

**United States Court of Appeals  
for the Federal Circuit**

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**MID CONTINENT STEEL & WIRE, INC.,**  
*Plaintiff-Appellant*

v.

**UNITED STATES,**  
*Defendant-Appellee*

**PT ENTERPRISE INC., PRO-TEAM COIL NAIL  
ENTERPRISE INC., UNICATCH INDUSTRIAL CO.,  
LTD., WTA INTERNATIONAL CO., LTD., ZON MON  
CO., LTD., HOR LIANG INDUSTRIAL  
CORPORATION, PRESIDENT INDUSTRIAL INC.,  
LIANG CHYUAN INDUSTRIAL CO., LTD.,**  
*Defendants-Cross-Appellants*

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2018-1229, 2018-1251

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Appeals from the United States Court of International  
Trade in Nos. 1:15-cv-00213-CRK, 1:15-cv-00220-CRK,  
Judge Claire R. Kelly.

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Decided: October 3, 2019

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ADAM H. GORDON, The Bristol Group PLLC, Washing-  
ton, DC, argued for plaintiff-appellant. Also represented  
by PING GONG.

MIKKI COTTET, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee. Also represented by JEANNE DAVIDSON, JOSEPH H. HUNT, PATRICIA M. MCCARTHY.

ANDREW THOMAS SCHUTZ, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, Washington, DC, argued for defendants-cross-appellants. Also argued by NED H. MARSHAK, New York, NY. Also represented by MAX FRED SCHUTZMAN, New York, NY; KAVITA MOHAN, Washington, DC.

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Before NEWMAN, O'MALLEY, and TARANTO, *Circuit Judges*.  
TARANTO, *Circuit Judge*.

The United States Department of Commerce found that certain foreign producers and exporters were dumping certain products into the United States market, and it imposed a small antidumping duty on their imports. A domestic company argues that Commerce should have imposed a higher duty. The foreign producers and exporters argue that Commerce made methodological errors, the correction of which would reduce any dumping margin to a de minimis level, so that no duty would be imposed. We reject the domestic firm's challenge. We partly reject the foreign firms' challenge, and we remand to secure further explanation from Commerce about one issue.

## I

Based on a petition from appellant Mid Continent Steel & Wire, Inc., Commerce initiated an antidumping duty investigation into steel nail products from Taiwan and certain other places. *Certain Steel Nails from India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam*, 79 Fed. Reg. 36,019 (Dep't of Commerce June 25, 2014). Commerce separated the Taiwanese investigation

into its own proceeding and named Taiwanese exporter PT Enterprise Inc. and its affiliated nail producer Pro-Team Coil Nail Enterprise Inc. as mandatory respondents. *See Certain Steel Nails from Taiwan: Negative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 Fed. Reg. 78,053, 78,054 (Dep't of Commerce Dec. 29, 2014) (Preliminary Determination). Those firms are the cross-appellants before us, along with other Taiwanese producers of nails. We hereafter use "PT" to refer sometimes to the cross-appellants collectively, sometimes just to PT Enterprise and Pro-Team.

The statute directs Commerce to determine whether the merchandise at issue is being sold or is likely to be sold in the United States "at less than its fair value," 19 U.S.C. § 1673, which the statute identifies as "dumping," *id.*, § 1677(34) (defining "dumping" to mean "the sale or likely sale of goods at less than fair value"). To make the required determination, Commerce must assess the difference between the "normal value" of the goods at issue (reflecting the home-market value) and the "export price or constructed export price" of those goods (reflecting the price at which they are sold into the United States). *See id.*, § 1677b(a) (stating that the determination of the existence of sales "at less than fair value" is to be based on a comparison of "the export price or constructed export price and normal value"); *id.*, § 1677a (addressing "export price" and "constructed export price"); *id.*, § 1677b (addressing "normal value"). That difference is the "dumping margin." *Id.*, § 1677(35)(A) (defining "dumping margin"). If Commerce finds the specified less-than-fair-value sales, and the International Trade Commission makes certain findings about effects on domestic industry, "there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise," *id.*, § 1673, *i.e.*, in the amount of the dumping margin.

Addressing the fact that a foreign producer or exporter often makes many sales, the statute provides certain rules and authorizations that govern Commerce's required determinations. *Id.*, § 1677f-1. It defines "weighted average dumping margin" to mean "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." *Id.*, § 1677(35)(B). The statute provides, as a general rule, that Commerce must "determine whether the subject merchandise is being sold in the United States at less than fair value" by "comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise" or by making the value/price comparison for each individual transaction. *Id.*, § 1677f-1(d)(1)(A)(i), (ii). But the statute also directs Commerce to disregard weighted average dumping margins if they are de minimis, *id.*, § 1673b(b)(3); and of relevance here, it provides authority to Commerce to compare average values (on the foreign side) to individual export prices or constructed export prices (on the U.S. side) in specified circumstances involving disparities among the U.S. side prices for the foreign exporter or producer. *Id.*, § 1677f-1(d)(1)(B).

Certain aspects of the method adopted by Commerce for calculating the dumping margin in the present matter are unchallenged. On the U.S. side of the required comparison, Commerce used the export price, rather than a constructed export price. On the foreign side, Commerce determined the Taiwanese normal value by determining a "constructed value," which required determinations about, among other things, amounts PT paid for various inputs. 19 U.S.C. § 1677b(a)(4), (e).

Although those basic choices are not in dispute, there is a dispute about how Commerce carried out its "constructed value" calculation. Among the inputs PT purchased were services from many "toll" manufacturers (or

“tollers”)—firms that provide limited manufacturing services using materials or other contributions supplied or owned by its customers. Mid Continent has contended that certain of PT’s tollers should be excluded from this input calculation because those tollers were affiliated with PT. The evident concern with a “transaction between affiliated entities” is that it might not “adequately represent the true amount,” *SKF USA Inc. v. United States*, 630 F.3d 1365, 1372 (Fed. Cir. 2011)—here, that PT’s payments for tolling to an affiliate might be artificially low, with the consequence that the constructed value might be too low, thus shrinking the gap between the constructed value and the U.S. price and, in turn, reducing the dumping margin and antidumping duty.

In its Preliminary Determination, Commerce rejected Mid Continent’s affiliation claim as to a number of PT’s tollers and found no dumping. Preliminary Determination, 79 Fed. Reg. at 78,054–78,055; *Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Steel Nails from Taiwan*, 79 ITADOC 78053 (issued Dec. 17, 2014) (Preliminary Decision Mem.). Commerce then conducted its full investigation and analysis, including verification of key factual submissions.

In its Final Determination, Commerce continued to find non-affiliation of certain PT tollers, contrary to Mid Continent’s contentions. See *Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 Fed. Reg. 28,959, 28,960–62 (Dep’t of Commerce May 20, 2015) (Final Determination); *Issues and Decision Memorandum for the Affirmative Final Determination in the Less than Fair Value Investigation of Certain Nails from Taiwan*, 80 ITADOC 28959, at 47–53 (issued May 13, 2015) (Issues and Decision Mem.). But, based on some adjustments of earlier information, Commerce now found a positive dumping margin above (though not far above) the level

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