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International Trade Administration
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Administrative Review
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December 22, 2014

MEMORANDUM TO: Paul Piquado
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: Issues and
Decision Memorandum for Final Results of Antidumping Duty
Administrative Review; 2011-2013

SUMMARY

The Department of Commerce (the Department) analyzed the case and rebuttal briefs submitted by interested parties in this administrative review of the antidumping duty order on certain steel nails (nails) from the United Arab Emirates (UAE) covering the period of review (POR) November 3, 2011, through April 30, 2013. As a result of this analysis, we made changes to the margin calculation for one respondent, Dubai Wire FZE (Dubai Wire), and continue to assign a margin based on adverse facts available (AFA) for the other respondent, Precision Fasteners, L.L.C. (Precision), because it was not responsive to our requests for information. We recommend that you approve the positions we developed in the “Discussion of the Issues” section of this memorandum.

Below is the complete list of the issues in this review on which we received case and rebuttal briefs from parties.

- Comment 1: Dubai Wire Affiliation
- Comment 2: Non-Dubai Wire Company Certifications
- Comment 3: Dubai Wire Third-Country Market Viability
- Comment 4: IBP’s Data Reporting Methodology
- Comment 5: Commissions in the United States
- Comment 6: Freight Revenue Cap
- Comment 7: Quantity Adjustments



Background

On June 24, 2014, the Department published the *Preliminary Results* in the administrative review of the antidumping duty order on nails from the UAE.¹ Shortly before we issued our *Preliminary Results*, we determined that Dubai Wire was affiliated with one of its U.S.-based customers and importer, Itochu Building Products Inc. (IBP), and a third company to which IBP sold Dubai Wire's merchandise, PrimeSource Building Products Inc. (PrimeSource) (collectively, IBP), which sold nails to unaffiliated customers in the United States and Canada (the third-country market). Therefore, we instructed Dubai Wire to provide an alternative set of U.S. and Canadian databases reporting constructed export price (CEP) and Canadian sales. We also requested supplemental information related to the cost of production (COP). For the *Preliminary Results* we calculated a margin based on facts available using Dubai Wire's export price (EP) sales information and stated that we would provide further analysis in a post-preliminary analysis memorandum once we analyzed the requested CEP sales and COP information. Also for the *Preliminary Results*, we assigned to Precision an AFA rate that was corroborated within the range of margins calculated for Dubai Wire.

On September 30, 2014, we extended the due date for the final results to December 22, 2014.² Using the revised EP and CEP databases, we recalculated Dubai Wire's margin and issued the Post-Preliminary Results on October 16, 2014.³ We invited parties to comment on the *Preliminary Results* and Post-Preliminary Results. We received case and rebuttal briefs from Mid Continent Steel & Wire, Inc. (the petitioner), and IBP in October and November 2014, who limited their comments to issues concerning Dubai Wire.⁴ We received no case or rebuttal briefs in which parties addressed issues concerning Precision. Based on our analysis of the comments received, we made certain revisions to the calculation of the weighted-average margin for Dubai Wire from the Post-Preliminary Results. Because no comments were received concerning Precision and we are aware of no additional information that would require us to revisit our analysis, we have made no changes to our determination with respect to Precision from the *Preliminary Results*.

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

¹ See *Certain Steel Nails from the United Arab Emirates: Decision Memorandum for Final Results of Antidumping Duty Administrative Review; 2011-2013*, 79 FR 35721 (June 24, 2014) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Certain Steel Nails from the United Arab Emirates: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review; 2011-2013" dated September 30, 2014.

³ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance "Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates – Post-Preliminary Results Analysis Memorandum; 2011-2013" dated October 16, 2014, and Memorandum to the File "Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates – Analysis Memorandum for Dubai Wire FZE" dated October 16, 2014 (Post-Preliminary Results).

⁴ See Case Brief from the petitioner, dated October 31, 2014, Case Brief from IBP dated October 31, 2014. See also Rebuttal Brief from the petitioner dated November 5, 2014, and Rebuttal Brief from IBP dated November 5, 2014.

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;
- 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.

Facts Available

Our calculation of Dubai Wire's margin in these final results indicated that there were many comparison- and transaction-specific margins above the rate selected as AFA for Precision in the *Preliminary Results*.⁵ For this reason, we continue to find that the 184.41 percent margin, the AFA rate assigned to Precision in the *Preliminary Results*, is within the range of the margins calculated on the record of the instant administrative review for Dubai Wire and therefore continues to be relevant for use as the AFA rate for Precision in the final results of this review. Accordingly, we reincorporate by reference the Department's analysis of the use of facts available, application of AFA, and the selection and corroboration of information used as facts available with respect to Precision from the *Preliminary Results*.⁶

Discussion of the Issues

Comment 1: *Dubai Wire Affiliation*

The petitioner argues that the Department was correct to find affiliation between Dubai Wire and IBP under 19 CFR 351.102(b)(3) based on control through the Progressive Steel and Wire LLC (PSW) joint venture (JV). However, it asserts that the record demonstrates an equally compelling basis to find affiliation under 19 CFR 351.102(b)(3) based on control through the close supplier relationship between Dubai Wire and IBP. The petitioner claims that the proportion of Dubai Wire's sales to IBP compared to sales to other customers indicates that Dubai Wire was reliant upon IBP. In addition, as Dubai Wire's JV partner and largest customer, there is no doubt IBP could have exercised significant control over Dubai Wire. The petitioner argues that the Department's regulations state that, in finding affiliation based on control, the Department will consider, *inter alia*, close supplier relationships, and that, in determining whether control exists, any such relationship must have the potential to impact decisions related to the production, pricing, or cost of the subject merchandise or foreign like product.⁷ The petitioner contends that, the Department has determined in previous cases that a close supplier relationship may occur when a majority of sales are made to one customer.⁸ Further, it states that the SAA defines a close supplier relationship as one where the supplier or buyer becomes

⁵ See Memorandum to the File "Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates – Final Analysis Memorandum for Dubai Wire FZE" dated concurrently with this memorandum (Dubai Wire Analysis Memo) at the Margin-Calculation Program Output 843-844.

⁶ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at pages 12-16.

⁷ The petitioner cites to 19 CFR. 351.102(b)(3).

⁸ The petitioner cites to *Certain Oil Country Tubular Good from the Republic of Korea*, 79 FR 41983 (July 18, 2014) and accompanying Issues and Decision Memorandum at Comment 20 (*OCTG from Korea*); and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan*, 61 FR 38139, 38157 (July 23, 1996).

reliant upon another,⁹ and the Department has for decades required that the record must demonstrate that the relationship is so significant that it could not be replaced.¹⁰ The petitioner argues that record evidence suggests that Dubai Wire could not survive as a company without the proportion of sales which go to IBP. Therefore, the overwhelmingly dominant nature of IBP's relationship with Dubai Wire provides an independent basis on which to conclude that the parties are affiliated. The petitioner argues that, finding affiliation on this basis, in addition to or in conjunction with the affiliation analysis already provided by the Department, would accurately reflect the record evidence and the relationship between Dubai Wire and IBP.

Furthermore, the petitioner asserts that IBP was incorrect to expect the Department to provide evidence of control of the partners' production, pricing or cost of the subject merchandise through the JV, because the Department's regulations¹¹ and the CIT¹² agree that, when considering whether there is affiliation, JV agreements and close supplier relationships must only provide *the ability to* exercise control, not demonstrate that control is actually exercised. The petitioner argues that, by IBP's own admission, the proportion of sales in which IBP paid a lower price than other customers for identical merchandise suggests there was actual control. Moreover, it is legally irrelevant that IBP may have treated other vendors the same way.

IBP argues that the Department was incorrect to find affiliation between Dubai Wire and IBP under 19 CFR 351.102(b)(3) based on control through the PSW JV. IBP contends that, there is no evidence that it had control over the production, pricing, or cost of nails produced by Dubai Wire. IBP asserts the following: (1) Dubai Wire dealt with IBP in the same arms-length manner before and after formation of the PSW JV; (2) there was no sharing of Dubai Wire's or IBP's internal costs, profits, or prices to other customers; (3) Dubai Wire sold nails to IBP and other customers at comparable prices; (4) the sales process between Dubai Wire and IBP was no different than the sales process between IBP and other vendors located in other countries; (5) prices paid by IPB to Dubai Wire were similar to IBP's other unaffiliated vendors; (6) Dubai Wire is only one of many IBP vendors; and (7) nails are only one of many different products sold by IBP in the United States. IBP argues that the Department correctly reasoned that entering into a JV relationship did not constitute sufficient reason to conclude that Dubai Wire and IBP were affiliated. However, the Department then concluded that the existence of the JV constitutes sufficient reason to conclude that the potential to impact decisions concerning the production, pricing, or cost of subject merchandise or foreign like product exists. IBP contends that the Department's decision constitutes impermissible circular reasoning, because the Department failed to provide any evidence to support its conclusion.

Furthermore, IBP argues that the Department should reject the petitioner's argument that the Department should find affiliation between Dubai Wire and IBP based solely on the proportion of Dubai Wire's sales to IBP, because the CIT and the Department on several recent occasions have rejected such an argument for instances where even 100 percent of merchandise was

⁹ The petitioner cites to Statement of Administrative Action, accompanying the Uruguay Round Agreements Act, H.R.Doc. No. 103-316, vol. 1 at 838 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4174-75 (SAA).

¹⁰ The petitioner cites to *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 62 FR 18404, 18417 (April 15, 1997).

¹¹ The petitioner cites to 19 CFR 351.102(b)(3).

¹² The petitioner cites to *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1299 (CIT 2005) (*TIJID*).

purchased from the producer, stating that it does not constitute evidence of a close supplier relationship or equate to the potential for control over the production, pricing or cost of the subject merchandise.¹³

Department's Position: As described above, the petitioner argues that we should find affiliation between Dubai Wire and IBP based on control through a close supplier relationship in addition to finding affiliation based on control through a JV. Although record evidence supports our finding that there is affiliation via a joint venture,¹⁴ record evidence does not support a finding that there is affiliation via a close supplier relationship.

We find no merit with respect to IBP's argument that Dubai Wire is not affiliated with IBP because there is no evidence that IBP had control over the production, pricing, or cost of nails produced by Dubai Wire. The petitioner correctly states, and the CIT affirmed in *TIJID, Inc. v. United States*, that in determining whether control over another person exists in a JV within the meaning of section 771(33) of the Act, we must only find the *potential* to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. IBP mischaracterizes our reasoning when it stated that we found affiliation based simply on the fact that the two parties entered into a JV agreement and concluded that the existence of the JV had an impact on decisions concerning the production, pricing or cost of the subject merchandise or the foreign like product. In our Affiliation Memo we determined that, based on record evidence of ownership of PSW, the Dubai Wire and IBP corporate entities were in a position to exert control over each other via the JV, not that they actually exerted control over each other.¹⁵ Therefore, IBP incorrectly expects that there be evidence of actual control in order to find affiliation through a JV.

We also find no merit with respect to the petitioner's argument that the record supports a finding for affiliation based on a close supplier relationship. Consistent with the Department's past decisions, we find that proportion of sales to one customer does not constitute enough information to determine a close supplier relationship.¹⁶ This requires the Department to examine other evidence on the record to look at other facts on the record. We find no contracts between Dubai Wire and IBP or other U.S. customers which would suggest Dubai Wire is reliant on any customer. The record establishes that IBP has vendors located in other countries and are not solely reliant on Dubai Wire for subject merchandise needs.¹⁷ Therefore, the Department finds that IBP's relationship to Dubai Wire is not so significant that it could not be replaced.¹⁸

¹³ IBP cites to *TIJID* and, *inter alia*, *OCTG from Korea*.

¹⁴ For details on our affiliation determination, see Memorandum to Thomas Gilgunn, Office Director, AD/CVD Operations, Office I, "Certain Steel Nails from the United Arab Emirates – Affiliation Memorandum for Dubai Wire FZE" dated May 28, 2014 (Affiliation Memo).

¹⁵ *Id.*

¹⁶ See, e.g., *Certain Oil Country Tubular Goods from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 68,396 (November 4, 2011); see also, e.g., *Grain-Oriented Electrical Steel From the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014).

¹⁷ See IBP's July 15, 2014, section A response to the Department's second sections A through C supplemental questionnaire dated May 29, 2014, at page 1.

¹⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier From Malaysia*, 69 FR 34124 (June 18, 2004); see also, e.g., *Solid Urea From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 76 FR 66,690 (October 27, 2011).

Conversely, there is no evidence on the record that establishes the dominance of IBP in the U. S. marketplace that by not doing business with them would exclude Dubai Wire from selling to other U. S. importers.¹⁹ Furthermore, we do not find the proportion of sales by Dubai Wire to IBP demonstrates, as the petitioner suggests, acts of exercising restraint or direction under 771(33)(G) of the Act.

Accordingly, we made no changes for the final results of review with respect to affiliation between Dubai Wire and IBP.

Comment 2: Non-Dubai Wire Company Certifications

The petitioner argues that the Department erred in the Post-Preliminary Results in making a “reasonable accommodation” and accepting company certifications signed by IBP instead of Dubai Wire and should instead apply AFA. The petitioner contends that the Department’s acceptance of certifications signed by a non-Dubai Wire employee is inconsistent with 19 CFR 351.303(g) which, having been recently strengthened under the *Final Certification Rule*,²⁰ states that, if the person who prepared or otherwise supervised the preparation of a submission is unable to certify due to extenuating circumstances, (only) another company official may certify. In this case, the petitioner asserts that the signer is not a Dubai Wire company official, the signer admits she did not have access to the certified confidential information, and the information she certified has been out of Dubai Wire’s control for months. The petitioner argues that the Department’s finding of extenuating circumstances, *i.e.*, that there are no “current” Dubai Wire employees within the meaning of 19 CFR 351.303(g), is contradicted by record evidence which indicates that there is at least one individual, a former Dubai Wire corporate officer who is required under UAE law to remain involved through the dissolution process, who could sign but has refused to do so. Furthermore, the petitioner contends that these facts lend doubt to the accuracy of the information used to calculate Dubai Wire’s margin and justify the use of facts otherwise available under section 776(a)(2) of the Act and U.S. Court of Appeals for the Federal Circuit -sanctioned adverse inferences, because Dubai Wire has failed to act to the best of its ability to comply with the Department’s request for information. The petitioner argues that the Department should also consider the deleterious impact such a departure from the regulation will have on the integrity of the administrative process by undermining the certification process, and should instead establish the importance of accurate submissions by applying AFA.

IBP argues that the Department correctly decided to exercise its discretion to make a reasonable accommodation and accept the non-employee certifications due to extenuating circumstances, and the petitioner has not presented any valid reason for the Department to reverse this decision or rely on AFA. Contrary to the petitioner’s claim, IBP contends that 19 CFR 351.303(g) allows the Department to interpret the regulations in a reasonable manner due to extenuating circumstances, which in this case are: (i) the vast majority of the information on the record was certified by Dubai Wire, (ii) the company is no longer operational due to the unexpected death of its CEO, (iii) Dubai Wire no longer has any employees, (iv) an employee of IBP and

¹⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People’s Republic of China*, 66 FR 58115 (November 20, 2001).

²⁰ See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (Final Certification Rule).

PrimeSource has a vested interest in the accuracy of the information, and (v) the certifier has been able to communicate with former Dubai Wire personnel to obtain pertinent operation information. IBP argues that, even if an employee certification were mandatory under these unusual circumstances, it would only be appropriate to rely on facts otherwise available because Dubai Wire has acted to the best of its ability. Furthermore, IBP asserts that the petitioner was incorrect to say that the certifications should have been signed by a person previously designated as an officer of Dubai Wire, who, following the advice of his counsel, reasonably refused to sign the company certification because he was not involved in preparing Dubai Wire's submissions, had no knowledge as to the contents, was not employed by Dubai Wire, and had no involvement in the operations of Dubai Wire other than as an investor.

Finally, IBP contends that the petitioner was incorrect to say that failing to rely on AFA in this case will have a deleterious impact on the integrity of the administrative process by undermining the certification requirements. IBP asserts that the opposite is true: because the petitioner did not allege that the submissions were incomplete or inaccurate, or allege that IBP has failed to supply all the requested information needed to calculate a margin, and only three out of all POR submissions were signed by a non-Dubai Wire employee, if the Department were to rely on AFA in consideration of the extenuating circumstances, it would send a message that the Department is unwilling to calculate a dumping margin in the fair and impartial manner required by law.

Department's Position: As described above, the petitioner argues that we erred in the Post-Preliminary Results in making a "reasonable accommodation" and accepting company certifications signed by an employee of IBP and PrimeSource, and argues that we should instead apply AFA. However, in light of the extenuating circumstances established on the record of this review and described in our Post-Preliminary Results, we continue to find that the circumstances surrounding the non-employee certifications at issue merit the exercise of the Department's discretion to make a reasonable accommodation with respect to the certification requirement set forth at 19 CFR 351.303(g).

As an initial matter, because of when this proceeding was initiated, it is subject to the *Interim Certification Rule*,²¹ not the *Final Certification Rule* as suggested by the petitioner, and thus, our decision to accept certain company certifications signed by a non-Dubai Wire employee was not based on the regulation guidelines described by the petitioner. Furthermore, the certification issue is limited to Dubai Wire's responses to our 2nd sections A-C and 1st and 2nd section D supplemental questionnaires.²² The bulk of the data provided in the combined responses to these questionnaires belongs to IBP, and presents no certification issue. After analyzing the responses from IBP and the petitioner to our inquiries for further relevant information, we find that, similar to the situation in *Honey from the People's Republic of China*,²³ there is sufficient evidence on

²¹ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011).

²² See IBP's July 15, 2014, response to the Department's second sections A through C supplemental questionnaire dated May 29, 2014; Dubai Wire's July 22, 2014, response to the Department's first section D supplemental questionnaire dated June 12, 2014; and IBP's September 2, 2014, response to the Department's second section D supplemental questionnaire dated August 14, 2014, respectively.

²³ See *Honey from the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review*, 77 FR 34343 (June 11, 2012) and accompanying Issues and Decision Memorandum at Comment 2 ("Due to the extenuating circumstances of this particular case, the Department has determined that it will exercise its discretion to

the record in favor of the reasonableness of making an accommodation in this review to accept the non-employee certifications at issue. Specifically, we find that there is sufficient record evidence indicating that Dubai Wire has ceased operations and no longer has “current” employees within the meaning contemplated by the certification requirement under 19 CFR 351.303(g) who would be able to certify the portion of the responses at issue, including: (i) UAE court records evidencing the initiation of court proceedings by former employees against Dubai Wire, and the issuance of a judgment by the UAE court against Dubai Wire;²⁴ (ii) emails from former managers and a former board member of Dubai Wire stating that Dubai Wire is non-operational and has entered bankruptcy proceedings in the UAE;²⁵ (iii) photographs of the Dubai Wire facility indicating a non-operational status;²⁶ and (iv) statements of personnel sent by IBP to investigate Dubai Wire’s operating status.²⁷ We also find persuasive the fact that the many statements on the record made by various persons are consistent, and contain levels of detail that would be expected of those with knowledge of the current status of Dubai Wire, which further enhances the reliability of the statements.²⁸ Indeed, the above-mentioned evidence indicates that, due to the unexpected death of Dubai Wire’s CEO, the Dubai Wire facility is not currently operational, employees have disbanded, and control over Dubai Wire’s remaining assets has been transferred to the UAE court system.

Furthermore, as in *Honey from the People’s Republic of China*,²⁹ we considered the intent of our certification requirement. While we understand that an employee of a Dubai Wire affiliate may not have the degree of knowledge to vouch for the accuracy and completeness of the information contained in the submissions as would an employee of Dubai Wire, we believe that an employee and officer of IBP and PrimeSource, Dubai Wire’s affiliates and companies which sell Dubai Wire’s merchandise and will be subject to the antidumping duty margin we calculate for Dubai Wire, would have a vested interest in the accuracy and completeness of the information provided to us. The purpose of 19 CFR 351.303(g) is to ensure that the signer of the company certification has the knowledge to vouch for the accuracy and completeness of the information contained in the submission to the best of the certifier’s knowledge. Although the certifier in this instance is employed by IBP and PrimeSource rather than Dubai Wire, the record shows she communicated with former employees, officers and shareholders of Dubai Wire³⁰ and was able

make a reasonable accommodation and accept the submission of the resale customer with a non-employee certification under 19 CFR 351.303(g).”) (*Honey from the People’s Republic of China*).

²⁴ See, e.g., IBP’s letter to the Secretary, “IBP Response to DOC letter of September 9, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates” dated September 16, 2014 (IBP Evidence) at Exhibit 3.

²⁵ See, e.g., IBP Evidence at Exhibits 1 and 2.

²⁶ See, e.g., IBP Evidence at Exhibit 5.

²⁷ See, e.g., IBP Evidence at Exhibit 1.

²⁸ See IBP’s letter to the Secretary of Commerce regarding “IBP Response to DOC letter of September 9, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates” dated September 16, 2014, at pages 2-3 and Exhibits 1-3.

²⁹ See *Honey from the People’s Republic of China* at Comment 2 (“Therefore, given the extenuating circumstances of this case, and consistent with the intent of the Department’s regulations, we will accept the [non-employee] certification.”).

³⁰ See IBP’s letter to the Secretary of Commerce regarding “IBP Response to DOC letter of August 27, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates” dated September 3, 2014; see also IBP’s letter to the Secretary of Commerce regarding “IBP Response to DOC letter of September 9, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates” dated September 16, 2014.

to obtain certain operational information of Dubai Wire to a sufficient degree for IBP as the submitting party to identify her as the person most accountable for the accuracy of the submissions and, therefore, for us to rely on the accuracy and completeness of Dubai Wire's information therein.³¹

In its response to our request to explain why certain submissions had been certified by a non-Dubai Wire employee, IBP notified us that because Dubai Wire is not operational and there is no Dubai Wire official capable of certifying the responses, they believe it was appropriate for the certifications to be signed by an employee of PrimeSource, which had assumed responsibility for ensuring that the Dubai Wire responses were completed.³² We find that this explanation, in addition to the multiple other submissions placed on the record by IBP that further detail the circumstances of Dubai Wire's operational status,³³ constitute notification under section 782(c)(1) of the Act by IBP of its difficulty in meeting the certification regulation's requirement that the signer be a "current" employee of Dubai Wire. We further requested that IBP confirm that the signer of the certifications prepared or otherwise supervised the preparation of the submissions³⁴ and provide certifications signed by a Dubai Wire employee or provide evidence there were no current employees.³⁵ IBP timely responded confirming the signer of the certifications prepared or otherwise supervised the preparation of the submissions³⁶ and provided evidence substantiating its claim that Dubai Wire was non-operational and there were no current employees.³⁷

³¹ See *Interim Certification Rule* at Comment 9 which states "...in order for a certification to be effective, there must be an individual (or a very limited number of individuals) to hold accountable for the accuracy and completeness of the entire submission based on that person(s)'s knowledge of the entire submission. The person(s) that the submitting party has identified as accountable for the accuracy and completeness of the entire submission should complete the certification."

³² See IBP's letter to the Secretary of Commerce regarding "Company Certification of Supplemental Section D Response: First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates" dated July 23, 2014.

³³ See IBP's letter to the Secretary of Commerce regarding "Reply to Department letter of July 30, 2014: First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates" dated August 1, 2014; see also IBP's letter to the Secretary of Commerce regarding "IBP Response to DOC letter of August 27, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates" dated September 3, 2014; see also IBP's letter to the Secretary of Commerce regarding "IBP Response to DOC letter of September 9, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates" dated September 16, 2014; see also IBP's letter to the Secretary of Commerce regarding "IBP Response to Petitioner letter of September 16, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates" dated September 26, 2014.

³⁴ See the Department's letter to IBP dated July 30, 2014.

³⁵ See the Department's letter to IBP dated August 27, 2014; see also the Department's letter to all interested parties dated September 9, 2014.

³⁶ See IBP's letter to the Secretary of Commerce regarding "Reply to Department letter of July 30, 2014: First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates" dated August 1, 2014.

³⁷ See IBP's letter to the Secretary of Commerce regarding "IBP Response to DOC letter of August 27, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates" dated September 3, 2014; see also IBP's letter to the Secretary of Commerce regarding "IBP Response to DOC letter of September 9, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates" dated September 16, 2014; see also IBP's letter to the Secretary of Commerce regarding "IBP Response to Petitioner letter of September 16, 2014; First Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates" dated September 26, 2014.

In light of the extenuating circumstances in this review and IBP's additional record evidence regarding the inability of a Dubai Wire official to sign the company certification, we find that any deficiency in the submissions due to the presence of a non-employee certification has been explained by IBP with sufficient record evidence for us to conclude that the responses are satisfactory under section 782(d) of the Act, and that it is appropriate for us to consider the submissions that have been submitted with a non-employee certification as usable pursuant to section 782(e) of the Act. Therefore, we have not declined to consider the information contained in those submissions. Furthermore, we find that certifications are in accordance with the intent of the *Interim Certification Rule* with respect to accountability for completeness and accuracy.³⁸

Finally, we agree with IBP that the petitioner has not presented a valid reason for us to reverse this decision or rely on facts otherwise available or AFA under section 776(b) of the Act for IBP failing to act to the best of its ability. Contrary to the petitioner's argument, there is no indication that the individual who allegedly could sign the certifications but has refused to do so is a person better suited to signing. Because we determined that the record evidence indicates there are no current employees of Dubai Wire, the simple fact that the individual was previously designated as an officer of Dubai Wire does not establish that this individual is more qualified to certify, *i.e.*, that he has prepared or otherwise overseen the preparation of the submissions in question. Moreover, IBP's submissions were complete and accurate, IBP has supplied all the requested information needed to calculate a margin and, as IBP correctly notes, only three out of all POR submissions were accompanied by company certifications signed by a non-Dubai Wire employee. All necessary information is on the record and there is no indication that IBP has withheld information, failed to provide information by the deadlines or in the form and manner requested, significantly impeded this proceeding, or provided information that cannot be verified. Moreover, we find that IBP has not failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information.

Accordingly, we will make no changes from the Post-Preliminary Results. Due to the extenuating circumstances of this particular case, we determined that we will exercise our discretion to make a reasonable accommodation with respect to 19 CFR 351.303(g) and accept the relevant submissions with a non-employee certification. Specifically, we determine that we will accept certain submissions by Dubai Wire that are accompanied by company certifications signed by a representative of Dubai Wire's affiliated importer, IBP, and affiliated distributor, PrimeSource.

Comment 3: *Dubai Wire Third-Country Market Viability*

IBP argues that the Department was incorrect in the Post-Preliminary Results when it determined third-country viability based on sales data which included derived resale quantities and should instead calculate Dubai Wire's margin based on constructed value (CV).

IBP explains that because nails from all vendors were commingled in PrimeSource's warehouse, PrimeSource could not link sales made from its warehouse inventory in the United States and Canada to a specific Dubai Wire entry or shipment. Therefore, PrimeSource reported in its U.S.

³⁸ See *Interim Certification Rule* at Comment 5.

and third-country sales databases all of its warehouse resales of product types sourced from Dubai Wire and then derived product-specific shipment ratios based on the total quantity of each product type sold by Dubai Wire during the POR (meant for PrimeSource's warehouse) as a percentage of total sales of PrimeSource's warehouse sales of that product type.

IBP asserts that the Department should conduct its comparison market viability test in the same commercially realistic manner as IBP reported its sales: based on all warehouse sales of product types identical to those purchased from Dubai Wire, and regardless of origin. Doing so, contends IBP, would conform to the "economic reality"³⁹ in which PrimeSource conducts its business in the United States and Canada, accurately reflect the comparative size and importance of each market to IBP/PrimeSource, track the observations and sales reported in IBP's Section B and C resale databases. It would also track the manner in which the Department calculated Dubai Wire/IBP's dumping margin (*i.e.*, the calculation of adjusted U.S. sales prices, calculation of adjusted third-country sales prices, selection of specific product types for comparison purposes when identical merchandise did not exist, and determination of whether Canadian sales prices were above or below the cost of production), and avoid "substantial overvaluation."⁴⁰ IBP argues that the decision by the Department that the Canadian market is viable is based on an unduly technical interpretation of the 5 percent viability requirement under section 773(a)(1)(B)(ii)(II) of the Act. IBP argues that when the two markets are compared on economic reality, the Department would find that the Canadian market does not meet the 5 percent requirement and therefore, the Department should base Dubai Wire's normal value (NV) on CV.

Furthermore, IBP contends, even if the Department concludes that the Canadian market is viable, the Department should exercise its discretion and calculate margins by comparing IBP's derived resale prices to CV. IBP argues that the statute does not compel the Department to use third-country sales and the Department has recognized that margins should not be based on third-country prices in appropriate circumstances.⁴¹ In the instant case, IBP claims that the Department is determining viability based on an unduly technical interpretation of the 5 percent rule. Moreover, the sole reason that the Department calculated an 18.81 percent margin in the Post-Preliminary Results is due to the Department's hyper-technical margin calculation methodology which, by using commercially different merchandise and vagaries of the Department's sales below cost test, results in commercially unrealistic margins for certain sales. IBP contends that, if the Department were to compare the two markets in a commercially realistic manner, as required by the courts,⁴² the Department would find that the Canadian market is not viable and the circumstances in this case justify the use of CV rather than third-country market sales as a basis for NV.

³⁹ IBP cites to *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (CAFC 2013), citing *United States v. Eurodif S.A.*, 555 U.S. 305, 317-18, 129 S. Ct. 878, 172 L. Ed. 2d 679 (2009).

⁴⁰ IBP cites to *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (CAFC 1997), citing 19 U.S.C. 1677b(c)(1), (e)(1988).

⁴¹ IBP cites to *Certain Oil Country Tubular Goods From Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and *Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review*, 71 FR 13091 (March 14, 2006).

⁴² IBP cites to *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (CAFC 2013), citing *United States v. Eurodif S.A.*, 555 U.S. 305, 317-18, 129 S. Ct. 878, 172 L. Ed. 2d 679 (2009), and *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (CAFC 1997), citing 19 U.S.C. 1677b(c)(1), (e) (1988).

The petitioner argues that IBP is incorrect to say that the Department should reject Canada as a viable third-country market and calculate NV using CV. The petitioner asserts that IBP's argument that the Department should conduct its viability test by comparing IBP's resales in the United States and Canada from any producer, regardless of origin is contrary to law. The petitioner contends that section 773(a)(1)(B)(ii)(II) of the Act clearly states that the price to be used as the basis for NV is to be obtained from a third country if the aggregate quantity of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity of the subject merchandise sold in the United States. The petitioner states that section 771(16) of the Act defines "foreign like product" as being produced in the same country and by the same person as the subject merchandise. Therefore, the petitioner argues that the Department was correct to determine third-country viability based on derived quantities, because they represent the sales quantities of foreign like product and subject merchandise produced by Dubai Wire in the UAE and, based on these derived quantities, the Department should continue to find that the Canadian market is viable. IBP's approach would improperly have the Department rely on sales of nails produced by any company in any country.

Furthermore, the petitioner contends that IBP incorrectly argues that Canadian sales prices are unrepresentative because the Department is determining viability based on an unduly technical interpretation of the 5 percent rule, the Department's hyper-technical margin calculation methodology, and vagaries of the Department's sales below cost test and cannot serve as the basis for comparison in the margin calculation. The petitioner asserts that IBP's argument is unfounded, unsupported, and untenable.

Department's Position: As described above, IBP has raised two issues related to its reported third-country sales which we examined. We have not found, however, any basis on which we should disregard its reported third-country sales.

Section 773(a)(1)(B)(ii)(II) of the Act and 19 CFR 351.404(b)(2) state that a third-country market is viable if the aggregate quantity of third-country sales of the foreign like product is equal to five percent or more of the aggregate quantity of U.S. sales of subject merchandise, and section 771(16) of the Act defines 'foreign like product' as being produced in the same country and by the same person as the subject merchandise. Moreover, section 773(a)(1)(B) of the Act states that we may base NV on the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, is in the usual commercial quantities and in the ordinary course of trade, if such a price is representative, and the administering authority does not determine that a particular market situation in such other country prevents a proper comparison with the EP or CEP.

We agree with the petitioner that the statute and regulations are clear that viability should be determined (only) by comparing merchandise produced by the respondent in the subject country. Therefore, we disagree with IBP that we should conduct our viability test based on sales quantities reported which include merchandise produced by companies other than Dubai Wire and in countries other than the UAE. We find no merit in IBP's argument that by using derived third-country sales quantities we are employing a hyper-technical margin calculation methodology which, by using commercially different merchandise and vagaries of our sales below cost test, results in commercially unrealistic margins for certain sales. It is true that, even

if we find the third-country market to be viable, we are not compelled by section 773(a)(1)(C) of the Act to use it. However, as the petitioner correctly argues, IBP has presented no evidence to support its claim that derived third-country sales quantities are commercially unrealistic, *i.e.*, that the prices are unrepresentative of foreign like product produced by Dubai Wire in the UAE as required by section 773(a)(1)(B)(ii)(I). The statute does not require, as IBP suggests, that in order for sales to be representative they must accurately reflect the importance of the Canadian market to IBP's overall sales. Indeed, IBP has presented no evidence that its third-country sales are not of usual commercial quantities, not in the ordinary course of trade, not representative in prices, or that there is a particular market situation which would prevent a proper comparison with EP/CEP and would cause us to conclude that the third-country market is unsuitable for comparison, or that use of CV is preferable. On the contrary, Dubai Wire's third-country sales reported as derived quantities, as supported by the record of this case, appear to be legitimate sales of merchandise identical to that which is sold in the United States, in the usual commercial quantities and in the ordinary course of trade and at the same level of trade suitable for comparison with EP/CEP, as required under section 773(a)(1)(B)(i) and (ii) of the Act.

Accordingly, we determine that IBP's reported third-country sales quantity of foreign like product, which exceeds the five percent third-country market viability threshold, satisfies the statutory and regulatory threshold of third-country market viability on a volume basis.⁴³ Based on this comparison, we determine that Dubai Wire had a viable third-country market during the POR. For the final results, therefore, we will continue to use Dubai Wire's third-country sales as a basis for NV.

Comment 4: IBP's Data Reporting Methodology

The petitioner argues that, contrary to IBP's claims of accuracy and consistency, its U.S. and third-country market sales data reflect a reporting methodology that is highly flawed, because it allocates all of IBP's purchases of subject merchandise from Dubai Wire over all of PrimeSource's sales of identical merchandise in both markets resulting in observations that are partly or wholly not actual sales, *i.e.* 'phantom' sales. Further, the petitioner asserts that IBP has chosen to employ this reporting methodology without first consulting the Department. The petitioner argues that the use of such unreliable data undermines the accuracy of the Department's calculations in that it raises serious questions concerning the Department's ability to reconcile reported databases to confirm that the universe of sales has been properly reported, and to calculate the U.S. market size and third-country viability, and it contradicts the CAFC's recognition that the basic purpose of the statute is determining margins as accurately as possible.⁴⁴ For these reasons, the petitioner states that the Department should rely on AFA for Dubai Wire.

IBP argues that, just as it reasoned why the Department should calculate NV based on CV rather than on sales prices to Canada in determining viability, relying on prices of derived third-country

⁴³ See IBP's July 15, 2014, section C questionnaire response and accompanying U.S. sales database (CQR), IBP's July 23, 2014, section B questionnaire response and accompanying third-country database (BQR), and IBP's September 16, 2014, section A through C supplemental questionnaire response and accompanying revised U.S. and third-country databases.

⁴⁴ The petitioner cites to *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (CAFC 1990).

quantities results in commercially unrealistic margin calculations. IBP asserts that the petitioner supports this conclusion when it notes instances of ‘phantom’ sales in the derived sales quantities but the petitioner was incorrect to conclude that the occurrence of phantom sales justifies reliance on AFA. Instead, the petitioner simply recognizes that, because there are instances of phantom sales, and these instances occur more frequently in the third-country market, such sales are unreliable for comparison purposes. Therefore, IBP argues, to ensure a commercially realistic calculation as required by law, the Department should conduct its viability analysis based on the original quantities sold by PrimeSource in the United States, rather than on the derived quantities used by the Department in its margin calculations, and compare IBP’s U.S. resale prices to CV.

Department’s Position: As described above, the petitioner has raised issues related to IBP’s CEP sales reporting methodology, which we examined. We have not found, however, any basis on which we should disregard reported third-country and U.S. sales and rely on AFA.

We acknowledge that IBP’s reporting methodology, while not ideal, is reasonable given the nature of the sales and distribution processes which pool nails from various countries before being sold.⁴⁵ We disagree with the petitioner that the reporting methodology results in such unreliable data that they undermine the accuracy of our calculations. There are instances during the reporting period where quantities of certain types of nails purchased by IBP from Dubai Wire are greater than the quantities of identical types of nails sold by PrimeSource, and there are instances where quantities of certain types of nails purchased by IBP from Dubai Wire are less than the quantities of identical types of nails sold by PrimeSource. However, the derived quantities as a whole are representative yet impartial to the product type and the quantities purchased from Dubai Wire by IBP. For reasons articulated above concerning IBP’s third-country viability, we disagree with IBP that its third-country sales are unrepresentative. To the contrary, we find that IBP’s third-country sales are of merchandise identical to that which is sold in the United States, in the usual commercial quantities and in the ordinary course of trade and at the same level of trade suitable for comparison with EP/CEP, as required under section 773(a)(1)(B)(i) and (ii) of the Act. Therefore, because IBP has employed a reasonable reporting methodology, we are reasonably able to reconcile the reported databases to confirm that the universe of sales has been properly reported, calculate the U.S. market size and third-country viability, and calculate a margin as accurately as possible.

Furthermore, contrary to the petitioner’s assertion, we find that the record does not support the application of AFA under section 776 of the Act. We find that IBP has not withheld information, failed to provide information by the deadlines or in the form and manner requested, significantly impeded this proceeding, or provided information that cannot be verified. Moreover, we find that IBP has not failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information.

Accordingly, consistent with our practice, we determined that IBP’s methodology is an acceptable reporting methodology,⁴⁶ and for the final results, therefore, we will use Dubai Wire’s third-country and U.S. sales, as reported, to calculate a margin for Dubai Wire.

⁴⁵ See CQR at pages 1, 4-5, and BQR at pages 2-3.

⁴⁶ See, e.g., *Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair*

Clerical Errors

Comment 5: Commissions in the United States

IBP argues that the Department changed its longstanding practice of treating commissions as commissions and instead treated commissions incurred in the United States as CEP expenses.

The petitioner argues that the record demonstrates that the Department's treatment of IBP's U.S. CEP commissions was intentional, matches the standard boilerplate programming, and as such, reflects a methodological choice rather than a ministerial error.

Department's Position: We disagree with IBP that we have changed our long-standing practice with respect to commissions. What is at issue is a change in the design of the margin-calculation program prior to this review, rather than a change in practice. In earlier boilerplates of the margin-calculation program, the program language only had one field for commissions, regardless of whether commissions were incurred in the comparison market or in the United States, and it was up to the programmer to add language to specify where commissions were incurred. The latest boilerplate of the margin-calculation program, which was used for the Post-Preliminary Results, has a field for commissions incurred in the comparison market and a separate field for expenses, including commissions, incurred in the United States. Pursuant to section 772(d)(1)(A) of the Act, our normal practice is to treat commissions incurred in the United States as CEP selling expenses, which we have done. Because changes to the margin-calculation program were strictly related to design, there has been no change to our treatment of commissions incurred in the United States in the Post-Preliminary Results compared to previous reviews. Accordingly, we made no changes for purposes of the final results.

Comment 6: Freight Revenue Cap

IBP argues that the Department did not follow its normal practice of programming a cap in the margin-calculation program which limits the freight revenue to the amount of reported freight expenses, and should cap third-country freight revenue.

The petitioner argues that the Department properly declined to cap freight revenue. However, if the Department decides to cap freight revenue in the comparison market, then it should do so in the U.S. market as well.

Department's Position: We agree with IBP that it is our normal practice to cap freight revenue to the amount of reported freight expenses. We also agree with the petitioner that, if we cap freight revenue to the amount of reported freight expenses incurred in the third-country market, it is appropriate to also cap freight revenue to the amount of reported freight expenses in the United

Value and Postponement of Final Determination, 74 FR 55183 (October 27, 2009), and accompanying company-specific analysis memorandum "Preliminary Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Taiwan - Analysis Memorandum for TCI Plastic Co., Ltd." dated October 19, 2009, at page 4, confirmed in *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010).

States. Accordingly, for the final results, we added language to the comparison market program to cap freight revenue to the amount of reported freight expenses incurred in the third-country market, and we added to the margin-calculation program language to cap freight revenue to the amount of reported freight expenses in the United States.⁴⁷

Comment 7: Quantity Adjustments

IBP argues that the Department incorrectly used all transactions in its margin calculation and, because there are a substantial number of U.S. transactions which should be deleted because of quantity adjustments, the Department should ensure that the quantity adjustments are properly applied.

The petitioner argues that, because the U.S. sales database used by the Department in its margin calculations is a set of derived, and therefore flawed, data, it is not possible to associate quantity adjustments with specific transactions with any certainty. Furthermore, there is no indication that the Department intended to rely on derived data.

Department's Position: As discussed above concerning IBP's reporting methodology, we disagree with the petitioner that the set of U.S. sales quantities used in our margin calculations is flawed. We believe IBP employed a reasonable reporting methodology, given the nature of the sales and distribution processes, and the derived U.S. and third-country sales quantities as a whole are representative yet impartial to the product type and the quantities from which they are derived. Likewise, because reported quantity adjustments have been derived similarly to reflect the product type and quantity of Dubai Wire's original quantity adjustments, we find that, given the nature of the sales and distribution processes, the reported quantity adjustments as a whole are also representative yet impartial to the product type. Therefore, contrary to the petitioner's assertion, we find it is reasonable to associate derived quantity adjustments to derived sales quantities and appropriate to apply the adjustments in our margin calculations. Furthermore, just as it is appropriate to apply the derived quantity adjustments to derived U.S. sales quantities in the margin-calculation program, we find it is also appropriate to apply derived quantity adjustments to derived third-country sales quantities in the comparison market program. Accordingly, for the final results, in addition to applying reported U.S. sales quantity adjustments to derived U.S. sales quantities, we will apply reported third-country sales quantity adjustments to derived third-country sales quantities.⁴⁸

⁴⁷ For details on changes to the programs related to freight revenue cap, *see* Dubai Wire Analysis Memo.

⁴⁸ For details on changes to the programs related to quantity adjustments, *see* Dubai Wire Analysis Memo.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margins for all of the reviewed companies in the *Federal Register*.

Agree _____

Disagree _____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

(Date)