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Investigation
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November 12, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Prestressed Concrete Steel
Wire Strand from Malaysia

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that prestressed concrete steel wire strand (PC strand) from Malaysia is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On April 16, 2020, Commerce received an antidumping duty (AD) petition covering imports of PC strand from Malaysia, which was filed in proper form by Insteel Wire Products, Sumiden Wire Products Corporation, and Wire Mesh Corp. (collectively, the petitioners).¹ On May 4, 2020, we released U.S. Customs and Border Protection (CBP) data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.²

¹ See Petitioners’ Letter, “Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates – Petition for the Imposition of Antidumping and Countervailing Duties,” dated April 16, 2020 (the Petitions).

² See Memorandum, “Release of Customs Data from U.S. Customs and Border Protection,” dated May 4, 2020.



Commerce initiated this investigation on May 6, 2020.³ In the *Initiation Notice*, we stated that, where appropriate, we intended to select respondents based on CBP data for U.S. imports of PC strand from Malaysia under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings.⁴ On May 13, 2020, we received comments from the petitioners requesting that Commerce select Kiswire Sdn. Bhd. (Kiswire) and Southern PC Steel Sdn. Bhd. (Southern) as mandatory respondents.⁵ On May 18, 2020, we also received a request from Wei Dat Steel Wire Sdn. Bhd. (Wei Dat), a Malaysian producer and exporter of subject merchandise, that Commerce select it as a voluntary respondent in this proceeding.⁶ On June 10, 2020, we selected Kiswire and Southern, the exporters and/or producers that accounted for the largest volume of subject merchandise, as the mandatory respondents in this investigation,⁷ and on June 15, 2020, we issued the AD questionnaire to them.⁸

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of PC strand to be reported in response to Commerce's AD questionnaire.⁹ In June 2020, PJSC PA Stalkanat-Silur (Stalkanat), CB Trafilati Acciai S.p.A. (Trafilati), and the petitioners submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.¹⁰ Global Special Steel Products S.A.U. (TYCSA) and the petitioners submitted rebuttal comments.¹¹

On June 5, 2020, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by

³ See *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, the Republic of Turkey, Ukraine, and the United Arab Emirates: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 28605 (May 13, 2020) (*Initiation Notice*).

⁴ *Id.*, 85 FR at 28609.

⁵ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Malaysia – Petitioners' Respondent Selection Comments," dated May 13, 2020.

⁶ See Wei Dat's Letter, "Prestressed Concrete Wire Strand from Malaysia," dated May 18, 2020.

⁷ See Memorandum, "Less-Than-Fair-Value Investigation of Prestressed Concrete Steel Wire Strand from Malaysia: Respondent Selection," dated June 10, 2020.

⁸ See, e.g., Commerce's Letter, "Antidumping Duty Questionnaire," dated June 15, 2020 (Southern Initial Questionnaire).

⁹ See *Initiation Notice*, 85 FR at 28606-7.

¹⁰ See Stalkanat's Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates, Comments on Product Characteristics and Product Matching Hierarchy," dated June 2, 2020; see also Trafilati's Letter, "Prestressed Concrete Steel Wire Strand from Italy: Scope and Product Characteristic Comments," dated June 2, 2020; and Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates – Petitioners' Comments on the Important Product Characteristics and Product Matching Hierarchy," dated June 2, 2020.

¹¹ See TYCSA's Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates: Rebuttal Comments on Product Characteristics and Product-Matching Hierarchy," dated June 12, 2020; see also Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates – Petitioners' Rebuttal Comments on the Important Product Characteristics and Product Matching Hierarchy," dated June 12, 2020.

reason of imports of PC strand from Malaysia.¹²

Because Southern did not respond to Commerce's questionnaire by the established deadline of July 6, 2020, on July 14, 2020, Commerce selected Wei Dat for individual examination in this investigation.¹³ From July through August, 2020, Kiswire and Wei Dat submitted timely responses to sections A, B, C, and D of Commerce's AD questionnaire, *i.e.*, the sections pertaining to general information, comparison market sales, U.S. sales, and cost of production (COP), respectively.¹⁴ From August through October 2020, we issued supplemental questionnaires to Kiswire and Wei Dat and received responses to these supplemental questionnaires between August and November 2020.¹⁵

On August 19, 2020, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.¹⁶ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on September 8, 2020, Commerce published in the *Federal Register* a postponement of the preliminary determination until no later than November 12, 2020.¹⁷

In November 2020, Kiswire, Wei Dat, and the petitioners requested that Commerce postpone the final determination, and Kiswire and Wei Dat additionally requested that provisional measures

¹² See *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates*, 85 FR 34648 (June 5, 2020).

¹³ See Memorandum, "Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Malaysia: Selection of Additional Respondent," dated July 14, 2020.

¹⁴ See Kiswire's July 21, 2020 Section A Questionnaire Response (Kiswire July 21, 2020 AQR); *see also* Wei Dat's August 4, 2020 Section A Questionnaire Response (Wei Dat August 4, 2020 AQR); Kiswire's August 3, 2020 Section B and C Questionnaire Response (Kiswire August 3, 2020 BCQR); Kiswire's August 10, 2020 Section D Questionnaire Response; and Wei Dat's August 27, 2020 Section B, C, and D Questionnaire Response (Wei Dat August 27, 2020 BCDQR).

¹⁵ See Kiswire's August 19, 2020 Supplemental Questionnaire Response (Kiswire August 19, 2020 SQR); *see also* Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia, Case No. A-557-819: Supplemental Section A Questionnaire Response," dated September 8, 2020; Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia, Case No. A-557-819: Supplemental Sections B-C Questionnaire Response," dated September 15, 2020; Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia, Case No. A-557-819: Supplemental Section D Questionnaire Response," dated September 21, 2020; Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia, Case No. A-557-819: Corrected Exhibits for KSB's Supplemental Section D Response," dated September 23, 2020; Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia, Case No. A-557-819: KSB's Second Supplemental Section D Questionnaire Response," dated November 3, 2020; Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia, Case No. A-557-819: KSB's Second Supplemental Sections A-C Questionnaire Response," dated November 6, 2020; Wei Dat's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia; Section A Supplemental Response," dated August 31, 2020; Wei Dat's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia; Sales Reconciliation Supplemental Response," dated September 25, 2020; and Wei Dat's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia: Sections B-C and Sales Reconciliation Supplemental Response," dated October 21, 2020.

¹⁶ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Malaysia, South Africa, Spain, Taiwan, Tunisia, Turkey, and Ukraine – Petitioners' Request to Postpone Preliminary Determinations," dated August 19, 2020.

¹⁷ See *Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine: Postponement of Preliminary Determinations in the Less-Than-FairValue Investigations*, 85 FR 55413 (September 8, 2020).

be extended from a four-month period to not more than six months, in accordance with section 733(d) of the Act.¹⁸

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The POI is April 1, 2019 through March 31, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was April 2020.¹⁹

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁰ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²¹ During this period, no interested party commented on the scope of this investigation.

V. SCOPE OF THE INVESTIGATION

The product covered by this investigation is PC strand. For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As stated above, Commerce selected Southern as a mandatory respondent in this investigation. On June 15, 2020, Commerce issued a questionnaire to Southern, to which Southern did not respond.²² For the reasons stated below, we determine that the use of an adverse inference when selecting from among the facts otherwise available is appropriate for the preliminary determination with respect to Southern.

A. Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use,

¹⁸ See Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Indonesia, Italy, Malaysia, South Africa, Spain, Tunisia, and Ukraine – Petitioners' Request for Postponement of Final Antidumping Determinations," dated November 2, 2020; *see also* Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia, Case No. A-557-819: Request to Extend Final Determination," dated November 9, 2020; and Wei Dat's Letter, "Pre-Stressed Concrete Steel Wire Strand from the Malaysia; Request to Extend Final Determination," dated November 3, 2020.

¹⁹ See 19 CFR 351.204(b)(1).

²⁰ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²¹ See *Initiation Notice*, 85 FR at 28606.

²² See Southern Initial Questionnaire.

subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information in the form and manner requested upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Southern did not respond to our request for information or otherwise participate in this investigation. As a result, we preliminarily find that the necessary information is not available on the record of this investigation, that Southern withheld information Commerce requested, that it failed to provide information by the specified deadline, and that it significantly impeded the proceeding. Moreover, because Southern failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine Southern's preliminary dumping margin.

B. Use of Adverse Inference

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.²³ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²⁴ Further, section 776(b)(2) of the Act states that use of an adverse inference when selecting from the facts otherwise available may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review accompanying the Uruguay Round Agreements Act, or other information placed on the record.²⁵ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁶ Affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse

²³ See 19 CFR 351.308(a).

²⁴ See section 776(b)(1)(B) of the Act.

²⁵ See 19 CFR 351.308(c).

²⁶ See SAA, H.R. Doc. 103-316, vol. 1 (1994) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

inference in selecting from the facts available.²⁷ It is Commerce's practice to consider, in employing adverse facts available (AFA), the extent to which a party may benefit from its own lack of cooperation.²⁸

We preliminarily find that Southern has not acted to the best of its ability to comply with Commerce's request for information. Southern failed to respond to Commerce's questionnaire. Southern's failure to participate in this investigation and respond to Commerce's questionnaire, thus, has precluded Commerce from performing the necessary analysis to calculate a weighted-average dumping margin based on Southern's own data. Accordingly, Commerce concludes that Southern failed to cooperate to the best of its ability to comply with a request for information by Commerce. Based on the above, pursuant to section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available in determining a dumping margin for Southern.

C. Preliminary Estimated Weighted-Average Dumping Margin Based on Adverse Facts Available

Section 776(b)(2) of the Act states that Commerce, when employing AFA, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.²⁹ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.³⁰ Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the Petition; or (2) the highest calculated rate of any respondent in the investigation.³¹

With respect to this investigation, the only dumping margin alleged in the Petition concerning PC strand from Malaysia is 39.57 percent.³² Thus, consistent with our practice, we first considered the only dumping margin alleged in the Petition concerning PC strand from Malaysia in determining the AFA applicable to Southern for this preliminary determination.

D. Selection and Corroboration of Adverse Facts Available Rate

When using facts otherwise available, section 776(c) of the Act provides that, in general, where Commerce relies on secondary information (such as the petition) rather than information

²⁷ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Preamble*, 62 FR at 27340.

²⁸ See SAA at 870; see also *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).

²⁹ See 19 CFR 351.308(c).

³⁰ See SAA at 870.

³¹ See, e.g., *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

³² See *Initiation Notice*, 85 FR at 28608.

obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.³³ Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.”³⁴ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.³⁵ The SAA and Commerce’s regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information derived from interested parties during the particular investigation.³⁶ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.³⁷ Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. If Commerce is unable to corroborate the highest petition margin using individual transaction-specific margins; Commerce may use the component approach to corroboration.³⁸

In order to determine the probative value of the dumping margin of 39.57 percent alleged in the Petition concerning PC strand from Malaysia, we examined the information on the record. When we compared the dumping margin of 39.57 percent alleged in the Petition concerning PC strand from Malaysia to the transaction-specific dumping margins we preliminarily determined for Kiswire and Wei Dat in this investigation, we found the rate of 39.57 percent to be significantly higher than Kiswire’s and Wei Dat’s highest calculated transaction-specific dumping margins (*i.e.*, 15.33 and 18.93 percent, respectively). Because we were unable to corroborate the rate of 39.57 percent in the Petition concerning PC strand from Malaysia with transaction-specific margins from Kiswire and Wei Dat, we next applied a component approach and compared the normal value (NV) and net U.S. price underlying this rate to the range of NVs and net U.S. prices that we preliminarily calculated for Kiswire and Wei Dat in this investigation. Again, we found that we were not able to corroborate the margin of 39.57 percent alleged in the Petition concerning PC strand from Malaysia using this component approach. Specifically, we find that the NV and net U.S. price underlying the margin of 39.57 percent alleged in the Petition concerning PC strand from Malaysia are not within the range of NVs and net U.S. prices calculated for Kiswire and Wei Dat.

Accordingly, with respect to Southern, we have used, as AFA, the highest transaction-specific margin of 18.93 percent that we preliminarily determined for Wei Dat. Applying the highest individual dumping margin of a cooperative respondent to a non-cooperative respondent as AFA is consistent with our approach in similar circumstances and has been sustained by the Court of

³³ See 19 CFR 351.308(d).

³⁴ See SAA at 870.

³⁵ See SAA at 870; *see also* 19 CFR 351.308(d).

³⁶ *Id.*

³⁷ See section 776(d)(3) of the Act.

³⁸ See, *e.g.*, *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

Appeals for the Federal Circuit.³⁹ Because this rate is not secondary information, but rather is based on information obtained in the course of this investigation, Commerce need not corroborate this rate, pursuant to section 776(c) of the Act.

VII. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Kiswire's and Wei Dat's sales of subject merchandise from Malaysia to the United States were made at LTFV, Commerce compared the export price (EP) to the NV, as described in the "Export Price," and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs or (CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁴⁰ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the

³⁹ See *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), and accompanying IDM at Comment 9; see also *Nan Ya Plastics Corp., Ltd. v. United States*, 810 F.3d 1333, 1345-46 (CAFC 2016).

⁴⁰ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields

a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁴¹

2. Results of the Differential Pricing Analysis

Kiswire

For Kiswire, based on the results of the differential pricing analysis, Commerce preliminarily finds that 77.39 percent of the value of U.S. sales pass the Cohen's *d* test and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Kiswire.

Wei Dat

For Wei Dat, based on the results of the differential pricing analysis, Commerce preliminarily finds that 70.46 percent of the value of U.S. sales pass the Cohen's *d* test and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because there is at least a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Wei Dat.

⁴¹ The CAFC in *Apex Frozen Foods v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Kiswire and Wei Dat in Malaysia during the POI that fit the description in the “Scope of Investigation” section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared the respondents’ U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: covering/coating, diameter, grade, strand, and type.⁴²

C. Date of Sale

Section 351.401(i) of Commerce’s regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter’s or producer’s records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁴³

Kiswire and Wei Dat reported the date of sale as the earlier of the commercial invoice date or shipment date for all comparison market and U.S. sales.⁴⁴ We preliminarily followed Commerce’s long-standing practice of basing the date of sale for all comparison market and U.S. sales on the earlier of the invoice date or the shipment date.⁴⁵

D. Export Price

For all sales made by Kiswire and Wei Dat, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to the importation, and the CEP methodology was not otherwise warranted.

⁴² See Kiswire August 3, 2020 BCQR; see also Wei Dat August 27, 2020 BCDQR.

⁴³ See 19 CFR 351.401(i); and *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁴⁴ See Kiswire August 19, 2020 SQR at Exhibit 1-2; see also Wei Dat August 4, 2020 AQR at 12.

⁴⁵ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

Kiswire

We calculated EP based on packed prices that Kiswire charged to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling expenses, international freight expenses, and marine insurance expenses, in accordance with section 772(c)(2)(A) of the Act.

Wei Dat

We calculated EP based on packed prices that Wei Dat charged to the first unaffiliated purchaser in the United States. We made deductions, from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling expenses, international freight expenses, and inland and marine insurance expenses, in accordance with section 772(c)(2)(A) of the Act.

E. Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we preliminarily determined that the aggregate volume of home market sales of the foreign like product for Kiswire and Wei Dat was more than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that Kiswire's and Wei Dat's home markets are viable. Therefore, we used home market sales in Malaysia as the basis for NV for Kiswire and Wei Dat in accordance with section 773(a)(1)(A) and (B) of the Act.

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that

⁴⁶ See 19 CFR 351.412(c)(2).

there is a difference in the stages of marketing.⁴⁷ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,⁴⁸ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴⁹

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁵⁰

In this investigation, we obtained information from Kiswire and Wei Dat regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.⁵¹ Our LOT findings are summarized below.

Kiswire

In the home market, Kiswire reported that it made sales through one channel of distribution, *i.e.*, direct shipments to unaffiliated end-users or distributors.⁵² Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) sales-related administrative activities. Based on Kiswire's selling functions, we find that Kiswire performed sales support, logistical services, and sales-related administrative activities for all home market sales, at the same level of intensity.⁵³ Therefore, we preliminarily determine that Kiswire's sales to the home market during the POI were made at one LOT.

⁴⁷ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

⁴⁸ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁴⁹ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁵⁰ See, e.g., *OJ from Brazil* IDM at Comment 7.

⁵¹ See Wei Dat August 4, 2020 AQR at Exhibit A-6; see also Kiswire July 21, 2020 AQR at A-17 and Exhibit A-7.

⁵² See Kiswire July 21, 2020 AQR at A-17 and Exhibit A-7.

⁵³ *Id.* at Exhibit A-8.

With respect to the U.S. market, Kiswire reported that it made EP sales through one channel of distribution, *i.e.*, direct shipments to an unaffiliated distributor.⁵⁴ For its U.S. sales channel, Kiswire reported that it performed sales support, logistical services, and sales-related administrative activities, at the same level of intensity.⁵⁵ Therefore, we determine that Kiswire's sales to the U.S. market during the POI were made at one LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Kiswire performed for its U.S. and home market customers are nearly identical.⁵⁶ Specifically, Kiswire performed the same three selling functions in the home market as it performed in the U.S. market, with slight differences in the intensity of the actions performed. Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

Wei Dat

In the home market, Wei Dat reported that it made sales through one channel of distribution, *i.e.*, direct shipments to unaffiliated end-users or distributors.⁵⁷ As noted above, selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) sales-related administrative activities. Based on Wei Dat's selling functions chart, we find that Wei Dat performed sales support, technical support, logistical services, and sales related administrative activities for all home market sales, at the same level of intensity.⁵⁸ Therefore, we preliminarily determine that Wei Dat's sales to the home market during the POI were made at one LOT.

With respect to the U.S. market, Wei Dat reported that it made EP sales through one channel of distribution, *i.e.*, direct shipment to an unaffiliated distributor.⁵⁹ For its U.S. sales channel, Wei Dat reported that it performed sales support, logistical services, and sales-related administrative activities for all U.S. sales. Therefore, we determine that Wei Dat's sales to the U.S. market during the POI were made at one LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Wei Dat performed for its U.S. and home market customers are nearly identical.⁶⁰ Specifically, Wei Dat performed the same three selling functions in the U.S. market as it performed in the home market, with slight differences in the intensity of the actions performed. Although Wei Dat also reported technical support services in the home market, it reported a low level of intensity for this activity.⁶¹ Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

⁵⁴ *Id.* A-17.

⁵⁵ *Id.* at Exhibit A-8.

⁵⁶ *Id.*

⁵⁷ See Wei Dat August 4, 2020 AQR at A-8-9 and Exhibit 6.

⁵⁸ *Id.* at Exhibit 6.

⁵⁹ *Id.* at A-8 to A-9.

⁶⁰ *Id.*

⁶¹ *Id.* at Exhibit 6.

3. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act,⁶² Commerce requested COP information from Kiswire and Wei Dat. We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we are applying our standard methodology of using annual costs based on Kiswire's and Wei Dat's reported data.

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by both respondents, except as follows:

- We revised Kiswire's reported G&A expense ratio to include various expenses from its fiscal year 2019 financial statements.
- We revised Kiswire's reported financial expense ratio to exclude the short-term income offset and to adjust for scrap sales and packing expenses.
- We adjusted Kiswire's transfer prices of certain inputs purchased from affiliated suppliers to reflect arm's-length values, in accordance with section 773(f)(2) of the Act.

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the comparison market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable price adjustments, movement charges, actual direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product

⁶² The Trade Preferences Extension Act of 2015 (TPEA) amended section 773(b)(2)(A) of the Act. See TPEA found at <https://www.congress.gov/bill/114thcongress/>.

are at prices less than the COP, we disregard the below-cost sales when: (1) they were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Kiswire’s and Wei Dat’s home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

F. Calculation of NV Based on Comparison-Market Prices

Kiswire

We calculated NV for Kiswire based on prices to unaffiliated customers. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments. We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, inland freight, inter-Malaysia ocean freight, and insurance.

We made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses (*i.e.*, fumigation expenses, royalties, and imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, fumigation expenses, royalties, bank charges, and imputed credit expenses), where appropriate. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market, where commissions were granted on sales to the United States, also known as the “commission offset.” Specifically, where commissions were incurred in the U.S. market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in home market or the commissions allowed in the U.S. market, whichever is less.

Wei Dat

We calculated NV for Wei Dat based on prices to unaffiliated customers. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for rebates, where appropriate. We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, inland freight and inland insurance.

We made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses (*i.e.*, imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, imputed credit expenses), where appropriate. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the “commission offset.” Specifically, where commissions were incurred in only one market, we limited the amount of

such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

For both respondents, when comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁶³ We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

VIII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

IX. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

11/12/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁶³ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.