



A-557-819

Investigation

POI: 04/01/2019 - 03/31/2020

**Public Document**

E&C/OV: MH/JN

April 5, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** Scot Fullerton  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of  
Prestressed Concrete Wire Steel from Malaysia

---

## I. SUMMARY

The Department of Commerce (Commerce) finds that prestressed concrete steel wire strand (PC strand) from Malaysia is, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The petitioners are Insteel Wire Products, Sumiden Wire Products Corporation, and Wire Mesh Corp. (the petitioners). The mandatory respondents selected for individual examination in this investigation are Kiswire Sdn. Bhd. (Kiswire), Southern PC Steel Sdn. Bhd. (Southern), and Wei Dat Steel Wire Sdn. Bhd. (Wei Dat).<sup>1</sup> The period of investigation (POI) is April 1, 2019, through March 31, 2020.

Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether Wei Dat's Testing and License Fees Should be Considered Direct or Indirect Selling Expenses
- Comment 2: Whether Wei Dat Failed to Demonstrate that Its Movement Expenses on U.S. Sales Reflect Actual Costs
- Comment 3: Whether Wei Dat Reported Incorrect U.S. Destination Information
- Comment 4: Whether Wei Dat's Financial Interest Expense Rate is Understated
- Comment 5: Whether to Deny Wei Dat's Scrap Offset
- Comment 6: Whether Commerce Should Grant Kiswire's Claimed Scrap Offset

---

<sup>1</sup> See *Prestressed Concrete Steel Wire Strand from Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 73685 (November 19, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



- Comment 7: Whether Commerce Should Revise Kiswire's Reported Cost of Manufacturing (COM)
- Comment 8: Whether Kiswire's U.S. Sales Should Be Classified as Constructed Export Price (CEP) Sales
- Comment 9: Whether Commerce Erred in Calculating Kiswire's Margin in the *Preliminary Determination*

## II. BACKGROUND

On November 19, 2020, Commerce published the *Preliminary Determination* in this investigation, and invited parties to comment on the decision.<sup>2</sup>

During the course of this investigation, travel restrictions were imposed that prevented Commerce personnel from conducting on-site verification. In the *Preliminary Determination*, Commerce notified interested parties that it was unable to conduct an on-site verification.<sup>3</sup> In lieu of on-site verification, Commerce sent in-lieu-of-verification (ILOV) questionnaires to Kiswire and Wei Dat to collect documentation in order to verify information that Kiswire and Wei Dat had already submitted to the record.<sup>4</sup> On December 21 and 23, 2020, we received ILOV questionnaire responses from Kiswire and Wei Dat, respectively.<sup>5</sup> Parties submitted case briefs on January 15, 2021,<sup>6</sup> and rebuttal briefs on January 26, 2021.<sup>7</sup>

## III. SCOPE OF THE INVESTIGATION

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

---

<sup>2</sup> *Id.*

<sup>3</sup> See *Preliminary Determination*, 85 FR at 73686.

<sup>4</sup> See Commerce's Letter, "In Lieu of Verification Questionnaire," dated December 10, 2020; and Commerce's Letter, "In Lieu of Verification Questionnaire," dated December 16, 2020.

<sup>5</sup> See Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia, Case No. A-557-819: KSB's Response to Questionnaire in Lieu of Verification," dated December 21, 2020. Because Wei Dat's ILOV questionnaire response contained untimely and unsolicited new factual information, Commerce rejected it on January 7, 2021. See Commerce's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia: Rejection of Untimely and Unsolicited New Factual Information," dated January 7, 2021. On January 8, 2021, Wei Dat resubmitted its ILOV questionnaire response without the new and untimely factual information, as directed by Commerce. See Wei Dat's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia; Resubmission of December 23, 2020 Supplemental Questionnaire Response In-Lieu of Verification," dated January 8, 2021 (Wei Dat's ILVQR).

<sup>6</sup> See Wei Dat's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia; Case Brief," dated January 15, 2021 (Wei Dat's Case Brief); see also Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Malaysia Petitioners' Case Brief for Kiswire Sendirian Berhad," dated January 15, 2021 (Petitioners' Case Brief for Kiswire); and Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Malaysia: Petitioners' Case Brief for Wei Dat," dated January 15, 2021 (Petitioners' Case Brief for Wei Dat).

<sup>7</sup> See Wei Dat's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia; Rebuttal Brief," dated January 26, 2021 (Wei Dat's Rebuttal Brief); Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia, Case No. A-557-819: KSB's Rebuttal Brief," dated January 26, 2021 (Kiswire Rebuttal Brief); and Petitioners' Letter, "Prestressed Concrete Steel Wire Strand from Malaysia Petitioners' Rebuttal Brief Concerning Wei Dat," dated January 27, 2021 (Petitioners' Rebuttal Brief for Wei Dat).

#### IV. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

We calculated the export price (EP) and normal value (NV) using the same methodology as the *Preliminary Determination*, with the following exceptions:

- We based certain of Wei Dat's movement expenses on partial adverse facts available (AFA). *See* Comment 2.
- We changed the reported destination state for certain of Wei Dat's transactions, based on information on the record. We also revised the differential pricing analysis for Wei Dat to be based on state instead of zip code. *See* Comment 3.
- We corrected a ministerial error in the calculation of certain of Kiswire's expenses. *See* Comment 9.
- We corrected Kiswire's margin program to exclude one reported sale that was outside the POI. *See* Comment 9.

#### V. DISCUSSION OF THE ISSUES

##### **Comment 1: Whether Wei Dat's Testing and License Fees Should be Considered Direct or Indirect Selling Expenses**

Wei Dat initially reported testing and licensing fees incurred in the home market as direct selling expenses, and it allocated the expenses that it paid over all POI sales.<sup>8</sup> In a supplemental questionnaire, we instructed Wei Dat to instead report such expenses as indirect selling expenses.<sup>9</sup>

##### *Wei Dat's Comments*

- Wei Dat incurred testing fees as a result of obtaining a certification from the Standard and Industrial Research Institute of Malaysia (SIRIM) to qualify its products for construction projects. Were Wei Dat not to qualify its products, Wei Dat would be unable to sell them to customers. Because the SIRIM testing expenses are directly related to Wei Dat's home market sales, Commerce should treat them as direct selling expenses.<sup>10</sup>

##### *Petitioners' Comments*

- Commerce classified these expenses correctly as indirect selling expenses. Wei Dat calculated the total value of testing and licensing fees paid to qualify the product with SIRIM and allocated this value over the total production of PC strand. It did not calculate the expense on a product-specific, customer-specific, or sale-specific basis.<sup>11</sup>

---

<sup>8</sup> *See* Wei Dat's Letter, "Section B, C, and D Questionnaire Response," dated August 27, 2020 (Wei Dat's BCDQR), at 25.

<sup>9</sup> *See* Commerce's Letter, "Supplemental Sections B-C and Sales Reconciliation Questionnaire," dated October 7, 2020, at 5.

<sup>10</sup> *See* Wei Dat's Case Brief at 1-3.

<sup>11</sup> *See* Petitioners' Rebuttal Brief for Wei Dat at 1-3.

- Wei Dat paid testing and licensing fees in only some months of the POI. Such infrequent expenses incurred to obtain certification are not direct selling expenses.<sup>12</sup>

**Commerce’s Position:** We disagree with Wei Dat. The testing and licensing fees that Wei Dat reported do not relate to specific sales in the database; rather, they appear to be fees incurred to qualify Wei Dat’s products in general, independent of any particular sales transaction.

In Wei Dat’s BCDQR, Wei Dat initially reported testing and licensing fees as direct selling expenses. Wei Dat stated that it calculated the total value of these fees, paid to qualify the merchandise under consideration with SIRIM, and then it allocated them over its total production of PC strand during the POI.<sup>13</sup> However, when we evaluated the circumstances under which Wei Dat incurred these fees, we required Wei Dat to revise its home market sales database to treat them as indirect, rather than direct, selling expenses. Wei Dat complied with this request.<sup>14</sup>

Commerce’s regulations at 19 CFR 351.410(c) define direct selling expenses as “expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.” Although Wei Dat claims that the SIRIM testing fees are a requirement for construction projects, and, thus, it cannot make home market sales without them, Wei Dat has not demonstrated that these fees are related to *particular* home market sales. Indeed, Wei Dat’s chosen calculation methodology shows just the opposite: Wei Dat allocated the testing and licensing fees over the entire POI because the expenses were only incurred in certain months, demonstrating that they relate to sales of subject merchandise during the POI generally.<sup>15</sup>

This conclusion is consistent with determinations made in other cases, involving similar circumstances. For example, in *Honey from Argentina*, we stated that testing expenses related to honey sampling were appropriately considered indirect selling expenses because the expenses did not “result from, and relate directly to, individual sales.”<sup>16</sup> Like the testing fees reported by Wei Dat, the testing expenses incurred by the respondent in *Honey from Argentina* were not reported specific to each sale, but they were instead allocated over the period of review.<sup>17</sup> Relatedly, the Court of Appeals for the Federal Circuit (CAFC) has recognized that indirect selling expenses are “expenses not related to a particular sale.”<sup>18</sup>

Accordingly, we continue to treat Wei Dat’s testing and license fees as indirect selling expenses for this final determination because these expenses do not appear to be directly related to particular sales.

---

<sup>12</sup> *Id.* at 3.

<sup>13</sup> See Wei Dat’s BCDQR at 25.

<sup>14</sup> See Wei Dat’s, “Supplemental Sections B-C and Sales Reconciliation Questionnaire Response,” (Wei Dat’s Supplemental BCQR) dated October 21, 2020, at 14 and Exhibit 3.

<sup>15</sup> See Wei Dat’s BCDQR at 25.

<sup>16</sup> See *Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part*, 74 FR 32107 (July 7, 2009), and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

<sup>17</sup> *Id.*

<sup>18</sup> See *Torrington Company v. United States*, 68 F.3d 1347, 1353 (Fed. Cir. 1995).

## **Comment 2: Whether Wei Dat Failed to Demonstrate that its Movement Expenses on U.S. Sales Reflect Actual Costs**

### *Petitioners' Comments*

- In its initial questionnaire response, Wei Dat failed to provide supporting documentation for the following U.S. movement expenses: foreign inland freight to port, foreign brokerage and handling, international freight, and marine insurance.<sup>19</sup>
- Commerce subsequently requested supporting documentation for these U.S. movement expenses for four sample sales, but Wei Dat only provided documentation for one of these four transactions.<sup>20</sup>
- Wei Dat's failure to provide documentation suggests that it could not support the values submitted and warrants application of partial AFA.<sup>21</sup> As partial AFA, Commerce should use the highest reported per-unit value for each affected expense.<sup>22</sup>

### *Wei Dat's Comments*

- Wei Dat has been cooperative throughout this investigation and, thus, AFA is not warranted.
- Wei Dat reported its U.S. movement expenses on a shipment-specific basis. Wei Dat provided the calculation for such expenses in its initial response and supported those calculations in a supplemental response.<sup>23</sup> Therefore, Commerce should use information reported by Wei Dat in the final determination.<sup>24</sup>

**Commerce's Position:** We disagree with Wei Dat that it provided all necessary information requested by Commerce for the movement expenses in question; rather, Wei Dat failed to supply supporting documentation for specific transactions identified by Commerce in a supplemental questionnaire. As a result, the record lacks evidence that the reported expense information is reliable, and we determine that the application of partial AFA with respect to these expenses is appropriate.

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: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes an antidumping proceeding by Commerce; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) states that Commerce "shall promptly inform the person submitting the response of the nature of {any} deficiency and shall, to the extent practicable, provide that person with an

---

<sup>19</sup> See Petitioners' Case Brief for Wei Dat at 1-4.

<sup>20</sup> *Id.* at 1.

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> See Wei Dat's Rebuttal Brief at 1-2.

<sup>24</sup> *Id.* at 2.

opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title ... {I}f that person submits further information in response to such deficiency and either (1) the administering authority finds that such response is not satisfactory, or (2) such response is not submitted within the applicable time limits, then {Commerce} may, subject to {section 782(e)}, disregard all or part of the original and subsequent responses.”

Section 776(b) of the Act further 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. In *Nippon Steel*, the CAFC held that, while the Act “does not provide an express definition of the ‘best of its ability,’” the ordinary meaning of “best” means “one’s maximum effort.”<sup>25</sup> Thus, according to the CAFC, 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. Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answer to all inquiries in an investigation.<sup>26</sup> While the CAFC noted that the “best of its ability” standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>27</sup> The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of {its} ability to do so.”<sup>28</sup> Moreover, further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>29</sup>

In our initial questionnaire, dated July 14, 2020, we requested that Wei Dat provide the unit cost of all movement expenses incurred to bring the subject merchandise from the original place of shipment to the customer’s place of delivery, as well as worksheets, descriptions of calculations, and for certain expenses, supporting documentation.<sup>30</sup> For example, for its reported international freight expense, we requested that Wei Dat provide any contracts or tariff rate agreements with carriers that apply to subject merchandise, describe how it calculated the reported unit cost, and include worksheets with the narrative response.<sup>31</sup> Wei Dat stated that it reported the international freight costs on a transaction-specific basis in its U.S. sales database, and it provided a worksheet indicating how international freight was calculated for an example transaction.<sup>32</sup> However, Wei Dat did not supply any contracts or tariff rate agreement as part of its response.

---

<sup>25</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See, e.g., *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83 (“While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element”).

<sup>30</sup> See Commerce’s Letter, “Antidumping Duty Questionnaire,” dated July 14, 2020 (Antidumping Duty Questionnaire), at C-15 to C-21.

<sup>31</sup> *Id.*

<sup>32</sup> See Wei Dat’s BCDQR at 46 and Exhibit C-4.

In a section B and C supplemental questionnaire, dated October 7, 2020, we requested movement expense documentation for the example transaction underlying Wei Dat's reported movement expense worksheet and three additional sample transactions.<sup>33</sup> Specifically, Commerce requested individual invoices, by number, relating to the example transaction and also identified three additional sequence numbers (SEQUs) for which it requested the same documentation. In Wei Dat's supplemental questionnaire response dated October 21, 2020, Wei Dat failed to provide any supporting documentation for the transaction shown on its movement calculation worksheet, supplied in response to the initial questionnaire, and only provided movement invoice documentation (consisting of a single freight invoice) for one of the three additional sample transactions that Commerce requested.<sup>34</sup> Given that the signature deadline for the *Preliminary Determination* was November 12, 2020,<sup>35</sup> we had limited time to analyze the documentation provided for Wei Dat's U.S. movement expenses in its supplemental questionnaire response. Accordingly, we preliminarily accepted Wei Dat's U.S. movement expenses, as reported, in our *Preliminary Determination*, and continued to analyze the record information after the *Preliminary Determination*.<sup>36</sup>

Pursuant to 776(a)(2)(A) through (C), the application of facts available are warranted in the instant case. Specifically, Wei Dat withheld information that had been requested by Commerce when it failed to provide requested source documentation to support the movement expenses identified by Commerce. Commerce initially requested that Wei Dat report the cost of all movement expenses incurred to bring the merchandise from the original place of shipment to the customer's place of delivery, and Wei Dat provided an example of its movement expense calculations for inland freight to port, foreign brokerage and handling, international freight, and marine insurance for one SEQU.<sup>37</sup> Although our request for international freight expenses included a request for "any contracts or tariff rate agreements with carriers that apply to the merchandise under investigation," Wei Dat provided no such supporting documentation for its reported expenses.<sup>38</sup> In a supplemental questionnaire Commerce again requested supporting documentation underlying Wei Dat's movement calculation worksheet for its inland freight to port, foreign brokerage and handling, international freight, and marine insurance expenses, including copies of the actual freight invoices for these expenses relating to four transactions.<sup>39</sup> Wei Dat only provided one freight invoice for one SEQU.<sup>40</sup> Therefore, in accordance with sections 776(a)(2)(A) and (B) of the Act, we find that Wei Dat withheld information requested by Commerce and failed to provide the information in a timely manner or in the form or manner requested. In failing to provide the information requested, Wei Dat also significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act because Commerce was prevented from confirming the accuracy of Wei Dat's reported movement expenses.

---

<sup>33</sup> See Commerce's Letter, "Supplemental Sections B-C and Sales Reconciliation Questionnaire," dated October 7, 2020, at 7-8.

<sup>34</sup> See Wei Dat's Supplemental BCQR at 20-21 and Exhibits 15a to 15c and 16a to 16f.

<sup>35</sup> See *Preliminary Determination*.

<sup>36</sup> *Id.*

<sup>37</sup> See Wei Dat's BCDQR at 42-46 and Exhibit C-4.

<sup>38</sup> *Id.* at 46 and Exhibit C-4.

<sup>39</sup> See Wei Dat's Supplemental BCQR at 20-21 and Exhibit 16f.

<sup>40</sup> *Id.* at 20-21 and Exhibits 15a to 15c and 16a to 16f.

In addition, the statutory factors for application of AFA are satisfied because Wei Dat failed to cooperate by not acting to the best of its ability to comply with a request for information. Because Wei Dat failed to provide supporting information in response to Commerce’s initial questionnaire and requested movement documentation in response to Commerce’s supplemental questionnaire, pursuant to section 776(b) of the Act, we find that Wei Dat failed to cooperate by not acting to the best of its ability. As noted above, the CAFC has held that, while the Act “does not provide an express definition of the ‘best of its ability,’” the ordinary meaning of “best” means “one’s maximum effort.”<sup>41</sup> Further, 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, which is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answer to all inquiries in an investigation.<sup>42</sup> “While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.” The statutory trigger for Commerce’s consideration of an adverse inference is simply a failure to cooperate to the best of a respondent’s ability, regardless of motivation or intent.<sup>43</sup> The documentation Commerce requested demonstrates and underpins the movement expenses. Because Wei Dat failed to provide information requested by Commerce that should have been in its possession and within its ability to provide, we conclude that Wei Dat failed to cooperate by not acting to the best of its ability to comply with a request for information. Accordingly, we determine that an adverse inference is warranted in selecting from among the facts available with the respect to Wei Dat’s movement expenses.

As AFA, Commerce is applying the highest reported per-unit expense for each of the U.S. movement expenses in question and for each transaction where such expenses were reported.<sup>44</sup> Because this is information that was obtained over the course of this investigation and was provided by Wei Dat itself, the corroboration requirements of section 776(c) do not apply to our selection of this information as partial AFA.

### **Comment 3: Whether Wei Dat Reported Incorrect U.S. Destination Information**

#### *Petitioners’ Comments*

- Wei Dat submitted sales documentation for two U.S. sales in its ILOV response that indicated the U.S. customer was located in a different city than the destination it reported in its U.S. sales database (in the field DESTU) .<sup>45</sup> The customer’s address should be used as the basis for reporting DESTU for these two transactions.<sup>46</sup>
- Wei Dat reported only one U.S. destination in the DESTU field, and Wei Dat stated that it shipped all of its sales of subject merchandise to the United States under “CIF” sales terms to that location.<sup>47</sup>

---

<sup>41</sup> See *Nippon Steel*, 337 F.3d at 1382-83.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See Memorandum, “Less-Than-Fair-Value Investigation of Prestressed Concrete Steel Wire Strand from Malaysia: Final Determination Analysis Memorandum for Wei Dat Wire Sdn. Bhd.,” dated concurrently with this memorandum (Wei Dat Final Analysis Memorandum) at 3.

<sup>45</sup> See Petitioners’ Case Brief for Wei Dat at 4-5 (citing Wei Dat’s ILVQR).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 4-7. For a discussion of the proprietary details of this issue, see Wei Dat Final Analysis Memorandum at 3.



- The DESTU reported by Wei Dat distorts the differential pricing analysis. Commerce computed Wei Dat’s preliminary dumping margin using the average-to-transaction (A-to-T) methodology, and it should continue to do so in the final determination because of this distortion.

*Wei Dat’s Comments*

- Wei Dat correctly reported DESTU for almost all U.S. Sales. Although shipments may pass through intermediate coastal ports, all goods are destined for a single final location. Documents submitted in the initial questionnaire response state “insurance till {a different location},” which is evidence that that other location is an intermediate port and not the ultimate destination.<sup>48</sup>

**Commerce’s Position:** Wei Dat stated that all of its U.S. sales were made to the same customer. However, although Wei Dat conceded that it “reported almost all DESTU correctly,” the record does not support its contention that all sales were destined for the location reported. Instead of supporting its reported DESTU data, Wei Dat provided documentation indicating that certain transactions were destined for locations other than the reported location.<sup>49</sup> Accordingly, because the record indicates that Wei Dat incorrectly reported the ultimate destination of certain shipments, we are revising Wei Dat’s reported DESTU variables for those transactions where record information supports a different DESTU.

In order to carry out this revision, we also revised our differential pricing analysis to identify locations based on state, instead of zip code, because the record does not contain zip codes for all locations. We have conducted our differential pricing analysis on this basis. We find that these revisions did not have a significant impact on our differential pricing analysis, given that more than 66 percent of the value of Wei Dat’s U.S. sales continue to pass the Cohen’s *d* test. This continues to confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Accordingly, Commerce is continuing to use the A-to-T methodology for this final determination.<sup>50</sup>

**Comment 4: Whether Wei Dat’s Financial Interest Expense Rate is Understated**

*Petitioners’ Comments*

- Wei Dat excluded certain financial expenses from its financial interest expense (INTEX) rate.<sup>51</sup> Commerce should revise Wei Dat’s INTEX ratio in the final determination to include these amounts.

*No other interested party commented on this issue.*

**Commerce’s Position:** We determine that Wei Dat excluded certain accounts from its financial expenses that should be included in calculating the INTEX rate. We asked Wei Dat in the first supplemental section D questionnaire to explain why it excluded certain financial statement

<sup>48</sup> See Wei Dat’s Rebuttal Brief at 2-3.

<sup>49</sup> See Wei Dat’s Supplemental BCQR at Exhibits 16b to 16e.

<sup>50</sup> See Wei Dat Final Analysis Memorandum at 3.

<sup>51</sup> See Petitioners’ Case Brief for Wei Dat at 7-8.

accounts from its reported costs.<sup>52</sup> Wei Dat responded that the accounts in question were excluded from its general and administrative expenses because they were included as either selling, movement, or as financing expenses.<sup>53</sup> However, the financial expenses included in Wei Dat's INTEX rate do not include these expenses, nor are they apparently included in any other account; therefore, for the final determination we are revising Wei Dat's INTEX rate to include these expenses that are clearly expenses related to Wei Dat's financial expense activities.

#### **Comment 5: Whether to Deny Wei Dat's Scrap Offset**

##### *Petitioners' Comments:*

- Commerce should deny Wei Dat's scrap offset because Wei Dat's reported scrap data are incomplete, unreliable, and fundamentally deficient.<sup>54</sup>
- Wei Dat did not sell scrap from its PC strand business unit during the POI and, instead, sold scrap from its wire mesh unit (which is not merchandise under consideration (MUC)) during the POI.<sup>55</sup>
- Wei Dat failed to provide other crucial information requested by Commerce, such as a scrap inventory movement schedule.<sup>56</sup> Further, the single invoice provided by Wei Dat relates to sales of scrap generated from products other than PC strand; therefore, it is not representative of the value of scrap generated in the production of MUC.<sup>57</sup>

##### *Wei Dat's Comments:*

- Wei Dat reported its scrap offset based on the information in its normal books and records.<sup>58</sup>
- Because Wei Dat does not record scrap generated through production in its normal books, it used scrap sold to calculate its scrap offset.<sup>59</sup>
- Wei Dat did not sell scrap from the wire rod used to produce MUC, it used a lower, more conservative value, for the scrap it sold during the POI.<sup>60</sup>

**Commerce's Position:** We determine that Wei Dat did not provide sufficient data to support its claimed scrap offset. In the initial questionnaire, Commerce asked Wei Dat to "describe the method used under your company's cost accounting system to account for scrap generated at each stage of the production process."<sup>61</sup> In its initial section D questionnaire response, Wei Dat did not provide a narrative explanation of its reporting methodology and, instead, provided an Excel worksheet, created for the purpose of this investigation, that appears to show an estimate

---

<sup>52</sup> See Commerce's Letter, "Antidumping Duty Less Than Fair Value Investigation of Prestressed Concrete Steel Wire Strand from Malaysia," dated October 1, 2020, at 4.

<sup>53</sup> See Wei Dat's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia; 1st section D Supplemental Response," dated October 14, 2020 (Wei Dat's Supplemental DQR), at 7 and Exhibit SQ-6; *see also* Wei Dat's Letter "Prestressed Concrete Steel Wire Strand from Malaysia; Section A Response," dated August 4, 2020, at Exhibit 11.

<sup>54</sup> See Petitioners' Case Brief for Wei Dat at 11.

<sup>55</sup> *Id.* at 9.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 10.

<sup>58</sup> See Wei Dat's Rebuttal Brief at 3-4.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> See Antidumping Duty Questionnaire at 68.

of scrap generated and a valuation of the offset.<sup>62</sup> In response to the first supplemental section D questionnaire, Wei Dat indicated that it “did not sell scrap for the PC section during the POI. Wei Dat did sell scrap from the wire mesh section (non-MUC) during the POI.”<sup>63</sup> In addition, Wei Dat asserted that wire mesh scrap is of lower value than scrap generated from MUC.<sup>64</sup>

In the ILOV questionnaire, Commerce requested that Wei Dat provide support for the valuation and quantity per metric ton of PC strand scrap for the months of May 2019 and December 2019. We further requested that Wei Dat provide screen prints from its financial accounting or cost accounting system that support these figures.<sup>65</sup> In response, Wei Dat did not comply with Commerce’s request to provide support for the quantity per metric ton and the valuation of PC strand scrap. Instead, Wei Dat provided data that were not linked to its accounting system. Moreover, the data Wei Dat provided was from the sale of wire mesh scrap rather than PC strand scrap.<sup>66</sup>

Commerce’s regulations state that “{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment.”<sup>67</sup> Commerce also has acknowledged in other cases with respect to the scrap offset, that it is the burden of the respondent to demonstrate its eligibility for such an adjustment, specifically with regard to a scrap offset.<sup>68</sup> Consequently, based on the reasons stated above, we find that Wei Dat did not sufficiently support its claimed scrap offset to its reported COM. Accordingly, we have removed Wei Dat’s scrap offset to its reported COM.<sup>69</sup>

## **Comment 6: Whether Commerce Should Grant Kiswire’s Claimed Scrap Offset**

### *Petitioners’ Comments*

- Kiswire does not record the weight of scrap that it generates during the production process, and it does not maintain an inventory movement schedule for scrap. In addition, Kiswire only weighs scrap at the time of the sale.<sup>70</sup>
- Kiswire has not demonstrated that its sales quantity of scrap is a reasonable proxy for the quantity of scrap that is generated. Record evidence further indicates that Kiswire sold more scrap than it reasonably could have generated.<sup>71</sup> Commerce has disallowed the scrap offset under similar fact patterns.<sup>72</sup>

---

<sup>62</sup> See Wei Dat’s BCDQR at 68 and Exhibit D-5.

<sup>63</sup> See Wei Dat’s Supplemental DQR at 33.

<sup>64</sup> *Id.*

<sup>65</sup> See Wei Dat’s ILVQR at 10.

<sup>66</sup> *Id.*

<sup>67</sup> See 19 CFR 351.401(b)(1).

<sup>68</sup> See *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 83 FR 4030 (January 29, 2018), and accompanying IDM at Comment 11; and *American Tubular Products, LLC v. United States*, No. 13-00029, Slip Op. 14-116 at 17-22 (CIT 2014).

<sup>69</sup> See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Wei Dat Steel Wire Sdn Bhd,” dated concurrently with this memorandum at 1.

<sup>70</sup> See Petitioners’ Case Brief for Kiswire at 4.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 5. (citing *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 12.

- Commerce has acknowledged that it is the burden of the respondent to demonstrate its eligibility for an adjustment, specifically with regard to a scrap offset.<sup>73</sup>
- Kiswire failed to link the quantity of scrap that is sold during the POI to the quantity of scrap that it generated during the same period.
- In its final determination, Commerce should recalculate Kiswire's COM to exclude its reported scrap offset.

#### *Kiswire's Comments*

- Record evidence demonstrates that Kiswire has met its burden to "demonstrate that the quantity of scrap sold is a reasonable proxy for the actual quantity of scrap generated."
- The supplemental section D questionnaire response demonstrated that Kiswire calculated its reported scrap offset based on the quantity of its sales of scrap generated from processing wire rod.<sup>74</sup>
- Kiswire provided a monthly schedule of its scrap sales, which showed that the POI quantity and value of scrap sold was from its prestressed concrete (PC) factory. Record evidence shows that this volume is less than the imputed volume of scrap generated.<sup>75</sup>
- Multiplying the yield ratio for subject merchandise during the POI by the total POI volume of wire rod consumed at the PC strand factory yields an imputed scrap volume. While not identical, the sales quantity of scrap sold is less than the imputed scrap volume that could have been generated during the POI and clearly a "reasonable proxy" for the actual quantity of scrap generated.
- The petitioners calculated the scrap quantity generated by subtracting only the wire rod input amount from the total quantity produced at the PC strand factory. This ignores other inputs such as zinc ingot, grease, epoxy and high-density polyethylene (HDPE) that contribute to the total volume produced, resulting in an apples-to-oranges comparison that understates the quantity of scrap generated.
- The correct calculation of the maximum theoretical scrap quantity that could have been generated is to subtract the total quantity of the raw material inputs from the total production quantity at the PC strand factory.
- This total is clearly greater than the amount of scrap sold and is in line with the quantity calculated for only subject merchandise using the yield ratio. As such, it is a reasonable proxy for the quantity of scrap generated.
- Commerce should continue to allow Kiswire's reported scrap offset for the final determination.

**Commerce's Position:** We determine, consistent with our finding in the *Preliminary Determination*, that it is appropriate to continue applying a scrap-offset for Kiswire. Commerce has explained its practice with respect to granting scrap offsets as follows:

Commerce's practice is to allow offsets to the reported costs based on the amount of scrap generated during production. However, we recognize that, in certain situations, a respondent's normal accounting system does not track scrap

---

<sup>73</sup> See Petitioners' Case Brief for Kiswire at 6.

<sup>74</sup> See Kiswire Rebuttal Brief at 11.

<sup>75</sup> *Id.*

generated, and only tracks the quantities of scrap sold. In such instances, Commerce's policy is to allow the offset for scrap sold if a respondent can show a reasonable link between the quantities of scrap sold and scrap generated. The burden to demonstrate that the quantity of scrap sold is a reasonable proxy for the actual quantity of scrap generated, rests with the respondent.<sup>76</sup>

Furthermore, where a respondent does not keep track of scrap generated, Commerce has found it reasonable to grant the offset based on scrap sales if the respondent can show that the amount of scrap sold is less than the amount reported as generated.<sup>77</sup> In its September 21, 2020, supplemental section D submission,<sup>78</sup> Kiswire explained that it does not record the weight of the scrap generated during the production process in the normal course of business, nor does it maintain inventory of scrap generated. At the time of sale, Kiswire weighs the scrap and records the revenue in its accounting records.<sup>79</sup>

In *Steel Propane Cylinders from Thailand Final*, a case with a similar fact pattern, Commerce found the respondent's approximation of scrap generated to be reasonable and, therefore, granted the offset adjustment.<sup>80</sup> Commerce calculated an estimate of the quantity of scrap generated, "noting that it exceeded the quantity sold."<sup>81</sup> As a result, Commerce "consider{ed} it reasonable to value {the respondent's} scrap offset based on the total sales value and find that it is appropriate to allow the full amount of the claimed offset for the final determination."<sup>82</sup>

The petitioners argue that the burden is on Kiswire to establish a "reasonable link" and demonstrate entitlement to a scrap offset. Here, Kiswire calculated its reported scrap offset based on the quantity of scrap sold that was generated from processing wire rod at its PC strand factory.<sup>83</sup> In Exhibit D-33 of the Kiswire Supplemental DQR,<sup>84</sup> Kiswire provided a monthly schedule of its scrap sales, which showed that the total quantity of scrap sold from wire rod processing at the PC strand factory did not exceed the quantity of scrap that could have been generated.<sup>85</sup> Likewise, the data reported by Kiswire indicates that the total quantity of raw material inputs in the PC strand factory less the total production quantity of the PC strand factory<sup>86</sup> is greater than the quantity of scrap sold during the POI. Because, the quantity of scrap that could have been generated during the POI exceeds the amount of scrap sold during the POI,<sup>87</sup> we find Kiswire's quantity of scrap sold during the POI to be a reasonable approximation

---

<sup>76</sup> See *Finished Carbon Steel Flanges from Spain: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 7919 (February 12, 2020), and accompanying IDM at Comment 1.

<sup>77</sup> See, e.g., *Steel Propane Cylinders from Thailand: Final Determination of Sales at Less Than Fair Value*, 84 FR 29168 (June 21, 2019), (*Propane Cylinders from Thailand*), and accompanying IDM at Comment 10.

<sup>78</sup> See 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 Supplemental DQR), at 8-9.

<sup>79</sup> *Id.*

<sup>80</sup> See *Propane Cylinders from Thailand* IDM at Comment 10.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> See Kiswire Supplemental DQR at Exhibit D-32.

<sup>84</sup> *Id.* at 8-9 and Exhibit D-33.

<sup>85</sup> *Id.*

<sup>86</sup> This formula measures the yield loss associated with the production of MUC.

<sup>87</sup> *Id.* at 9 and Exhibit D-32.

of the quantity generated and, thus, are continuing to grant Kiswire's full scrap offset for the final determination.

Furthermore, we agree with Kiswire that the petitioners' calculation of the amount of scrap that could have been generated only takes into consideration the wire rod consumed in the PC strand factory from the total production quantity, but ignores the fact that there are other material inputs (*i.e.*, zinc ingot, grease, epoxy, and HDPE) that contributed to the total finished production quantity.<sup>88</sup> Therefore, because the raw material input quantity that the petitioners compare to the finished production quantity excludes certain raw material inputs, we find that it is not a valid comparison. However, as explained above, Kiswire has provided a reasonable link between the quantity of scrap sold and the quantity of scrap that could have been generated. Therefore, for the final determination, we continue to allow Kiswire's reported scrap offset based on the quantity and value of the scrap sold.

### **Comment 7: Whether Commerce Should Revise Kiswire's Reported COM**

#### *Petitioners' Comments*

- The Act instructs respondents to report costs based on their normal books and records. In the normal course of business, Kiswire assigns its ungalvanized PC wire and strand products group (PCU) one overall average per-unit COM. The PCU product group includes PC strand, unbonded PC strand, PC wire, and other products. This product group includes both subject and non-subject merchandise. For reporting purposes, instead of using the average per-unit cost from its normal books and records, Kiswire calculated a different per-unit COM for MUC within the PCU product group.
- Kiswire explained that there are several reasons for the difference between the per-unit COM that it assigns to the PCU product group in the normal course of business and the per-unit COM reported for subject merchandise, none of which justifies deviating from the use of its normal books and records for reporting costs to Commerce.<sup>89</sup>
- While Kiswire asserts that it had to use specific grades of wire rod to produce the MUC because only those grades have the (1) required chemical composition, and (2) required wire rod diameter, those specific wire rod grades have similar chemical and physical characteristics to the wire rod grades used to produce non-MUC, which undermines Kiswire's assertions.<sup>90</sup>
- Kiswire introduced additional distortions to its reported costs by using a single aggregate work in process (WIP) adjustment ratio (*i.e.*, including all the PCU group products), to determine the actual consumption cost of wire rod, and applied the resulting ratio to the grade-specific figures to derive the reported per-unit amounts.
- In accordance with section 773(f)(1)(A) of the Act, Commerce should not allow Kiswire to deviate from its normal books and records and should increase Kiswire's reported COM by the difference between the reported costs and the costs Kiswire maintains in its normal books and records.

---

<sup>88</sup> See Petitioners' Case Brief for Kiswire at 5-6.

<sup>89</sup> *Id.* at 7.

<sup>90</sup> *Id.* at 9.

### *Kiswire's Comments*

- In the normal course of business, Kiswire only calculates one overall average COM by product group. With respect to raw material costs, Kiswire calculates a single weighted-average wire rod cost and assigns that cost to all products within the product group.<sup>91</sup>
- While Kiswire's normal books and records result in an accurate presentation of the company's financial position and meets the company's management requirements, it does not calculate manufacturing costs at the product-specific level or reflect differences in costs between products based on the physical characteristics defined by Commerce.
- Commerce's section D questionnaire requires companies to report the actual product-specific costs for producing the MUC. In order to report its input costs in a manner consistent with Commerce's instructions, Kiswire developed a cost reporting methodology that takes into account the actual grade of wire rod consumed and the production routing for each product.
- Specific grades of wire rod are used by Kiswire to produce subject merchandise, while other grades are used exclusively to produce non-MUC sold by Kiswire.<sup>92</sup>
- The petitioners argue that the Act directs Commerce to strictly rely on Kiswire's normal books and records. In doing so, they overlook the fact that the use of the costs in Kiswire's normal books and records do not reasonably reflect the costs associated with the production of the MUC and do not distinguish the product specific cost based on Commerce's defined physical characteristics.
- Kiswire satisfied Commerce's reporting requirements using a methodology, supported by its normal books and records, that reflects the cost of wire rod used to produce MUC. The reported methodology was the most accurate method available and ensured that the costs reasonably reflected the cost of producing MUC.<sup>93</sup>
- The petitioners allege that the wire rod cost reporting methodology used by Kiswire is flawed because the wire rod grades used in the production of subject merchandise in some instances have similar chemical or physical characteristics to the wire rod grades used in production of non-MUC products. However, the grades noted by the petitioners are clearly not used to produce MUC, as the physical characteristics of those products are outside of the scope of this investigation.<sup>94</sup>
- The distortion as alleged by the petitioners related to using a single WIP inventory amount to determine the actual consumption is without merit. The WIP adjustment is simply a component of the adjustment made to ensure that the reported wire rod costs represent consumption costs versus purchases and ensures the reported costs reconcile to Kiswire's total consumption costs in its normal books and records.<sup>95</sup>
- Commerce should continue to disregard the petitioners' arguments and accept Kiswire's costs as reported for the final determination.

**Commerce's Position:** We find that Kiswire's reported costs reasonably reflect the differences in the costs associated with the physical characteristics defined by Commerce at the outset of the investigation. Moreover, we determined that the product costs maintained by Kiswire in its

---

<sup>91</sup> See Kiswire Rebuttal Brief at 13.

<sup>92</sup> *Id.* at 14.

<sup>93</sup> *Id.* at 16.

<sup>94</sup> *Id.* at 17-18.

<sup>95</sup> *Id.* at 18-19.

normal books and records, that the petitioners claim should be used, are not product-specific and do not differentiate product costs based on the defined physical characteristics for this proceeding.

Section 773(f)(1)(A) of the Act mandates that Commerce rely on a producer's normal books and records if those records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Specifically, in the response methodology section of the initial questionnaire, Commerce states that "the starting point for your response must be the costs as recorded in your normal books and records, *see* section 773(f) of the {Act}. While it may be necessary to adjust those costs to comply with certain reporting requirements you must provide the reasons for each departure from your normal books and records."<sup>96</sup>

Here, while the costs maintained in Kiswire's normal books and records comply with Malaysian GAAP, they do not reasonably reflect the manufacturing costs at the product-specific level or reflect differences in the physical characteristics of MUC. Kiswire explained in its questionnaire responses that, to ensure the reported wire rod input costs reasonably reflect the cost of producing MUC, it deviated from using its normal books and records, that reflected one overall average wire rod input cost, and calculated the reported cost based on the cost of the wire rod grade used in the production of MUC.<sup>97</sup>

In the normal course of business, Kiswire calculates one overall average COM by product group. Specifically, Kiswire calculates a single average raw material cost of wire rod and assigns that average cost to all products within the PCU product group, which is comprised of MUC and non-MUC.<sup>98</sup> Consequently, in the normal course of business, all products within the PCU group, including MUC, are assigned the same average wire rod costs regardless of the grade of the wire rod used to produce each product. Additionally, in the normal course of business, for conversion costs, Kiswire allocates the processing costs to products within the product group based on the relative sales values.<sup>99</sup> Given that this methodology does not calculate manufacturing costs at the product-specific level or reflect differences in costs based on the physical characteristics of the products produced, Kiswire developed a method of calculating the product-specific COM consistent with Commerce's instructions.<sup>100</sup>

For the purpose of reporting product-specific costs in the format requested by Commerce, Kiswire assigned to each product the cost of the specific type of wire rod consumed in producing the product. Additionally, for reporting purposes, Kiswire included a scrap offset in its reported

---

<sup>96</sup> See Antidumping Duty Questionnaire at D-10.

<sup>97</sup> See Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia {sic}, Case No. A-557-819: Section D Initial Questionnaire Response," dated August 10, 2020 (Kiswire DQR), at 16; *see also* Kiswire Supplemental DQR at 20; and 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 Second Supplemental DQR), at 1-2 and Exhibit D-51.

<sup>98</sup> See Kiswire DQR at 23.

<sup>99</sup> *Id.* at 20.

<sup>100</sup> *Id.*



COM, and allocated processing costs to specific products based on the specific processes performed to produce each product.<sup>101</sup>

The petitioners assert that the Act instructs Commerce to calculate a respondent's costs based on its normal books and records. Therefore, the petitioners argue that Commerce should not allow Kiswire to deviate from its normal books and records, and should instead, use the overall average cost of wire rod by product group. Based on the circumstances presented here, we disagree. Relying on Kiswire's normal books and records would not meet Commerce's requirements that a respondent's reported costs reasonably reflect the cost of producing the MUC, as it would not reflect the differences in the physical characteristics of the products, such as the grade of the wire rod used to produce the specific PC strand products.<sup>102</sup>

The petitioners also argue that the grade of wire rod used by Kiswire in its reported costs for MUC have similar chemical and physical characteristics to the wire rod grades used in the production of non-MUC. Specifically, the petitioners argue that other grades of wire rod purchased by Kiswire could have been used to produce MUC, other than those reported by Kiswire, because they have a similar chemical composition to the grades of wire rod that Kiswire used to produce MUC. However, based on the specifications of the additional grades of wire rod noted by the petitioners, record evidence does not show that those grades could be used to produce MUC. In addition, the record does not show that Kiswire used any grades of wire rod, other than those reported, to produce MUC.

Commerce requested Kiswire to provide information related to its purchases of wire rod by grade that were used to produce MUC and non-MUC, and how the differences in the grades reflect the physical characteristics used in this investigation.<sup>103</sup> In its response to the second supplemental section D questionnaire, Kiswire provided the physical characteristics of each grade of wire rod it purchased during the POI (*i.e.*, including the wire rod diameter range, the tensile strength, the chemical composition, and the finished product for which each grade is used).<sup>104</sup> Kiswire explained that MUC requires a certain carbon content, manganese content, chromium content, and silicon content in order to achieve the necessary tensile strength associated with finished MUC. In addition, Kiswire asserted that, along with the chemical composition, the tensile strength is affected by the rate of the reduction in the diameter which dictates the wire rod diameter input.<sup>105</sup> Accordingly, both the diameter and chemical composition affect the specific wire rod input needed to achieve a specific finished product, and the other grades of wire rod purchased by Kiswire do not have the required combination of chemical elements and wire rod diameter necessary to produce MUC.<sup>106</sup> We examined the exhibits provided by Kiswire that supported its reported grade-specific costs of wire rod. We have analyzed the record pertaining to the differences in grades and it appears that the grades indicated by the petitioners are not used

---

<sup>101</sup> *Id.* at Exhibit D-47.

<sup>102</sup> See *Strontium Chromate from Austria: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 53676 (October 8, 2019), and accompanying IDM at Comment 2.

<sup>103</sup> See Kiswire Second Supplemental DQR at 1-2 and Exhibit D-51.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

to produce MUC. Specifically, the chemical composition of these grades (*i.e.*, carbon, chromium, and silicon) are not suitable to produce MUC.<sup>107</sup>

To reconcile the results of its reporting methodology for wire rod costs (*i.e.*, based on the purchase price of the various wire rod grades) with the actual consumption as recorded in its normal books, Kiswire took into consideration the change in WIP inventory. The petitioners argue that Kiswire's use of an overall change in WIP inventory adjustment, as opposed to a grade-specific change in WIP inventory adjustment, introduces distortions into the reported costs.<sup>108</sup> We disagree that the use of an overall change in WIP is unreasonable. First, the overall change in WIP is captured relative to the overall wire rod consumption cost so the adjustment is determined on a consistent basis. Second, the change in WIP inventory is extremely small when compared to the overall consumption of wire rod, so any variation in the grades of the WIP would have a minimal impact on the overall consumption cost of wire rod. Third, as Kiswire explained and the record demonstrates, the company's WIP inventory ledger as maintained in the normal course of business does not track WIP inventory on a grade-specific basis.<sup>109</sup> As such, we find that Kiswire's reported WIP adjustment methodology is reasonable.

In summary, the record supports Kiswire's deviation from its normal books and records in order to report grade-specific actual wire rod costs consistent with Commerce's instructions. As discussed above, we have analyzed the record pertaining to Kiswire's reported costs and the underlying reporting methodology and in doing so conclude that its reported costs reasonably reflect the physical characteristics set forth by Commerce in this investigation. Therefore, we have not adjusted Kiswire's reported manufacturing costs as suggested by the petitioners for this final determination.

#### **Comment 8: Whether Kiswire's U.S. Sales Should Be Classified as CEP Sales**

##### *Petitioners' Comments*

- Kiswire classified all of its U.S. sales as EP sales, although it has an affiliated U.S. selling agent, Kiswire Trading Incorporated (KTI), who is involved in Kiswire's sales of subject merchandise to the United States.
- Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter...."
- The agreement for Kiswire's U.S. sales is between two U.S. entities, the unaffiliated U.S. customer and KTI. Consequently, the locus of Kiswire's U.S. transactions is in the United States, and all of Kiswire's sales should be classified as CEP.<sup>110</sup>

---

<sup>107</sup> *Id.*

<sup>108</sup> See Petitioners' Case Brief for Kiswire at page 10-11.

<sup>109</sup> See Kiswire DQR at Exhibit D-13.

<sup>110</sup> See Petitioners' Case Brief for Kiswire at 14 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico*, 65 FR 39358 (June 26, 2000), and accompanying IDM at Comment 10).

- In *AK Steel*, the CAFC found that “if the contract for sale was between a U.S. affiliate of a foreign producer or exporter and an unaffiliated U.S. purchaser, then the sale must be classified as a CEP sale.”<sup>111</sup>
- In *Carbon Steel Flat Products from the Netherlands*, Commerce classified sales as CEP because the contracts for those sales were concluded in the United States and signed by the respondent’s U.S. affiliate.<sup>112</sup>
- In the instant case, because the agreement for sale is between KTI and the unaffiliated U.S. customer, Commerce should classify Kiswire’s U.S. sales as CEP sales in the final determination.
- If Commerce treats Kiswire’s U.S. sales as CEP sales, then Commerce should treat Kiswire’s U.S. commission expenses as CEP expenses.

#### *Kiswire’s Comments*

- The record demonstrates that KTI is merely a liaison between the U.S. customer and Kiswire in Malaysia, that KTI has no authority to make or agree to a sale with the U.S. customer, and that Kiswire is the entity that agrees to sell at the specified terms and conditions evidenced in the purchase order and finalized in the sales invoice.
- The CAFC determined in *AK Steel* that there are two relevant factors when making an EP/CEP determination: (1) the location of the sale; and (2) whether the sale is made by an affiliate.<sup>113</sup> The CAFC clarified that the term “seller” in section 772(b) of the Act simply means one who contracts to sell, and that “sold” refers to the transfer of ownership or title.<sup>114</sup> It is undisputed that KTI never takes ownership of the goods, and, therefore, KTI cannot have “sold” the goods to the U.S. customer.
- KTI acts as the initial point of contact with Kiswire’s sole U.S. customer for all of Kiswire’s sales of PC strand to the United States. KTI merely forwards purchase orders to Kiswire, and it has no further involvement with the U.S. sale after signing the purchase order acknowledgement form on behalf of Kiswire. Kiswire records the purchase order in its production system, and issues the sales order and invoice.<sup>115</sup>
- An “‘agreement to sell’ is a binding commitment that has not yet been consummated by the exchange of goods for consideration, *i.e.*, the ‘sale’ itself.”<sup>116</sup> For the commitment to be binding, there must be “mutual assent to the material terms (price and quantity).”<sup>117</sup> KTI clearly does not have the ability to bind Kiswire to the U.S. customer’s offered price and quantity.
- The only agreement between Kiswire and KTI concerning KTI’s agency is the sales commission agreement provided in its section A response.<sup>118</sup> Under this agreement, KTI

<sup>111</sup> *Id.* (citing *AK Steel Corp. v. United States*, 226 F.3d 1361 (CAFC 2000) (*AK Steel*)).

<sup>112</sup> *Id.* at 15 (citing *Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 68341, 68344 (December 8, 2003) (*Carbon Steel Flat Products from the Netherlands*), unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review*, 69 FR 33630 (June 16, 2004)).

<sup>113</sup> *Id.* (citing *AK Steel*, 226 F.3d at 1370-71).

<sup>114</sup> *Id.* at 3 (citing *AK Steel*, 226 F.3d at 1371).

<sup>115</sup> *Id.* at 5 (citing Kiswire’s Letter, “Prestressed Concrete Steel Wire Strand from Malaysia {sic}, Case No. A-557-819: Section A Initial Questionnaire Response,” dated July 20, 2020 (Kiswire AQR), at Exhibit A-29).

<sup>116</sup> *Id.* at 6 (citing *Corus Staal BV v. United States*, 502 F.3d 1370, 1376 (CAFC 2007)).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 7 (citing Kiswire AQR at Exhibit A-9).

may only make a sales offer on behalf of Kiswire if the terms and conditions of the offer have already been provided by Kiswire.

- In the *Gold East Remand Redetermination*, a U.S. affiliate received purchase orders from U.S. customers, which it then passed along to the foreign exporter. While Commerce considered the purchase orders to be the initial agreement with the customers, it did not consider them binding agreements to sell.<sup>119</sup> Instead, Commerce found that the invoice served this function because it set the material terms of sale.<sup>120</sup> Further, because the respondent issued the invoice outside the United States, Commerce considered the sale to be an EP sale.<sup>121</sup> The U.S. Court of International Trade (CIT) affirmed this decision.<sup>122</sup>
- An examination of the contract for sale in this case makes it plain that the parties to the transaction are Kiswire and its U.S. customer. Further, after the contract is signed or the order report is issued, the material terms, *i.e.*, price and quantity, remain subject to change. Therefore, the “agreement for sale” setting the material terms is not made until the invoice was issued (or the merchandise was shipped, if that date was earlier), as Commerce acknowledged in the *Preliminary Determination*.<sup>123</sup> Accordingly, Commerce should continue to treat Kiswire’s U.S. sales as CEP transactions.

**Commerce’s Position:** As we did in the *Preliminary Determination*, we are continuing to treat Kiswire’s sales to its U.S. customer as EP sales for the purpose of our antidumping duty analysis. Under section 772(a) of the Act, the term “export price” means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines “constructed export price” as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

In general, Commerce applies EP methodology to a sale when the foreign producer or exporter sells merchandise directly to an unrelated purchaser located in the United States, while Commerce applies the CEP methodology when the foreign producer’s or exporter’s goods are sold to an unaffiliated U.S. buyer by a producer-affiliated company located in the United States.<sup>124</sup> The location of the sale and the identity of the seller are critical to determining whether a transaction constitutes an EP or CEP sale.<sup>125</sup>

---

<sup>119</sup> *Id.* at 8 (citing *Gold East Remand Redetermination* at 10-12).

<sup>120</sup> *Id.* (citing *Gold East Remand Redetermination* at 12-13).

<sup>121</sup> *Id.* at 8-9 (citing *Gold East Remand Redetermination* at 13-14).

<sup>122</sup> *Id.* at 8-10 (citing *Gold East Paper (Jiangsu) Co. v. United States*, 991 F. Supp. 2d 1357 (CIT 2014); *Certain New Pneumatic Off-the-Road Tires from India: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 82 FR 4848 (January 17, 2017), and accompanying IDM at Comment 10 (holding that sales shipped and invoiced from India to the first unaffiliated customer were EP sales); and *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010)).

<sup>123</sup> *Id.* at 10 (citing *Preliminary Determination PDM* at 10).

<sup>124</sup> See *AK Steel*, 226 F.3d at 1364.

<sup>125</sup> *Id.* at 1371.

In its initial response, Kiswire explained its sales process for goods sold to the United States. Kiswire does not make direct contact with U.S. customers; rather, the initial sales order inquiry is made via KTI, which performs a limited role as a sales agent.<sup>126</sup> KTI consults with Kiswire throughout the negotiation process and does not make any final decision without Kiswire's approval.<sup>127</sup> KTI consults with Kiswire regarding pricing and is instructed on what prices it is permitted to offer on Kiswire's behalf, which KTI then communicates to the U.S. customer.<sup>128</sup> KTI also communicates to Kiswire any counteroffers which are outside of Kiswire's communicated instructions; thereafter, the customer issues its purchase order to Kiswire *via* KTI.<sup>129</sup> After receiving the purchase order, Kiswire issues the order report, produces the goods (or ascertains that it has them in inventory), completes the shipment, and issues the invoice to the U.S. customer.<sup>130</sup>

Once KTI signs the order acknowledgment form on behalf of Kiswire,<sup>131</sup> it takes no further action regarding the sale. It does not take title to or possession of the goods, or provide any services to the U.S. customer.<sup>132</sup> Title to the goods passes to the U.S. customer directly from Kiswire when the customer receives the bill of lading for the shipment.<sup>133</sup> Payments from the U.S. customer are directly wired to Kiswire based on the invoice issued by Kiswire to the U.S. customer.<sup>134</sup> In its sales database, Kiswire identified the date of sale as the earlier of the invoice date or the date of shipment.<sup>135</sup>

Most pertinent to the current investigation is a determination as to which party, Kiswire or KTI, actually sold the goods under consideration to the U.S. customer. The Act requires that, in determining whether a sale is an EP or CEP sale, the first step in Commerce's analysis is to identify when the subject merchandise was "first sold (or agreed to be sold)."<sup>136</sup> The CAFC's decision in *Corus Staal* highlights the importance of establishing when the material terms of the sale are set in determining the date of sale or an agreement to sell. The Court stated that "{n}either a sale nor an agreement to sell occurs until there is mutual assent to the material terms (price and quantity)."<sup>137</sup> The Court in *Corus Staal* then explained that the terms "sale" and "agreement to sell," have separate meanings under the Act.<sup>138</sup> The Court held that an "agreement to sell" is a "binding commitment that has not yet been consummated by the exchange of goods for consideration, *i.e.*, the 'sale' itself."<sup>139</sup>

---

<sup>126</sup> See Kiswire AQR at A-28.

<sup>127</sup> See Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia {sic}, Case No. A-557-819: Supplemental Section A Questionnaire Response," dated September 8, 2020 (Kiswire Supplemental AQR), at 11.

<sup>128</sup> *Id.* at 12.

<sup>129</sup> *Id.*

<sup>130</sup> See Kiswire AQR at A-29.

<sup>131</sup> See Kiswire Supplemental AQR at 10.

<sup>132</sup> *Id.* at 12.

<sup>133</sup> *Id.*

<sup>134</sup> See Kiswire AQR at A-29.

<sup>135</sup> See Kiswire's Letter, "Prestressed Concrete Steel Wire Strand from Malaysia {sic}, Case No. A-557-819: Sections B-C Initial Questionnaire Response," dated August 3, 2020 (Kiswire BCQR), at C-12.

<sup>136</sup> See *Nucor Corp. v. United States*, 612 F. Supp. 2d 1264, 1281 n.18 (CIT 2009) (*Nucor*).

<sup>137</sup> See *Corus Staal*, 502 F.3d at 1376.

<sup>138</sup> *Id.*

<sup>139</sup> See *Corus Staal*, 502 F.3d 1370 at 1376-1377 (citing *AK Steel*, 226 F.3d at 1370-71).

Kiswire reported the earlier of the invoice date or date of shipment in its response as the basis of its date of sale for sales to the U.S. market.<sup>140</sup> Additionally, Kiswire explained that the material terms of sale were established in Malaysia and were subject to change up until subject merchandise is exported to the United States.<sup>141</sup> Kiswire further explained that it usually issues a revised purchase order incorporating any such changes, but that the terms of sale are only final once Kiswire issues the invoice or ships the merchandise.<sup>142</sup> The record supports Kiswire's claim that the binding agreement to sell occurred in Malaysia before the subject merchandise was exported to the United States.<sup>143</sup> Further, the information on the record supports Kiswire's assertion that KTI's role was limited to establishing/facilitating contact between Kiswire and its U.S. customer, that it was Kiswire itself that established and agreed to the terms of sale in Malaysia, and that Kiswire was the entity that issued the invoice, shipped the goods, and transferred title to the customer. Therefore, we find that it was Kiswire, not KTI, that was responsible for making the sale to the U.S. customer prior to exportation to the United States.

A focus on where the terms were set is also consistent with the CIT's decision in *Nucor*, in which the Court noted the importance of where the terms of sale were set: "In this case, the terms of sale, including price, were set outside the United States."<sup>144</sup> In that case, the CIT noted that "all activities relevant to the sales {of the subject merchandise} to U.S. customers – including sales negotiations, issuance of invoices, and preparation of documentation to facilitate payment – were handled *outside the United States*, by {the respondent company's} personnel in Turkey" (emphasis in original).<sup>145</sup> Similar to the situation in *Nucor*, here the terms of sale were established outside the United States, *i.e.*, in Malaysia, and Kiswire was responsible for processing invoices and payment, absent any involvement of its U.S. affiliate. Accordingly, and consistent with the *Preliminary Determination*, we are continuing to treat Kiswire's U.S. sales as EP sales rather than CEP sales for this final determination.

#### **Comment 9: Whether Commerce Erred in Calculating Kiswire's Margin in the Preliminary Determination**

##### *Petitioners' Comments*

- The computer program that Commerce used to compute Kiswire's preliminary dumping margin contained an error because it computed weighted-average values for several home market expenses using only positive amounts (*i.e.*, it set zero values to "missing" such that they were ignored in the average).
- Commerce's exclusion of zero values is "an error in addition, subtraction, or other arithmetic function," and is therefore a ministerial error within the meaning of 19 CFR 351.224(f). Commerce should correct this error in the final determination.
- In addition to the issue noted above, in the *Preliminary Determination* Commerce included one U.S. sale that predated the POI in the margin analysis. For the final determination, Commerce should exclude this sale from the margin program.

---

<sup>140</sup> See Kiswire BCQR at C-12.

<sup>141</sup> See Kiswire Supplemental AQR at 5.

<sup>142</sup> *Id.* at 6.

<sup>143</sup> *Id.* at Exhibits A-32 and A-34.

<sup>144</sup> See *Nucor*, 612 F. Supp. 2d at 1281 n.18.

<sup>145</sup> *Id.* at 1279.

*No other party commented on this issue.*

**Commerce's Position:** We agree that we made the two errors alleged by the petitioner, and we have corrected them for this final determination by: (1) no longer setting zero values to missing when computing weighted-average amounts; and (2) excluding from our analysis the reported sale that occurred outside the POI.<sup>146</sup>

## VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of this investigation in the *Federal Register* and will notify the International Trade Commission of our determination.

☒

\_\_\_\_\_  
Agree

☐

\_\_\_\_\_  
Disagree

4/5/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

---

<sup>146</sup> See Memorandum, "Antidumping Duty Investigation of Prestressed Concrete Wire Strand from Malaysia: Final Analysis Memorandum for Kiswire Sdn. Bhd.," dated concurrently with this memorandum.