



A-533-887
Investigation
Public Document
E&C/OV: AC

September 19, 2019

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

FROM: Scot T. Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Carbon and Alloy Steel
Threaded Rod from India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports of carbon and alloy steel threaded rod (CASTR) from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The preliminary margins of sales at less than fair values are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On February 21, 2019, we received an antidumping duty (AD) petition covering imports of carbon and alloy steel CASTR from India,¹ which was filed in proper form on behalf of the Vulcan Steel Products Inc. (the petitioner). We initiated this investigation on March 13, 2019.²

In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that, after considering the large number of producers and exporters identified in the Petition, it is not practicable to examine each producer or exporter individually.³ On March 11, 2019, Commerce released the 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

¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties: Carbon and Alloy Steel Threaded Rod from the People’s Republic of China, India, Taiwan, and Thailand,” dated February 21, 2019 (Petition).

² See *Carbon and Alloy Steel Threaded Rod from India, Thailand, and People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 10034 (March 19, 2019) (*Initiation Notice*).

³ See Petition at Volume I Exhibit 13.



selection. Based on the CBP data, we limited our examination to Daksh Fasteners and Mangal Steel Enterprises Ltd. (Mangal), respectively.⁴ On April 12, 2019, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of carbon and alloy steel CASTR from India.⁵

On June 14, 2019, Commerce postponed the deadline for the preliminary determination at the request of the petitioner.⁶ Accordingly, the revised deadline for the preliminary determination is September 19, 2019.⁷ On July 18, 2019, we received a cost-based particular market situation allegation (PMS) from the petitioner.⁸ On August 27, 2019, we issued a supplemental questionnaire to the petitioner regarding its PMS allegation.⁹ The petitioner submitted its response on September 4, 2019.¹⁰ We preliminarily find that the revised allegation is sufficient to warrant further analysis. We also intend to issue additional questions to address remaining deficiencies regarding the quantitative analysis. We will then evaluate the response and make a determination on the PMS allegation in a post-preliminary determination. Additionally, we have accepted the factual information in support of these allegations and have further established a deadline for the submission of factual information to rebut, clarify or correct that allegation in a memo to the file dated concurrently with this preliminary determination.¹¹

On August 12, 2019, and August 21, 2019, the petitioner¹² and Mangal¹³, respectively, requested that Commerce postpone the final determination. We are conducting this investigation in accordance with section 733(b) of the Act.

⁴ See Memorandum, “Carbon and Alloy Steel Threaded Rod from India: U.S. Customs and Border Protection Data for Respondent Selection Purposes,” dated March 11, 2019 (CBP Data Memo); *see also* Memorandum, “Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Threaded Rod from India: Respondent Selection,” dated April 12, 2019 (Respondent Selection Memo).

⁵ See *Carbon and Alloy Steel Threaded Rod from China, India, Taiwan, and Thailand*, 84 FR 14971 (April 12, 2019); *see also Carbon and Alloy Steel Threaded Rod from China, India, Taiwan, and Thailand*, Inv. 701-TA-618-619 and 731-TA-1441-1444 (Preliminary), USITC Publication 4885, April 2019.

⁶ See *Carbon and Alloy Steel Threaded Rod from India, Taiwan, and the People’s Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 27764 (June 14, 2019).

⁷ *Id.*

⁸ See Petitioner’s Letter, “Carbon and Alloy Steel Threaded Rod from India: Particular Market Situation Allegation,” dated July 18, 2019.

⁹ See Commerce’s Letter, “Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India: Particular Market Situation Allegation Supplemental Questions,” dated August 27, 2019.

¹⁰ See Petitioner’s Letter, “Carbon and Alloy Steel Threaded Rod from India: Response to Particular Market Situation Allegation Supplemental Questions,” dated September 4, 2019.

¹¹ See Memorandum, “Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Threaded Rod from India: Comment Schedule for the Particular Market Situation Allegation,” dated concurrently with this memorandum.

¹² See Petitioner’s Letter, “Carbon and Alloy Steel Threaded Rod from India: Request for Extension of Final Determination,” dated August 12, 2019.

¹³ See Mangal’s Letter, “Antidumping Investigation of Carbon and Alloy Steel Threaded Rod from India: Request for Postponement of Final Determination,” dated August 20, 2019.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2018 through December 31, 2018.

IV. SCOPE OF THE INVESTIGATION

For a full description of the scope of the investigation, *see* the accompanying preliminary determination *Federal Register* notice at Appendix I.

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,¹⁴ we set aside a period of time until April 2, 2019, for parties to comment on product coverage (*i.e.*, scope) and encouraged all parties to submit comments within 20 calendar days of publication of that notice.¹⁵ On July 2, 2019, Commerce issued a memorandum which clarified a typographical error regarding a particular steel specification in the scope of the investigations.¹⁶ We received comments concerning the scope of the AD and countervailing duty (CVD) investigations of carbon and alloy steel CASTR from China, as well as India, Taiwan, and Thailand, which were also placed on the record of this investigation. The Preliminary Scope Decision Memorandum, issued concurrently with the CVD preliminary determination, includes an explanation of our consideration of the parties' comments and our preliminary modifications to the scope of the investigation. Based on our analysis of the comments and rebuttals we received, we have preliminarily modified the scope of this investigation.¹⁷

VI. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics until April 2, 2019.¹⁸ The petitioner provided comments¹⁹ which we took into consideration in determining the physical characteristics outlined in the AD questionnaire.²⁰ Commerce received no rebuttal comments regarding product characteristics.

¹⁴ *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁵ *See Initiation Notice*, 84 FR at 10035.

¹⁶ *See* Commerce's Letter, "Carbon and Alloy Steel Threaded Rod from India, Taiwan, Thailand, and the People's Republic of China: Correction of Typographical Error in the Scope Language," dated July 2, 2019.

¹⁷ *See* Memorandum, "Carbon and Alloy Steel Threaded Rod from India, Taiwan, Thailand, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated July 22, 2019 (Preliminary Scope Decision Memorandum).

¹⁸ *See Initiation Notice*, 84 FR at 10035.

¹⁹ *See* Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from China, India, Taiwan, and Thailand: Comments on Product Characteristics," dated April 2, 2019.

²⁰ *See* Commerce's Letter, "Product Characteristics the Antidumping Duty Investigations of Carbon and Alloy Steel Threaded Rod from, India, Taiwan, and Thailand, and the People's Republic of China," dated April 26, 2019.

VII. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation. Pursuant to section 777A(c)(2) of the Act, Commerce may limit its examination to: (A) a sample of exporters, producers or types of products that Commerce determines is statistically valid based on the information available to Commerce at the time of selection; or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that Commerce determines can be reasonably examined. In this AD proceeding, because of the large number of companies involved in the investigation and its limited resources, Commerce selected respondents that account for the largest volume of the subject merchandise that can reasonably be examined, pursuant to section 777A(c)(2)(B) of the Act.

In the *Initiation Notice*, Commerce stated its intent to base respondent selection on the entry data from CBP.²¹ Commerce released the CBP data to all interested parties on March 11, 2019, and requested comments regarding the CBP entry data and respondent selection.²² On March 22, 2019, we received comments on the CBP data and respondent selection from the petitioner.²³ On April 12, 2019, we limited the number of respondents selected for individual examination to the two exporters accounting for the largest volume of exports from India to the United States during the POI that could be reasonably examined, *i.e.*, Daksh Fasteners and Mangal.²⁴ On April 24, 2019, we uploaded the questionnaire to ACCESS.²⁵ However, Daksh Fasteners had not submitted an entry of appearance, and the questionnaire was not sent to the company directly. Thus, we cannot confirm that the company was aware of its selection as a mandatory respondent and whether it received a copy of our initial questionnaire. Consistent with *Lightweight Thermal Paper from China*, for the preliminary determination, we will assign to Daksh Fasteners the all-others rate, as discussed herein. In addition we note that we have issued the questionnaire directly to Daksh Fasteners via both FedEx and e-mail.²⁶

VIII. AFFILIATION

Section 771(33) of the Act states, in part, that the following persons shall be considered to be “affiliated” or “affiliated persons”:

²¹ See *Initiation Notice*, 84 FR at 10038.

²² *Id.*; see also CBP Data Memo.

²³ See Petitioner’s Letter, “Carbon and Alloy Steel Threaded Rod from India: Comments for Respondent Selection,” dated March 22, 2019; see also Respondent Selection Memo.

²⁴ See Respondent Selection Memorandum.

²⁵ See Commerce’s AD Questionnaire to Daksh Fasteners, dated April 24, 2019; Commerce’s AD Questionnaire to Mangal, dated April 24, 2019.

²⁶ See *Lightweight Thermal Paper from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2015–2016, 82 FR 56951 (December 1, 2017), and accompanying Preliminary Decision Memorandum (PDM).

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Act defines affiliates as, among other things, those that are in a “control” relationship with each other. In order to find control, a party must be legally or operationally in a position to exercise restraint or direction over another party.²⁷ “Actual control . . . is not required by the statute Rather, a person is considered to be in a position of control if he is legally in a position to exercise restraint or direction over the other person.”²⁸ “Person” is defined in Commerce’s regulations to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”²⁹ Additionally, Commerce’s interpretation of “any person” as encompassing “family” has been judicially upheld.³⁰

The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316 (1994), indicates that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, or (4) close supplier relationships in which either party becomes reliant upon the other.³¹ With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become

²⁷ See section 771(33) of the Act.

²⁸ See *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1293 (CIT 2005) (*TIJID*).

²⁹ See 19 CFR 351.102(b)(37). Similarly, 1 U.S.C. 1 defines “person” for purposes of all federal statutes as including “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”

³⁰ See *Ferro Union Inc. v. Wheatland Tube Co.*, 44 F. Supp. 2d 1310, 1326 (CIT 1999) (stating that “a family can reasonably be considered an ‘entity’ or an ‘enterprise’ because family members likely share a common interest.”); see also *Dongkuk Steel Mill Co. v. United States*, 29 CIT 724, 734 (2005).

³¹ See SAA at 838.

reliant on the other.³² Only if such reliance exists does Commerce then determine whether one of the parties is in a position to exercise restraint or direction over the other.³³

Additionally, 19 CFR 351.102(b)(3) states that, to determine whether control exists within the meaning of section 771(33) of the Act, Commerce will consider the same four SAA factors listed above, among other factors. However, Commerce does not find the existence of control based on these factors “unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.”³⁴ Also, Commerce “will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.”³⁵

We note that Commerce has found that a principal and agent in a sales transaction, even if unrelated in a broader corporate sense, are “affiliated” within the meaning of section 771(33) of the Act.³⁶ While there is no explicit reference to agents in section 771(33) of the Act, Commerce has interpreted this section to include such relationships because the statute defines an affiliated party to include “any person who controls any other person” or “any person which is legally or operationally in a position to exercise restraint or direction over another person.” Thus, this definition covers principal-agent relationships because, by definition, a principal controls its agent. The agent may act only to the extent that its actions are consistent with the authority granted by the principal. Thus, control of the principal over its agent is the hallmark of an agency relationship.³⁷

Mangal reported in its Section A response,

“With regards to the U.S. customer, NASCO, in the 2012 Less than fair value investigation on Steel Threaded Rod from India, because of the totality of the circumstances, Department found believes that perhaps a principal/agent relationship existed between Mangal and the U.S. customer - NASCO. Thus, for purposes of the analysis, NASCO and Mangal were considered as affiliated in accordance with section 771(33)(G) of the Act, hence Mangal’s sales through NASCO were considered as CEP sales. In this investigation also, the business practices between NASCO and Mangal are

³² See *Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 59739, 59739-40 (October 11, 2006), unchanged in *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 72 FR 6528 (February 12, 2007); see also *TIJID*, 366 F. Supp. 2d at 1298-99.

³³ See *Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362, 1373-74 (CIT 2009); see also *TIJID*, 366 F. Supp. 2d 1286 at 1298-99; and *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18417 (April 15, 1997).

³⁴ See 19 CFR 351.102(b)(3).

³⁵ *Id.*

³⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24400-24403 (May 5, 1997), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

³⁷ *Id.*

similar to previous investigation, above, which is further explained below, hence in Section C response, Mangal will be reporting the sales through NASCO as CEP sales.”³⁸

Further, Mangal states that neither Mangal nor NASCO enter into long term or short-term contracts in U.S. market.³⁹

While agency relationships are frequently established by written contract, this is not essential, and in the absence of an agency contract, “the analysis of whether a relationship constitutes an agency is case-specific and can be quite complex; there is no bright line test.”⁴⁰

The criteria that we have used previously to define a principal/agent relationship without a written contract is as follows:⁴¹

1. the foreign producer’s role in negotiating price and other terms of sale;
2. the extent of the foreign producer’s interaction with the U.S. customer;
3. whether the agent/reseller maintains inventory;
4. whether the agent/reseller takes title to the merchandise and bears the risk of loss;
5. whether the agent/reseller further processes or otherwise adds value to the merchandise;
6. the means of marketing a product by the producer to the U.S. customer in the pre-sale period; and;
7. whether the identity of the producer on sales documentation inferred such an agency relationship during the sales transactions.

In this case, Mangal reported the following:

1. *The foreign producer’s role in negotiating price and other terms of sale:* Mangal provides customer specific price lists to NASCO⁴², NASCO then negotiates with the customers directly.⁴³ *The foreign producer’s role in negotiating price and other terms of sale:* Mangal provides customer-specific price lists to NASCO,⁴⁴ who then negotiates with the customers directly.⁴⁵ Any price negotiation below the price lists provided must be approved by Mangal.⁴⁶ The customer then submits a purchase order to NASCO, who

³⁸ See Mangal’s May 22, 2019, Section A Questionnaire Response (AQR) at 14; see also *Steel Threaded Rod from India: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 9164 (February 18, 2014), and accompanying PDM at 13-18.

³⁹ See AQR at 23.

⁴⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24400-24403 (May 5, 1997).

⁴¹ See *Stainless Steel Sheet and Strip from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002), and accompanying IDM at Comment 23.

⁴² See AQR at 21.

⁴³ *Id.*

⁴⁴ *Id.* at 21.

⁴⁵ *Id.*

⁴⁶ *Id.*

then sends it to Mangal.⁴⁷ Mangal prepares the commercial invoice, which is the invoice sent to the customer.⁴⁸ For sales made in this chain, Mangal's invoice to NASCO is less than the price the final customer pays.⁴⁹ Additionally, based on the volume of material sold through NASCO in a year, Mangal gives an annual discount to NASCO as a percentage of the sale value during that period.⁵⁰ The record evidence in relation to this factor supports the finding of a principal/agent relationship.

2. *The extent of the foreign producer's interaction with the U.S. customer:* The U.S. customers make payments to NASCO based on the payment terms agreed to between NASCO and its customer, and NASCO makes payments to Mangal based on payment terms agreed to between Mangal and NASCO.⁵¹ Mangal also prepares the commercial invoice, which is the invoice sent to the customer.⁵² The record evidence in relation to this factor does not weigh in favor of finding a principal/agent relationship.
3. *Whether the agent/reseller maintains inventory:* NASCO does not have a warehouse and does not stock any subject merchandise.⁵³ The record evidence in relation to this factor supports the finding of a principal/agent relationship.
4. *Whether the agent/reseller takes title to the merchandise and bears the risk of loss:* NASCO takes title at the time the merchandise arrives at the U.S. port.⁵⁴ NASCO also coordinates the customs clearance of all shipping containers with subject merchandise from Mangal, and will sometimes handle delivery to the U.S. customer as well.⁵⁵ The record evidence in relation to this factor does not weigh in favor of finding a principal/agent relationship.
5. *Whether the agent/reseller further processes or otherwise adds value to the merchandise:* There's no record evidence that NASCO adds any value to the merchandise in question.⁵⁶ The record evidence in relation to this factor supports the finding of a principal/agent relationship.
6. *The means of marketing a product by the producer to the U.S. customer in the pre-sale period:* Neither Mangal nor NASCO has incurred any advertising expense on U.S. sales.⁵⁷ The record evidence in relation to this factor does not weigh in favor of finding of a principal/agent relationship.
7. *Whether the identity of the producer on sales documentation inferred such an agency relationship during the sales transactions:* Mangal is identified on the U.S. customer's invoice to NASCO and customers are aware that Mangal is the producer of the merchandise.⁵⁸ The record evidence in relation to this factor supports the finding of a principal/agent relationship.

⁴⁷ *Id.*

⁴⁸ *Id.* at 20.

⁴⁹ *Id.* at 22.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 20.

⁵³ *Id.*

⁵⁴ *Id.* at 17.

⁵⁵ *Id.*; see also Mangal's June 10, 2019, Section C Questionnaire Response (CQR) at 21.

⁵⁶ See AQR at 32-33; see also CQR at 55-56.

⁵⁷ See CQR at 44.

⁵⁸ See AQR at Exhibit A-7(b).

Despite the fact that NASCO does not take title to the products, NASCO's consistent and close relationship with Mangal and Mangal's active relationship with its customers leads us to find that Mangal and NASCO have a principal/agent relationship. Given the evidence above and the totality of the circumstances, we have evidence to support that Mangal and NASCO have a principal/agent relationship, and thus are affiliated pursuant to section 771(33)(G) of the Act.

IX. DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value (NV)

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Mangal's sales of subject merchandise were made from India to the United States at less than fair value (LTFV), Commerce compared the export price (EP) and constructed export price (CEP), as appropriate, to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Determination of the 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 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 LTFV investigations and AD reviews, 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.⁵⁹ 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 EPs or CEPs 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

⁵⁹ 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); *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).

differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated 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 accounts 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.⁶⁰

B. Results of the Differential Pricing Analysis

For Mangal, based on the results of the differential pricing analysis, Commerce preliminarily finds that 76.10 percent of the value of U.S. sales pass the Cohen's *d* test,⁶¹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is a meaningful difference 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 sales. Thus, for this preliminary determination, Commerce is applying the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin.

C. Product Comparisons

In accordance with section 771(16) of the Act, Commerce considered all products produced and sold by the respondent in India as described in the "Scope of the Investigation" section of this memorandum, above, that were in the ordinary course of trade. Commerce compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, Commerce compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

⁶⁰ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (Fed. Cir. July 12, 2017) recently 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.

⁶¹ See Memorandum, "Analysis for the Preliminary Determination of the Less Than Fair Value Investigation of Carbon and Alloy Steel Threaded Rod from India: Mangal Steel Enterprise Limited," dated concurrently with this memorandum (Mangal Preliminary Analysis Memorandum), at 2-3.

In making product comparisons, Commerce matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: whether the product is painted, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, pickled, and patterns in relief. For Mangal's sales of CASTR in the United States, the reported control number (CONNUM) identifies the characteristics of CASTR as it entered the United States.

D. 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, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁶² Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.⁶³

E. EP/CEP

In accordance with section 772(a) of the Act, we calculated certain Mangal sales sold to the first unaffiliated purchaser in the United States prior to importation on an EP basis. In accordance with section 772(b) of the Act, for the remainder of Mangal's U.S. sales, we used CEP because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with Mangal.

We based Mangal's EP sales on a packed price to the first unaffiliated purchaser in the United States. Commerce also made adjustments for billing adjustments, discounts, credit expenses, bank charges, and other direct and indirect selling expenses along with inventory carrying costs, as appropriate. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, marine insurance, foreign brokerage and handling, international freight, and U.S. inland freight.

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 described above, Mangal reported CEP sales of the subject merchandise through its affiliate NASCO during the POI.

⁶² See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁶³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; 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.

We calculated CEP based on a packed price to customers in the United States. We made deductions from the starting price for any movement expenses (*e.g.*, foreign inland freight, marine insurance, foreign brokerage and handling, international freight, U.S. customs duties, U.S. brokerage and handling, and U.S. inland freight), in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses and indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.⁶⁴

F. Calculation of NV Based on Constructed Value (CV)

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV because Mangal did not have a viable comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, general and administrative (G&A) expenses, interest expenses, U.S. packing expenses, and profit in the calculation of CV. We relied on Mangal's submitted materials and fabrication costs, G&A, interest expenses, and U.S. packing costs. Based on our examination of the record evidence, Mangal did not appear to experience significant changes in the cost of manufacturing during the POI. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

Because Mangal does not have a viable home or third-country market, we are unable to calculate a CV profit ratio using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home-market or third-country sales made in the ordinary course of trade. When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the "profit cap").

Because there is no profit information on the record for the same general category of merchandise, we are unable to calculate profit under section 773(e)(2)(B)(i) of the Act, *i.e.*, based on sales of the same general category of product. Further, as Mangal is the only respondent in this investigation for which there will be a calculated margin, we are unable to calculate profit under section 773(e)(2)(B)(ii) of the Act, *i.e.*, based on the weighted average of the profit ratios of the other exporters or producers being examined. Thus, we must calculate profit under section 773(e)(2)(B)(iii) of the Act, *i.e.*, any other reasonable method.

Interested parties submitted audited financial statements for eleven companies as possible options for CV profit under section 773(e)(2)(B)(iii) of the Act. We reviewed the submitted

⁶⁴ For additional details, *see* Mangal Preliminary Analysis Memorandum.

financial statements for the eleven companies and determined it appropriate to rely on the information for Udehra, Mita, Simmonds, Ratnam, and Sundram. The financial statements for these companies reflect production and sales of comparable merchandise, produced and sold in India, the home market.⁶⁵ Additionally, we find that Udehra, Mita, Simmonds, Ratnam, and Sundram's financial statements are all contemporaneous with the POI. Therefore, for the preliminary determination, we have used Udehra, Mita, Simmonds, Ratnam, and Sundram's financial statements to calculate CV profit.⁶⁶

Commerce has determined that there is no evidence on the record of "the amount normally realized by exporters or producers . . . in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise" under section 773(e)(2)(B)(iii) of the Act to calculate the profit cap. As a result, pursuant to section 776(a) of the Act, where necessary information is not on the record of a proceeding, Commerce shall rely on facts otherwise available to calculate the profit cap. For the reasons discussed above, no financial statements on the record of this proceeding would better fulfill the purpose of the profit cap than the financial statements we have preliminarily determined to use to calculate CV profit under any other reasonable method. Therefore, because there is no other information available on the record, as facts available, we are preliminarily relying on those financial statements used in calculating CV profit for the profit cap.

Finally, with respect to indirect selling expenses, because Mangal does not have a viable home market or third-country market, Commerce does not have comparison market selling expenses to use in its calculations, as directed by section 773(e) of the Act. As an alternative, to calculate selling expenses, for the preliminary determination, Commerce has used the same financial statements that it used to calculate CV profit (*i.e.*, Udehra, Mita, Simmonds, Ratnam, and Sundram), in accordance with section 773(e)(2)(B)(iii) of the Act.

G. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

X. **ALL-OTHERS RATE**

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and

⁶⁵ See Mangal's Letter, "Antidumping Duty Investigation of Carbon Alloy Steel Threaded Rod from India: Constructed Value Profit and Selling Expense Comments and Information," dated July 22, 2019, at Exhibit CV-2 (a), (b), and (c), CV-4 (a), (b), and (c), CV-5 (a), (b), and (c) and CV-7 (a), (b), and (c); *see also* Mangal's Letter, "Submission of Constructed Value Profit and Selling Expenses Rebuttal Comments," dated July 29, 2019, at 6, 7, and 8; Petitioner's Letter, "Submission of Rebuttal Information for Constructed Value Profit and Selling Expense Comments and Information," dated July 31, 2019, at Exhibit 4; and Petitioner's Letter, "Submission of Factual Information for CV profit and Selling Expense," dated July 22, 2019, at Exhibit 2.

⁶⁶ See Mangal Preliminary Analysis Memorandum, for the calculation of the CV selling expenses ratio based on Udehra, Mita, Simmonds, Ratnam, and Sundram's financial statements.

producers not individually examined. Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.

The only rate that is not zero, *de minimis*, or based entirely on facts otherwise available is the rate calculated for Mangal. Consequently, the margin calculated for Mangal is assigned as the rate for all other producers and exporters, including, for this preliminary determination, Daksh Fasteners.

XI. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

In AD investigations where there is a concurrent CVD investigation, it is Commerce’s normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent’s weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent countervailing duty investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price “shall be increased by the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy.”⁶⁷

Commerce determined in the preliminary determination of the companion CVD investigation that Mangal benefitted from certain subsidy programs contingent on exports totaling 5.48 percent.⁶⁸ With respect to Mangal’s cash deposit rate, as well as the all others cash deposit rate, we find that an export subsidy adjustment of 5.48 percent is warranted because this is the export subsidy rate included in the companion CVD investigation.

XII. VERIFICATION

Commerce intends to verify Mangal’s responses after the publication of this preliminary determination.

⁶⁷ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

⁶⁸ See *Carbon and Alloy Steel Threaded Rod From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 36570 (July 29, 2019), and accompanying PDM.

XIII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

9/19/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance