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 $^{13}/_{16}$ 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 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 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 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 changes 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 Lung 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–580–828]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors From the Republic of Korea

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

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Blankenbaker or Rebecca Woodings, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0989 or (202) 482–0651.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as