



A-520-804
AR: 11/03/2011-04/30/2013
Public Document
AD/CVD I: MR/BH

June 18, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Steel Nails from the United Arab Emirates: Decision
Memorandum for Preliminary Results of Antidumping Duty
Administrative Review; 2011-2013

SUMMARY

The Department of Commerce (the Department) is conducting this administrative review of the antidumping duty order on certain steel nails (nails) from the United Arab Emirates (UAE). The period of review (POR) is November 3, 2011 through April 30, 2013. The review covers two producers/exporters of the subject merchandise, Dubai Wire FZE (Dubai Wire) and Precision Fasteners, L.L.C. (Precision). We preliminarily find that Dubai Wire and Precision sold subject merchandise at less than normal value (NV) in the United States during the POR. We preliminarily assign Precision a margin based on adverse facts available (AFA) because it was not responsive to the Department's requests for information. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and NV for Dubai Wire and based on AFA for Precision.¹ Interested parties are invited to comment on these preliminary results.

Background

On May 10, 2012, the Department published in the *Federal Register* notice of an antidumping duty order on nails from the UAE.² On May 29, 2013, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), Tree Island, a domestic interested party, requested an administrative review of the antidumping duty order on nails from the UAE

¹ See the "Facts Available" section of this notice.

² *Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27421 (May 10, 2012) (*Order*).



with respect to Dubai Wire and Precision.³ On May 31, 2013, Progressive Steel & Wire, LLC (PSW), another domestic interested party,⁴ requested an administrative review of the antidumping duty order on nails from the UAE with respect to Precision.⁵ Also on May 31, 2013, Mid Continent Nail Corporation (the petitioner) requested an administrative review of the antidumping duty order on nails from the UAE with respect to Dubai Wire.⁶ The petitioner's review request also requested an antidumping duty administrative review with respect to Precision, but the petitioner withdrew its request on June 25, 2013.⁷ Additionally, on May 30, 2013 and May 31, 2013, respectively, Precision and Dubai Wire each requested an administrative review of the antidumping duty order on nails from the UAE with respect to their entries of subject merchandise.⁸ Precision withdrew its request for review on September 25, 2013.⁹ On June 28, 2013, in accordance with 19 CFR 351.221(c)(1)(i), we published in the *Federal Register* a notice of initiation of administrative review of the antidumping duty order on nails from the UAE.¹⁰ All requests and withdrawals were timely.

We issued antidumping questionnaires to Dubai Wire and Precision on July 11, 2013.¹¹ We did not conduct respondent selection because we had sufficient resources to individually examine both companies for which we received requests for review.

On October 18, 2013, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1 through October 16, 2013.¹² As a

³ See letter to the Secretary of Commerce from Tree Island Industries, Ltd./Tree Island Wire USA (Tree Island) regarding "Certain Steel Nails from the United Arab Emirates: Request for Administrative Reviews" {emphasis removed}, dated May 29, 2013.

⁴ PSW, a joint-venture company which is fifty percent owned by Dubai Wire's wholly-owned subsidiary, is a U.S. producer of nails.

⁵ See letter to the Secretary of Commerce from PSW regarding "Request for the First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates, A-520-804 (POR: 11/3/11-4/30/13)" {emphasis removed}, dated May 31, 2013.

⁶ See letter to the Secretary of Commerce from the petitioner regarding "Certain Steel Nails from the United Arab Emirates: Request for Administrative Review of Dubai Wire FZE" {emphasis removed}, dated May 31, 2013.

⁷ See letter to the Secretary of Commerce from the petitioner regarding "Certain Steel Nails from the United Arab Emirates: Withdrawal of Request for Administrative Review of Precision Fasteners LLC" {emphasis removed}, dated June 25, 2013.

⁸ See letter to the Secretary of Commerce from Precision regarding "Certain Steel Nails from the United Arab Emirates; Request for Administrative Review" {emphasis removed}, dated May 30, 2013; see also letter to the Secretary of Commerce from Dubai Wire regarding "*Request for the First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates, A-520-804 (POR: 11/3/11-4/30/13)*" {emphasis removed}, dated May 30, 2013.

⁹ See letter to the Secretary of Commerce from Precision regarding "Certain Steel Nails from the United Arab Emirates; Withdrawal of Request for Administrative Review" {emphasis removed}, dated September 25, 2013. (Precision Withdrawal Request)

¹⁰ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 38924 (June 28, 2013).

¹¹ See the Department's July 11, 2013, letter to Precision and the enclosed antidumping questionnaire (Precision Questionnaire); see also the Department's July 11, 2013, letter to Dubai Wire and the enclosed antidumping questionnaire (Dubai Wire Questionnaire).

¹² See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government" dated October 18, 2013.

result, the revised deadline for the preliminary results was extended to February 18, 2014.¹³ In accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), on February 4, 2014, the Department extended the due date for the preliminary results by 76 days to May 5, 2014,¹⁴ and again on April 15, 2014, by an additional 44 days to June 18, 2014.¹⁵

Scope of the Order

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this order are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this order are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this order are the following products:

- non-collated (*i.e.*, hand-drive or bulk), two-piece steel nails having plastic or steel washers (“caps”) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive;

¹³ Because February 17, 2014, was a federal holiday, the preliminary results were due the next business day, February 18, 2014. *See Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

¹⁴ *See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Certain Steel Nails from the United Arab Emirates: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review; 2011-2013”* dated February 4, 2014.

¹⁵ *See Memorandum to James Maeder, Director, Office II, Antidumping and Countervailing Duty Operations, regarding “Certain Steel Nails from the United Arab Emirates: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review; 2011-2013”* dated April 15, 2014.

- wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive; an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive;
- corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

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

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d) (2012), to determine whether Dubai Wire’s sales of the subject merchandise from the UAE to the United States were made at less than NV, the Department compared the EP to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1) (2012), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping investigations.¹⁶ In a recent investigation, pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department applied a “differential pricing” analysis for

¹⁶ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

determining whether application of average-to-transaction comparisons is appropriate in a particular situation.¹⁷ The Department finds the differential pricing analysis used in that recent investigation may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, as well as the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, city name) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number (CONNUM) and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods

¹⁷ See *e.g.*, *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and the accompanying Issues and Decision Memorandum at Comment 3.

that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

B. Results of the Differential Pricing Analysis

For Dubai Wire, based on the results of the differential pricing analysis, the Department finds that 50.87 percent of Dubai Wire's export sales confirms the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because there is a 25 or greater percent relative change in the weighted-average dumping margin when calculated using the average-to-average method and the appropriate alternative method.¹⁸ Accordingly, the Department determines to apply the average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to

¹⁸ See the "Differential Pricing" section of the Memorandum to the File regarding "Preliminary Results of the Administrative Review of Certain Steel Nails from the United Arab Emirates: Analysis Memorandum for Dubai Wire FZE," dated concurrently with this memorandum and hereby incorporated by reference (Dubai Wire Analysis Memo) and attached margin-calculation program log and output.

the average-to-average method, and application of the average-to-average method¹⁹ to those sales identified as not passing the Cohen's *d* test the average-to-transaction method in making comparisons of EP and NV for Dubai Wire.

Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by Dubai Wire and sold in the U.S. and third-country²⁰ markets on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. For instances in which there was neither an identical nor similar comparison product, we compared to constructed value. In the order of importance, these physical characteristics are nail form, product form, steel type, surface finish, diameter, shank length, collation material, head style, shank style, and heat treatment.

Date of Sale

19 CFR 351.401(i) states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.²¹

Based on record evidence, all material terms of sale are established on the date of invoice (*i.e.*, the date the commercial invoice is issued) and do not change after the issuance of the invoice.²² Based upon these facts and in accordance with our regulation and practice, we preliminarily determine that the date of invoice or the date of shipment, whichever is earlier, is the appropriate date of sale for all sales to the United States and to the third country.

¹⁹ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

²⁰ Dubai Wire's sales volume of foreign like product in the home market was less than five percent of its sales of subject merchandise to the United States. Therefore, we used sales of foreign like product to its largest third-country market, Canada. See "Home Market Viability as a Comparison Market" section of this notice.

²¹ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum, at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

²² See Dubai Wire's September 24, 2013, response to the Department's antidumping questionnaire, at page 22 (for section B) and page 21 (for section C).

Export Price

For Dubai Wire's sales to the United States, the Department calculated EP in accordance with section 772(a) of the Act because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States. We calculated EP based on the free-on-board, cost-and-freight price, or delivered-duty-paid to unaffiliated purchasers in the United States. Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to the port of exportation, brokerage and handling in the UAE, international freight, marine insurance, brokerage and handling in the United States, and inland freight from U.S. port of entry to unaffiliated customer warehouse. No other adjustments were claimed or applied.

Normal Value

A. *Home Market Viability as Comparison Market*

To determine whether there was a sufficient volume of sales of nails in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home-market sales of foreign like product to its volume of U.S. sales of subject merchandise during the POR.²³ Based on this comparison, we determined that Dubai Wire did not have a viable home market during the POR Pursuant to 773(a)(1)(B)(i)(II) of the Act, because Dubai Wire's aggregate volume of third-county sales to Canada was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise,²⁴ we determined that the Canadian market was viable for comparison purposes.

B. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²⁵ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁶ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether home market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

²³ See section 773(a)(1)(B) of the Act. For more details, *see also* Dubai Wire Analysis Memo.

²⁴ *Id.*

²⁵ See 19 CFR 351.412(c)(2).

²⁶ *Id.*; *see also* Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*); Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.²⁷ When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. When this occurs and available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department grants a CEP offset, as provided in section 773(a)(7)(B) of the Act.²⁸

In this review, we obtained information from Dubai Wire regarding the marketing stages involved in making its reported third-country and U.S. sales, including a description of the selling activities Dubai Wire performed for each channel of distribution. Dubai Wire reported one channel of distribution (*i.e.*, direct sales to distributors) and a single level of trade in the U.S. market.²⁹ Selling activities can be generally grouped into four selling function categories for analysis: (1) sales process and marketing support; (2) freight and delivery; (3) inventory and warehousing; and (4) quality assurance/warranty services.³⁰ Because the sales process and selling functions Dubai Wire performed for selling to the U.S. market did not vary by individual customers, the necessary condition for finding they constitute different LOTs was not met. Accordingly, we preliminarily determine that all of Dubai Wire's U.S. sales constitute a single LOT.

Dubai Wire reported one channel of distribution (*i.e.*, direct sales to distributors) and a single LOT in the third-country market.³¹ Because the sales process and selling functions Dubai Wire performed for selling to customers in the third-country market did not vary by individual customers, we preliminarily determine that all of Dubai Wire's third-country sales constitute a single LOT.

We examined the selling activities performed for EP sales from Dubai Wire to the unaffiliated U.S. and third-market customers and found that Dubai Wire performed the following selling functions: engineering services, sales promotion, packing, inventory maintenance, order input and processing, technical assistance, quality claims services, and freight and delivery.³² Because Dubai Wire performed the same selling functions at the same relative level of intensity for both markets, we determine that the EP LOT was similar to the third-country market LOT in terms of

²⁷ See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

²⁸ See *Plate from South Africa*, 62 FR at 61732-33.

²⁹ See Dubai Wire's August 22, 2013, response to section A of the Department's antidumping questionnaire, at 17-18.

³⁰ See *OJ from Brazil, and accompanying Issues and Decision Memorandum at Comment 7*; see also *Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (March 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009).

³¹ See Dubai Wire's August 22, 2013, response to section A of the Department's antidumping questionnaire, at 19-20.

³² *Id.*, at 21-23 and Exhibit A-5.

selling activities. Accordingly, we considered the EP LOT to be similar to the third-country market LOT and not at a different stage of distribution than the LOT in the third-country market. Therefore, we matched EP sales to sales at the same LOT in the third-country market and no LOT adjustment under section 773(a)(7)(A) of the Act was necessary.

C. Calculation of Normal Value Based on Comparison Market Prices

We based NV on the starting prices to unaffiliated customers in the third country and made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i). We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight expenses from the plant to the customer and expenses associated with loading the merchandise onto the truck to be shipped. Finally, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where appropriate, by deducting direct selling expenses (*i.e.*, imputed credit expenses) incurred on third-country sales and adding U.S. direct selling expenses (*i.e.*, imputed credit expenses and bank charges) to NV.³³

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign-like product and subject merchandise.³⁴

D. Cost of Production

The petitioner filed an allegation that Dubai Wire sold nails from the UAE in the third-country market at prices below the cost of production (COP) during the POR.³⁵ Based on the Department's analysis of Dubai Wire's cost data, we found that there are reasonable grounds to believe or suspect that Dubai Wire made sales of the foreign like product in its comparison market at prices below the COP during the POR.³⁶ Thus, pursuant to section 773(b)(1) of the Act, we initiated a below cost investigation of Dubai Wire's third-country sales to Canada and requested that Dubai Wire respond to section D of the Department's antidumping duty questionnaire.³⁷ For the preliminary results, we disregarded certain third-country sales made by Dubai Wire at prices below the COP.³⁸ Furthermore, based on our analysis of Dubai Wire's cost data, we preliminarily determine that our quarterly cost methodology is not warranted.

³³ See Dubai Wire Analysis Memo.

³⁴ See 19 CFR 351.411(b).

³⁵ See Letter to the Secretary of Commerce from the petitioner regarding "Certain Steel Nails From the United Arab Emirates: Allegation of DWE's Sales Below the Cost of Production," dated October 30, 2013.

³⁶ See Memorandum to Thomas Gilgunn, Acting Office Director, AD/CVD Enforcement I, regarding "Certain Steel Nails from the United Arab Emirates: Request to Initiate a Cost Investigation for Dubai Wire FZE," dated December 18, 2013; and the Department's letter to Dubai Wire regarding "Certain Steel Nails from the United Arab Emirates: Request to Initiate a Cost Investigation for Dubai Wire FZE," dated December 19, 2013.

³⁷ *Id.*

³⁸ See Dubai Wire Analysis Memo.

Therefore, we applied our standard methodology of using annual costs based on the reported data, adjusted as described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the COP on a CONNUM-specific basis, based on the sum of the Dubai Wire's costs of materials and fabrication for the foreign like product plus amounts for general and administrative expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment.

We relied on COP data Dubai Wire submitted in its response to our cost questionnaire. As of the date of the preliminary results, there is an outstanding section D supplemental questionnaire.³⁹ We intend to consider Dubai Wire's response to this questionnaire for the final results.⁴⁰

2. Test of Comparison Market Sales Prices

On a CONNUM-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP. In particular, in determining whether to disregard home market sales made at prices below their COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. We determined the net comparison market prices for the below-cost test by adjusting the gross unit price for all applicable movement charges, discounts, rebates, billing adjustments, direct and indirect selling expenses, and packing expenses excluding all adjustments for imputed expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given CONNUM were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted average COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Because we are applying our standard annual average cost methodology in these preliminary results, we also applied our standard cost-recovery test with no adjustments.

In this case, we found that, for certain specific products, more than 20 percent of Dubai Wire's comparison-market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded

³⁹ See the Department's section D supplemental questionnaire, dated June 12, 2014.

⁴⁰ See the "Facts Available" section of this memorandum for Dubai Wire.

these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Facts Available

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Dubai Wire

During the POR, Dubai Wire indicated that it made sales of subject merchandise to a customer, which Dubai Wire identified as unaffiliated on the record. This customer sold Dubai Wire’s merchandise to a third company, which Dubai Wire also identified as unaffiliated on the record, and in turn this third company sold Dubai Wire’s merchandise to unaffiliated customers in the United States and Canada (the third-country market for this review).⁴¹ However, the Department preliminarily determined that Dubai Wire is affiliated with both of these companies⁴² and instructed Dubai Wire to provide an alternative set of U.S. and Canadian (third-country) databases reporting the first sale to an unaffiliated purchaser, rather than the sales made to Dubai Wire’s affiliates.⁴³ As mentioned above, the Department also requested supplemental information from Dubai Wire related to COP.⁴⁴ Dubai Wire reported to the Department that, because of the great amount of information it would have to report to properly respond to the Department’s requests, it is unable to provide the requested information in time for the

⁴¹ See Dubai Wire’s August 22, 2013 response to section A of the Department’s antidumping questionnaire.

⁴² See Memorandum to Thomas Gilgunn, Director, Antidumping and Countervailing Duty Operations Office I, regarding “Certain Steel Nails from the United Arab Emirates – Affiliation Memorandum for Dubai Wire FZE,” dated May 28, 2014.

⁴³ See the Department’s sections A-C supplemental questionnaire, dated May 29, 2014.

⁴⁴ See the Department’s section D supplemental questionnaire, dated June 12, 2014.

preliminary results.⁴⁵ Because we preliminarily determine that both of these parties are affiliated with Dubai Wire, we lack necessary sales data and determine that it is appropriate to apply “facts otherwise available” pursuant to section 776(a)(2)(B) of the Act.

As discussed above, pursuant to section 776(b) of the Act, the Department may use facts otherwise available with an adverse inference when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. However, as explained above, we do not find that Dubai Wire failed to cooperate with respect to providing the requested sales data and, accordingly, we are not drawing an adverse inference. Furthermore, pursuant to section 782(e) of the Act, Dubai Wire provided all the data necessary for the Department to calculate an antidumping margin for EP sales and it is only due to the nature of the Department’s request that we are not able to incorporate the requested sales and COP data. Therefore, consistent with our practice we are applying neutral facts available.⁴⁶ Specifically, we are using Dubai Wire’s EP sales data to calculate a margin for the preliminary results. Once we analyze the requested CEP sales and COP information and revised our margin calculations for Dubai Wire, we intend to issue post-preliminary results.

Precision

A. Use of Facts Available

Precision’s antidumping duty questionnaire was issued on July 11, 2013.⁴⁷ The Department confirmed that counsel for Precision retrieved the document from IA ACCESS on July 11, 2013.⁴⁸ Section A of Precision’s antidumping duty questionnaire was due August 1, 2013, and sections B-E were due August 13, 2013.⁴⁹ We did not receive a questionnaire response from Precision. The last communication we received from Precision was its September 25, 2013, withdrawal of its request for review.⁵⁰

Section 776(a)(1) of the Act states that the Department “shall use” facts available if necessary information is not available on the record. Further, section 776(a)(2) of the Act provides that the Department “shall use” facts available if it determines that an interested party withheld information requested by the Department, failed to provide such information by the deadlines for submission of the information or in the form and manner requested by the Department, or

⁴⁵ See letter to the Secretary of Commerce from Dubai Wire regarding “Request for Extension to Department’s Sections A-C Supplemental Questionnaire dated May 29, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates,” dated June 6, 2014.

⁴⁶ See, e.g., *Frontseating Service Valves From the People’s Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011), and accompanying Issues and Decision Memorandum at Comment 12; see also *Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part*, 76 FR 56397 (September 13, 2011), and accompanying Issue and Decision Memorandum at Comment 9.

⁴⁷ See Precision Questionnaire.

⁴⁸ See Memorandum to the File regarding “Certain Steel Nails from the United Arab Emirates: Precision Fasteners, LLC Questionnaire Access Log,” dated June 18, 2014.

⁴⁹ *Id.*, at 5.

⁵⁰ See Precision Withdrawal Request.

significantly impeded a proceeding. In this case, all of these factors apply. Accordingly the use of facts available is warranted in determining a weighted-average dumping margin for Precision.

B. Application of Facts Available With an Adverse Inference

Despite the clear instructions in the Department's July 11, 2013, letter concerning its antidumping procedures and time limits imposed by the statute, Precision never responded to the Department's questionnaire, nor did it provide any indication that it was unable to comply with the Department's information requests. Further, Precision ceased to communicate with the Department after its September 25, 2013, withdrawal of its request for review of itself. However, because there are outstanding review requests, Precision remains under review in this proceeding and has a responsibility to participate. Accordingly, we preliminarily find that Precision did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act, because it failed to respond to the Department's requests for information and failed to provide any additional information. Thus, an adverse inference is warranted in selecting from the facts otherwise available with respect to Precision.⁵¹

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.⁵² As AFA, we preliminarily assign Precision a weighted-average dumping margin of 184.41 percent, the highest rate found in the less-than-fair-value investigation.⁵³ This rate is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁵⁴

When a respondent is not cooperative, such as Precision in this review, the Department has the discretion to presume that the highest prior dumping margin reflects the current weighted-average dumping margin.⁵⁵ If this were not the case, the party would produce current information showing its rate to be less.⁵⁶ Further, by using the highest prior dumping margin, we offer the assurance that the exporter will not benefit from refusing to provide information.

⁵¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (where the Department applied total AFA because the respondent failed to respond to the questionnaire).

⁵² See also 19 CFR 351.308(c)(1) & (2); SAA at 868-870.

⁵³ See *Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029, 17030 (March 23, 2012) (*LTFV Final*), unchanged in *Certain Steel Nails From the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27421 (May 10, 2012) (*LTFV Amended Final*) (amending the final determination to correct certain ministerial errors).

⁵⁴ See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010).

⁵⁵ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)).

⁵⁶ See *Rhone Poulenc*, 899 F.2d at 1190.

Section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁵⁷ As clarified in the SAA, “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁸ To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information.⁵⁹ As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information.⁶⁰ Further, independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review.⁶¹

The 184.41 percent rate that the Department is using in this case as AFA was the highest rate from the petition and it was used as the AFA rate in the investigation. No additional information has been presented in the current review which calls into question the reliability of the information. This rate was corroborated in the pre-initiation phase of the investigation to determine the probative value of the margins alleged in the petition for use as AFA⁶² and it was further corroborated for the final determination of the investigation using a component analysis against Dubai Wire’s comparison margins in the investigation.⁶³ This rate was assigned to Tech Fast International Ltd., a mandatory respondent in the investigation, as AFA. Thus, we determine this information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will

⁵⁷ See SAA at 870.

⁵⁸ *Id.*

⁵⁹ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁶⁰ See SAA at 869.

⁶¹ See 19 CFR 351.308(d) and SAA at 870; see also *Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627, 35629 (June 16, 2003), unchanged in final determination, 68 FR 62560; and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183-84 (March 11, 2005).

⁶² See *Certain Steel Nails from the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68129, 68131-32 (November 3, 2011) (*LTFV Prelim*) unchanged in *LTFV Amended Final*. (The Department established the adequacy and accuracy of all six margins alleged in the petition in the *LTFV Prelim*.)

⁶³ See *LTFV Final*, 77 FR at 17030.

disregard the margin and determine an appropriate margin.⁶⁴ Similarly, the Department does not apply a margin that has been discredited.⁶⁵ To assess the relevancy of the rate used, the Department compared the comparison margins calculated for Dubai Wire in the instant administrative review with the 184.41 percent rate. The Department found that the 184.41 percent margin was within the range of the margins calculated on the record of the instant administrative review for Dubai Wire⁶⁶ and there is not information on the record of the review that demonstrates that the selected rate is not an appropriate AFA rate for the non-responsive firm. Because the 184.41 percent margin is within the range of comparison margins on the record of this administrative review, the Department determines that the 184.41 percent margin continues to be relevant for use as an AFA rate for Precision in this administrative review.

Currency Conversion

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

Recommendation

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

(Date)

⁶⁴ See *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available), because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

⁶⁵ See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated).

⁶⁶ See Dubai Wire Analysis Memo, at page 180 of the attached margin-calculation program output.