND BOSTITCH**



**TABLE G-1**

**RESULTS OF OPERATIONS OF PASLODE ON ITS OPERATIONS PRODUCING ALL NAILS WHERE CR NAILS ARE PRODUCED, FISCAL YEARS 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\* \* \* \* \*

**TABLE G-2**

**RESULTS OF OPERATIONS OF BOSTITCH ON ITS OPERATIONS PRODUCING ALL NAILS WHERE CR NAILS ARE PRODUCED, FISCAL YEARS 1994-96, JAN.-JUNE 1996, AND JAN.-JUNE 1997**

\* \* \* \* \*

