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June 2, 2015

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

FROM: Christian Marsh *CM*
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; 2013-2014

SUMMARY

The Department of Commerce (the Department) has analyzed the case and rebuttal briefs submitted by interested parties in this administrative review of the antidumping duty (AD) order on certain steel nails (nails) from the United Arab Emirates (UAE) covering the period of review (POR) May 1, 2013, through April 30, 2014. The only comments we received concerned one of the mandatory respondents, Dubai Wire FZE (Dubai Wire). As a result of this analysis, we continue to assign a margin based on facts available (FA) for Dubai Wire because we continue to find that this company was non-operational during the POR and could not respond to the Department's request for information. We continue to establish a margin based on adverse facts available (AFA) for the other mandatory respondent, Precision Fasteners, L.L.C. (Precision), because this company was unresponsive to the Department's request for information. We recommend that you approve the position we developed in the "Discussion of the Issue" section of this memorandum.

The sole issue raised in the case and rebuttal briefs we received from parties concerned the application of facts available with no adverse inference in establishing the margin for Dubai Wire in the preliminary results of this review.



BACKGROUND

On February 6, 2015, the Department published the *Preliminary Results* of the administrative review of the AD order on nails from the UAE.¹ We invited parties to comment on the *Preliminary Results*. In March 2015, we received a case brief from Mid Continent Steel & Wire, Inc. (Mid Continent), a domestic interested party, and a rebuttal brief from Dubai Wire's affiliated importer, Itochu Building Products Inc., and affiliated distributor, PrimeSource Building Products Inc., (together, IBP), both of which were limited to the above-mentioned single issue concerning Dubai Wire.² We received no case or rebuttal briefs with respect to Precision, the other mandatory respondent in this review. Based on our analysis of the comments received, we made no changes to our determination in the *Preliminary Results* with respect to Dubai Wire, and we continue to rely on FA to establish a margin for this company. Because we received no comments concerning Precision and we are aware of no additional information that would require us to revisit our analysis, we made no changes to our determination with respect to Precision from the *Preliminary Results* and continue to rely on AFA to establish a margin for this company.

SCOPE OF THE ORDER

The merchandise covered by this order³ 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.

¹ See *Certain Steel Nails from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 6693 (February 6, 2015) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

² See case brief from Mid Continent dated March 9, 2015, and rebuttal brief from IBP dated March 16, 2015.

³ See *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).

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.

DISCUSSION OF THE ISSUE

Comment 1: Application of Facts Available to Dubai Wire

In the *Preliminary Results*, we stated the following:

Dubai Wire’s affiliated U.S. importer of record provided evidence indicating that, at the time of the delivery of the questionnaire, Dubai Wire was no longer operational, and also provided notice, pursuant to section 782(c) of the Act, that Dubai Wire would be unable to respond to the questionnaire... The issue of Dubai Wire becoming non-operational was also examined extensively in the previous administrative review. In light of the evidence provided in the context of the instant review, and consistent with our findings in the previous administrative

review, we find that Dubai Wire was not operational during the instant POR and, therefore, was unable to respond to our questionnaire or to participate in any way in this review. Accordingly, we find that Dubai Wire did not fail to cooperate with respect to providing the requested information and, thus, we are not drawing an adverse inference. Therefore, consistent with our practice, we are applying neutral facts available. Specifically, we are assigning Dubai Wire the weighted average dumping margin of 18.13 percent, the rate we calculated for Dubai Wire in the most recently completed administrative review.⁴

We also enumerated evidence, submitted on the record of this review, indicating that Dubai Wire was no longer operational.⁵

Mid Continent argues that Dubai Wire's failure to respond to the AD questionnaire in any fashion⁶ manifestly satisfies the statutory AFA standard and demands application of FA with an inference adverse to Dubai Wire's interests. Mid Continent contends that the Department somehow concluded that the statute tolerates Dubai Wire's "complete disengagement," notwithstanding the decision in *Nippon Steel*⁷ (where, Mid Continent alleges, the U.S. Court of Appeals for the Federal Circuit (CAFC) held that the AFA statute "does not condone inattentiveness, careless, or inadequate record keeping").

Mid Continent takes issue with our statements in the *Preliminary Results* that an application of neutral FA, instead of AFA, is consistent with our practice concerning companies, such as Dubai Wire, that were found to have ceased operations. Mid Continent argues that the precedent we cited in support of these statements is inapposite and does not support the existence of an agency practice that declines an application of AFA in cases where a mandatory respondent fails to cooperate altogether. Specifically, Mid Continent alleges that the administrative precedent⁸ on which we relied addresses wholly inapposite circumstances where mandatory respondents were found to have used their best efforts to obtain and report information from unaffiliated toll producers, but which were unable to provide complete information. Mid Continent argues that it is factually and legally erroneous for the Department to have relied on such decisions as establishing any practice, much less a consistent practice, that addresses the situation concerning Dubai Wire.

Mid Continent asserts that the Department based its findings in the *Preliminary Results* entirely on information submitted by Dubai Wire's importer, IBP. Mid Continent argues that IBP's self-

⁴ See *Preliminary Results* and accompanying PDM at 4-5 (internal citations omitted).

⁵ *Id.*, at 4.

⁶ Mid Continent alleges that, in failing to submit any response in this review, Dubai Wire did not, for example, submit any kind of communication describing its legal or operational status.

⁷ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003) (*Nippon Steel*).

⁸ See *Preliminary Results* and accompanying PDM at 5, fn 10 (citing *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) (*Frontseating Service Valves*), 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) (*SDGEs*), and accompanying Issues and Decision Memorandum at Comment 9.

serving information falls, however, far short of establishing that Dubai Wire has been formally and finally dissolved in accordance with the laws of the UAE. Mid Continent alleges that it demonstrated in the most recently completed administrative review that Dubai Wire continues to exist as a legal entity with one or more representatives that could have provided some response on the company's behalf.⁹

Moreover, Mid Continent argues, the Department's reliance on this information is misplaced given IBP's overriding interest in reducing its dumping liability. Indeed, Mid Continent reasons, the CAFC recognized that the Department should apply AFA precisely in the circumstances present in this review because, Mid Continent asserts, the Court found that the cooperation of the respondent's importer is not relevant to the AFA analysis.¹⁰ Mid Continent argues that IBP will receive extraordinary relief by having its dumping liability, established in the previous segment of the proceeding, continue in this segment, despite Dubai Wire's lack of cooperation in this review. Mid Continent argues that IBP stands to benefit in a manner that contradicts CAFC rationale in *KYD* with respect to the consequences for an importer resultant from a respondent having failed to cooperate.

IBP argues that the Department's preliminary decision to assign Dubai Wire an 18.13 percent rate, based on neutral FA, was based on factual determinations, which were undeniably supported by substantial evidence in the record and a legal analysis concerning the relationship between neutral FA and AFA, which conformed to law.

IBP argues that in supporting its conclusion in the *Preliminary Results*, the Department relied on the extensive documentation that IBP submitted in this review, as well as the Department's determination in the recently completed *Nails POR I* (where it found that Dubai Wire no longer was capable of certifying to the accuracy of its submissions to the Department). IBP argues that the facts the Department examined in *Nails POR I* and on which it relied in this review are supported by substantial evidence and are not subject to dispute. IBP argues that Mid Continent's allegations (*i.e.*, that the information upon which the Department relied is "self-serving," does not establish that Dubai Wire has been "formally and finally dissolved," and that "DWE continues to exist as a legal entity with one or more representatives that could have provided a response on behalf of Dubai Wire") do not rise to the level of substantial evidence and are not sufficient to support a conclusion that Dubai Wire had the ability to participate in this review.

IBP argues that, in establishing the rate for Dubai Wire, the Department's decision to apply neutral facts available, rather than drawing an adverse inference, conforms to law because section 776(b) of the Act authorizes the Department to use an adverse inference only in those cases in which the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The fact that a party fails to provide information does not constitute sufficient reason for the Department to rely on AFA. IBP asserts that the CAFC's discussion in *Nippon Steel* clearly illuminates such an AFA standard. IBP argues that the

⁹ Mid Continent cites *Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011-2013*, 79 FR 78396 (December 30, 2014) (*Nails POR I*) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰ Mid Continent cites *KYD, Inc. v. United States*, 607 F.3d 760, 768 (CAFC 2010) (*KYD*).

Department correctly found that Dubai Wire was no longer operational and that Dubai Wire did not have the ability to comply with the Department's request for information or to participate in the review. Thus, IBP continues, the Department correctly concluded that, when Dubai Wire advised the Department that it was not able to participate in this proceeding, it did "the maximum it was able to do," a requirement that underpins the statutory mandate that a respondent must act to "the best of its ability," as interpreted by CAFC in *Nippon Steel*.

IBP argues that the Department correctly relied on *SDGEs* and *Frontseating Service Valves* for the proposition that it is inappropriate to apply AFA to a company which has acted to the best of its ability during the course of a proceeding, notwithstanding the fact that the company is unable to provide the Department with the information requested. IBP contends that this is the same standard which the Department applied to Dubai Wire in this review.

IBP takes issue with Mid Continent's reliance on *KYD* for the proposition that the Department is required to apply AFA when "faced with an uncooperative respondent and a cooperative importer – to maximize cooperation from those in possession of the necessary information: the respondent." IBP contends that this argument ignores the facts that: (1) in this case, unlike the situation in *KYD*, the Department correctly concluded that the respondent, Dubai Wire, acted to the best of its ability (notwithstanding the fact that it was unable to respond to the Department's questions); and (2) in *KYD*, the respondent had failed to cooperate in the prior review, leaving the Department with no choice but to apply a prohibitive AFA rate - in contrast, in this case, the Department determined that Dubai Wire cooperated in *Nails POR 1*, and accordingly the Department was able to apply the rate it determined for Dubai Wire there to Dubai Wire in this review.

IBP argues that the Department supported the neutral FA rate of 18.13 percent with substantial evidence confirming that the facts and circumstances in this review were not materially different from the previous review in which this rate was calculated for Dubai Wire. IBP asserts that this information was more than sufficient to support the Department's decision that the 18.13 percent rate established in *Nails POR 1* was appropriate to use as facts available as Dubai Wire's rate in the current review.

IBP calls for the Department to reject Mid Continent's argument that "an importer's attempt to reduce its duty liability should not, as a matter of sound policy, trump the compelling rationale supporting the reliance on AFA in this review." IBP argues that reliance on "sound policy" dictates that the Department should calculate dumping margins in a fair and equitable manner, as accurately as possible, based on the best information on the record. IBP asserts that the record in this case confirms that Dubai Wire is a "dead" company, incapable of replying to the Department's questionnaire – therefore, Dubai Wire has not failed to act to the best of its ability, and there is absolutely no policy reason to assign Dubai Wire an AFA rate of 184.41 percent, when the record evidence reveals that the dumping rate in the current review for Dubai Wire should be the same as the 18.13 percent rate that the Department established for Dubai Wire in *Nails POR 1*.

Department's Position: For these final results of review, we continue to find that applying a rate of 18.13 percent to Dubai Wire, on the basis of facts available, is appropriate.

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or if 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. 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 has failed to cooperate by not acting to the best of its ability to comply with a request for information.

As a preliminary matter, we disagree with the assertion made by Mid Continent that Dubai Wire failed to respond in any manner, such as submitting any kind of communication describing its legal or operational status. To the contrary, on behalf of Dubai Wire, IBP submitted evidence in this review indicating that Dubai Wire continued to be non-operational during this POR.¹¹ We found such an action to constitute a sufficient and appropriate notice, pursuant to section 782(c) of the Act, that Dubai Wire would be unable to respond to the questionnaire.¹²

In the *Preliminary Results*, we found that Dubai Wire did not fail to cooperate with respect to providing the requested information because we determined it was unable to respond to our questionnaire or to participate in any way in this review.¹³ The record evidence demonstrates that, at the time of receipt of the Department’s questionnaire, Dubai Wire did not have either the required personnel knowledgeable of the preparation of the questionnaire responses nor access to materials necessary to do so.¹⁴ This determination was based on the evidence provided in the context of this review, and is consistent with our findings in the previous administrative review, none of which Mid Continent disputes. In light of this record evidence, we do not find Mid Continent’s assertions that Dubai Wire “continues to exist as a legal entity with one or more representatives that could have provided a response on behalf of Dubai Wire” persuasive in establishing Dubai Wire’s ability to participate in this review. The record evidence, consisting of statements from several sources knowledgeable of Dubai Wire’s status, as well as communications from a representative that Mid Continent contends could have responded on behalf of Dubai Wire, contradicts this claim. Specifically, in its case brief Mid Continent refers,

¹¹ See *Preliminary Results* and accompanying PDM at 4 (enumerating record evidence derived from multiple sources concerning various aspects of Dubai Wire’s operational status).

¹² Section 782(c)(1) of the Act states, “{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) **shall consider the ability of the interested party to submit the information** in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party” (emphasis added). Section 782(c)(2) of the Act states, “{t}he administering authority and the Commission **shall take into account any difficulties experienced by interested parties...in supplying information requested** by the administering Authority...” (emphasis added).

¹³ See *Preliminary Results* and accompanying PDM at 4-5.

¹⁴ See letter from Dubai Wire’s importer entitled, “Factual Information in Support of Calculating DWE Dumping Margin Based on Neutral Facts Available; Second Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates” {emphasis removed}, dated November 26, 2014, at Exhibit 2 and 3.

in passing, to a former Dubai Wire corporate officer who, as Mid Continent alleged in the previous review, is required under UAE law to remain involved through the dissolution process.¹⁵ The record of this review contains, however, the communication records from the individual in question commenting on Dubai Wire's continued inability to respond to further requests for information (concerning the current review) or to have Dubai Wire official certify as to the accuracy of the information previously submitted to the Department when Dubai Wire was operational (concerning the previous review). Further, as we explained in the previous review, the purpose of the company certification (necessary with every submission containing factual information)¹⁶ requirement under 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 being submitted and that the signer be a "current" employee of a company providing the response; on the basis of the record evidence we examined in *Nails POR I*, we accepted IPB's documented explanation that there were no current employees of Dubai Wire capable of certifying the responses, including the official in question.¹⁷ As such, contrary to Mid Continent's assertion, the official in question could not have provided a response on Dubai Wire's behalf because this person could neither prepare the response (due to a lack of access to Dubai Wire company records necessary to do so) nor supervise the preparation of the response (due to a lack of required personnel at Dubai Wire knowledgeable of the materials).

Turning to Mid Continent's arguments regarding Dubai Wire's legal status, we note that as a preliminary matter, Mid Continent concedes that the record of this proceeding does not establish Dubai Wire's final, definitive legal status.¹⁸ In any event, we disagree with Mid Continent that Dubai Wire's legal status is determinative of whether the Department should apply facts available with an adverse inference in this case. First, a company's legal existence can continue long after it becomes non-operational and unable to respond to the Department's information requests. Thus, hinging our examination of an entity's ability to respond to the Department's information requests on its legal status alone may result in an overly narrow analysis of record evidence that disregards evidence regarding an entity's operational status, the availability of personnel, the availability of company sales and accounting records, and other relevant considerations. Second, the Department based its determination regarding Dubai Wire's ability to respond upon a careful examination of the specific facts on the record and the circumstances in this segment of the proceeding. Here, the totality of the evidence on the record amply demonstrates Dubai Wire's non-operational status, the unavailability of personnel who could be responsible for providing responses to the Department's information requests, and a lack of adequate access to materials necessary to do so. In light of this evidence, we find that it is reasonable for the Department not to apply an adverse inference in assigning a margin based on FA to Dubai Wire.

Mid Continent's reliance on *Nippon Steel* is misplaced because that decision actually supports our determination to abstain from relying on AFA in determining a dumping rate for Dubai Wire

¹⁵ See *Nails POR I* and accompanying Issues and Decision Memorandum at Comments 2.

¹⁶ The required company certification accompanying any response to the Department's request for information necessarily provides that the signatory "prepared or otherwise supervised the preparation of the attached submission."

¹⁷ See *Nails POR I* and accompanying Issues and Decision Memorandum at Comments 2.

¹⁸ See Mid Continent's case brief, dated March 9, 2015, at 4.

in this review. In *Nippon Steel* the Court explicitly found that “[t]he focus of {section 776}(b) is respondent’s *failure to cooperate to the best of its ability*, not its failure to provide requested information,” and “...the statutory mandate that a respondent act to ‘the best of its ability’ requires the respondent to do the maximum it is able to do.”¹⁹ Specifically, in *Nippon Steel* the Court observed the following:

Before making an adverse inference, Commerce must examine respondent’s actions and assess the extent of respondent’s abilities, efforts, and cooperation in responding to Commerce’s requests for information. Compliance with the “best of its ability” standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation...²⁰

Commerce must...make a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent’s lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records. An adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made; i.e., under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.²¹

Adapting the rationale espoused in *Nippon Steel* to the circumstances that we examined in this review (surrounding the non-operational nature of Dubai Wire) confirms that the maximum that Dubai Wire was able to do was to have IBP document, in place of Dubai Wire, the reasons for Dubai Wire’s inability to respond. Thus, it was reasonable for us to determine that Dubai Wire did not fail to cooperate to the best of its ability because its ability to respond was documented, through multiple sources, to have been severely compromised in the first place.²²

We disagree with Mid Continent’s argument that the precedent on which we relied in the *Preliminary Results* does not support the existence of an agency practice that declines an application of AFA in cases where a mandatory respondent fails to cooperate altogether. We relied on *Frontseating Service Valves* and *SDGEs* because there is very limited precedent, if any at all, concerning situations, such as here, where a mandatory respondent ceases its operations. The precedent we cited in the *Preliminary Results* supports, however, our practice of applying facts available without an adverse inference to a company which has demonstrated that it acted to the best of its ability to respond to our inquiry, notwithstanding that it was unable to provide the Department with the information requested. Further, our application of this precedent to the

¹⁹ See *Nippon Steel*, 337 F.3d at 1381-1382 (emphasis in original).

²⁰ *Id.*, 337 F. 3d at 1382.

²¹ *Id.*, 337 F. 3d at 1382-1383.

²² *Id.*, 337 F. 3d at 1382 (citing *Webster’s New Collegiate Dictionary* 104 (1981) that defines the term “best” to mean “one’s maximum effort,” and the term “ability” to mean “the quality or state of being able,” particularly “physical, mental, or legal power to perform.”).

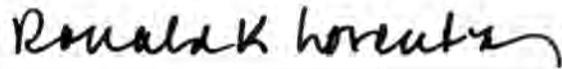
facts of the present review comports with the statutory provisions of section 782(c) of the Act. The sole premise concerning the circumstances in the instant review is the same as that which we considered in *Frontseating Service Valves* and *SDGEs* - the underlying ability to provide the requested information manifested through the documented efforts undertaken to do so.

Lastly, we find that Mid Continent's reliance on *KYD* to support its argument that the cooperation of the respondent's importer is not relevant to the AFA analysis is misplaced. In *KYD*, an importer asserted that we should apply AFA rates only against uncooperative parties and that a cooperative, independent importer should not be required to pay an assessment based on an AFA dumping margin imposed on the uncooperative producer/exporter that supplied its merchandise.²³ The *KYD* court was unpersuaded, noting that the importer is legally responsible, by law and regulation, for paying the assessed duties associated with the goods it imports.²⁴ Here, unlike the situation in *KYD*, the Department determined that the respondent, Dubai Wire, acted to the best of its ability and, thus, did not fail to cooperate with the Department's request for information. Moreover, in keeping with the decision in *KYD*, Dubai Wire's importer, IBP, does not benefit from its cooperation because the assessment rate it will be required to pay as a result of this review is no different than the dumping margin we determined, on the basis of facts available, for its supplier, Dubai Wire.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is 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



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

June 2, 2015
(Date)

²³ See *KYD*, 607 F. 3d at 768.

²⁴ *Id.*