

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. In accordance with section 772(b) of the Act, CEP is 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, as adjusted under subsections (c) and (d).

For purposes of this review, Mukand has classified certain sales as EP sales and certain sales as CEP sales. Based on the information on the record, we are using both EP and CEP as defined in section 772(a) and (b) of the Act.

For purposes of this review, Viraj has classified all sales as CEP sales. Based on the information on the record, we are using CEP as defined in section 772(b) of the Act.

Mukand

The Department has determined that Mukand's EP sales are properly reported sales, because those sales were made in accordance with the definition of an EP sale. Mukand has classified those sales made by its wholly-owned affiliate, Mukand International Limited ("MIL"), which was based in the United Arab Emirates during the POR, as EP sales. For the reported EP sales, MIL sold directly to a U.S. customer, prior to importation. Based on the evidence on the record, the Department preliminarily determines that MIL's EP sales were made within the meaning of section 772(a) of the Act, and thus have been appropriately classified by Mukand as EP transactions.

The Department based EP on packed prices to unaffiliated purchasers in the United States. The Department made deductions for inland freight, international freight, marine insurance, brokerage and handling, and U.S. Customs duties in accordance with section 772(c)(2) of the Act.

In addition, Mukand classified certain sales made in the United States after importation, in accordance with an agreement signed by MIL and its customer Precision Metals Services ("PMS") ("the Agreement"), as CEP sales. Due to the proprietary nature of this agreement, please refer to Antidumping Duty Administrative Review of Stainless Steel Wire Rods from India: Agency Sales Analysis, dated December 12, 2003 ("Agency Sales Memorandum"), for a detailed

explanation. According to Mukand, the agreement was signed, prior to the POR, after several shipments of subject merchandise were rejected by PMS after the subject merchandise had been imported into the United States and stored at PMS' warehouse in the United States. During the POR, several downstream sales of the subject merchandise were made to unaffiliated U.S. customers by PMS in accordance with the terms of the Agreement. Based on the evidence on the record, the Department preliminarily determines that MIL's CEP sales were made within the meaning of section 772(b) of the Act, and thus have been appropriately classified by Mukand as CEP transactions.

Additionally, based on the evidence on the record, the Department has preliminarily determined that given the unique terms and circumstances of these sales, those sales classified by Mukand as CEP sales should also be treated as sales made through an agent, with PMS as the agent. *See Agency Sales Memorandum.*

Citing the *Final Results*, the Department issued a supplemental questionnaire on May 29, 2003, requesting that Mukand report the sales prices and expenses incurred on the reported agency sales to which Mukand provided the Department with a Section C questionnaire response on July 11, 2003. However, after a thorough examination of this response and the accompanying sales database, the Department identified several deficiencies in the response and sales database, requiring the Department to issue an 18 page supplemental questionnaire on August 12, 2003. Despite providing Mukand a chance to correct the deficiencies in the response, Mukand informed the Department that PMS would not submit a response to the Department's supplemental questionnaire. *See Letter from Mukand, dated September 15, 2003; Agency Sales Memorandum.*

By not providing the agency sales information requested by the Department, in a database format that provides specific prices and expenses for these agency sales, Mukand has prevented the Department from calculating an accurate dumping margin. Further, in the *Final Results*, the Department made it clear to Mukand that the Department would further examine these sales in subsequent reviews. *See Final Results* at Comment 2. Moreover, the Department applied facts available to Mukand's CEP/agency sales in the last review, noting that it had requested the downstream sales data from Mukand late in the review

process. *See Final Results* at Comment 2. Thus, Mukand had notice that the Department would further examine any reported CEP/agency sales in this review and the possible consequences of not supplying the Department with the requested information.

However, despite this knowledge, Mukand and PMS failed to respond to the Department's request to remedy the deficiencies in their response to the Department's request for the downstream sales prices and expenses for the CEP/agency sales. Thus, because Mukand was aware of the fact that the Department would examine its reported CEP/agency sales and the potential consequences of not responding to the Department's request, and because, unlike in the last review, the Department made this request several months before the preliminary determination, the Department has preliminarily determined to apply facts available to these sales (*i.e.*, Mukand's CEP/agency sales), because Mukand and PMS have withheld certain information requested by the Department and did not act to the best of its ability to comply with the Department's request. *See sections 776(a)(2)(A) and 776(b) of the Act.*

Consistent with sections 776(a)(2)(A) and 776(b) of the Act, Mukand and PMS withheld information that had been requested by the Department and did not act to the best of its ability to comply with the Department's request for information, justifying the use of adverse facts available in reaching the applicable determination. Therefore, the Department has preliminarily determined that the use of adverse facts available for the prices and expenses incurred for Mukand's agency sales in the U.S. market, in accordance with section 776(b) of the Act. Facts available, the Department has applied the corroborated "all others" rate of 48.8% to Mukand's reported CEP sales.

Viraj

For purposes of this review, Viraj has classified all of its sales as CEP sales. Based on the information on the record, we are using CEP as defined in section 772(b) of the Act.

Viraj has classified those sales made by VSL through Viraj USA Inc. ("VUI"), an affiliated reseller in the United States that is 100% owned by VFL, as CEP sales. VSL makes the shipment from India on an Ex-Dock Duty Paid ("EDDP") basis to VUI. VUI clears the goods through U.S. customs and oversees customer delivery. Then VUI sells the goods to the unaffiliated U.S. customer, who makes payment to VUI.