



A-533-887
Investigation
POI: 1/1/18 – 12/31/18
Public Document
E&C/OV: AC/JH

February 7, 2020

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

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

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

I. SUMMARY

The Department of Commerce (Commerce) finds that carbon and alloy steel threaded rod (threaded rod) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2018 through December 31, 2018.

After analyzing the comments submitted by interested parties, and based on our findings at verification, we have made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues for which we received comments from interested parties:

- Comment 1: Calculation of Constructed Value (CV) Profit and Selling Expense Ratios
- Comment 2: Excluded Electricity Costs
- Comment 3: Mangal Steel Enterprise’s (Mangal’s) General and Administrative (G&A) Expenses
- Comment 4: Adverse Facts Available (AFA) for Daksh Fasteners

¹ See *Carbon and Alloy Steel Threaded Rod from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 50376 (September 25, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



II. BACKGROUND

On September 25, 2019, Commerce published the *Preliminary Determination* in this LTFV investigation.² In the *Preliminary Determination*, we calculated a dumping margin of 2.04 percent for Mangal.

In the *Preliminary Determination*, we also noted that Commerce issued its antidumping questionnaire to Daksh Fasteners on April 24, 2019.³ Commerce sent a courtesy copy of the questionnaire via FedEx on September 13, 2019, and extended the deadline for Daksh Fasteners to respond.⁴ Commerce confirmed with FedEx that its questionnaire was delivered to Daksh Fasteners on September 18, 2019.⁵ Daksh Fasteners did not respond to the questionnaire by the specified deadlines, and it did not reach out to Commerce expressing hardship in completing the questionnaire.

Between October and December 2019, we conducted verification of the sales and cost of production (COP) data reported by the participating respondent in this investigation, Mangal, as well as its affiliated U.S. entity, North American Steel Connection, in accordance with section 783(i) of the Act.⁶ On January 9, 2020, we issued a Post-Preliminary Determination with respect to the petitioner's particular market situation allegation.⁷ We invited interested parties to comment on the *Preliminary Determination* and Post-Preliminary Determination.

On January 14, 2020, Vulcan Threaded Products Inc. (the petitioner) and Mangal submitted case briefs.⁸ On January 17, 2020, the petitioner and Mangal submitted rebuttal briefs.⁹ On January 23, 2020, Commerce conducted a public hearing in this proceeding.¹⁰

² See *Preliminary Determination*.

³ See Commerce's Letter to Daksh Fasteners, dated April 24, 2019.

⁴ See Commerce's Letter to Daksh Fasteners, dated September 13, 2019.

⁵ See Memorandum, "Carbon and Alloy Steel Threaded Rod from India: Tracking of Questionnaire to Daksh Fasteners," dated October 16, 2019.

⁶ See Memorandum, "Verification of Cost Response of Mangal Steel Enterprises Ltd. in the Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India," dated December 10, 2019 (Mangal Cost Verification Report); Memorandum, "Verification of the Sales Response of Mangal Steel Enterprise Limited in the Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India," dated January 3, 2020 (Mangal Sales Verification Report); and Memorandum, "Verification of the Constructed Export Price (CEP) Sales Response of North American Steel Connection in the Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India," dated January 3, 2020.

⁷ See Memorandum, "Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India: Decision on Particular Market Situation Allegation," dated January 9, 2020 (Post-Preliminary Determination).

⁸ See Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from India: Case Brief," dated January 14, 2020 (Petitioner's Case Brief); and Mangal's Letter, "Antidumping Duty Investigation of Carbon Alloy Steel Threaded Rod from India: Case Brief," dated January 14, 2020 (Mangal's Case Brief).

⁹ See Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from India: Rebuttal Brief," dated January 17, 2020 (Petitioner's Rebuttal Brief); and Mangal's Letter, "Antidumping Duty Investigation of Carbon Alloy Steel Threaded Rod from India: Rebuttal Brief," dated January 17, 2020 (Mangal's Rebuttal Brief).

¹⁰ See Commerce's Letter to Interested Parties, dated January 21, 2020; see also Public Hearing Transcript, dated January 23, 2020.

Based on our analysis of the comments received, as well as our verification findings, we have made changes from our *Preliminary Determination*.

III. SCOPE OF THE INVESTIGATION

The scope of this investigation covers carbon and alloy steel threaded rod from India. The complete scope is contained in Appendix I of the accompanying *Federal Register* notice.

IV. MARGIN CALCULATIONS

We calculated export price, normal value, and COP for Mangal using the same methodology as stated in the *Preliminary Determination*,¹¹ except as follows:

1. We revised Mangal's power costs to include electricity costs for a certain department and to correct a minor error presented at verification. *See* Comment 2.
2. We revised Mangal's G&A expense ratio calculation to include donation expenses in the numerator. *See* Comment 3.

For additional details on the calculation methodology, *see* the Final Analysis Memorandum.¹²

V. DISCUSSION OF THE ISSUES

Comment 1: Calculation of CV Profit and Selling Expense Ratios

Petitioner's Comments

- Commerce should not use the financial statements of integrated steel producers to determine CV profit and selling expenses.¹³ In *OCTG from Vietnam*, for example, Commerce rejected the financial statement of an integrated steel producer whose production processes were not sufficiently similar to the respondent's because the record contained better information.¹⁴
- Specifically, Commerce should decline to use the financial statement of Ratnam Steel Ltd. (Ratnam) in its calculation of CV profit and selling expenses, because Ratnam is an integrated steel producer and, therefore, not comparable to Mangal. Ratnam is a producer of both threaded steel products, as well as carbon and alloy steel bar. Carbon and alloy steel bar are the major input to threaded rod. Thus, Ratnam's profit margin is not

¹¹ *See* Memorandum, "Antidumping Investigation of Carbon and Alloy Steel Threaded Rod from India: Mangal Steel Enterprise Limited Preliminary Analysis Memorandum," dated September 19, 2019.

¹² *See* Memorandum, "Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India: Mangal Steel Enterprise Limited Final Analysis Memorandum," dated concurrently with this memorandum (Final Analysis Memorandum).

¹³ *See* Petitioner's Case Brief at 10.

¹⁴ *Id.* at 12 (citing *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 41973 (July 18, 2014) (*OCTG from Vietnam*), and accompanying Issues and Decision Memorandum (IDM) at Comment 2).

comparable to Mangal's profit margin for threaded rod produced from steel bar sourced from a third party.¹⁵

- Alternatively, if Commerce continues to use Ratnam's financial statements in its final calculation of CV profit and selling expenses, then Commerce should also include the financial statement of EVRAZ Plc (EVRAZ) in its calculation. Both are integrated producers with the ability to produce not only the finished threaded rod product, but also the carbon or alloy steel bar that serves as the major input for subject merchandise.¹⁶
- Commerce correctly excluded the financial statements of Ganpati Fasteners Private Limited (Ganpati) and Jai Fasteners Private Limited (Jai). Ganpati is a trading company, not a manufacturer, which makes its operations vastly dissimilar from Mangal's. In addition, Jai's operational size makes its profit rate not reflective of Mangal's experience.¹⁷
- Commerce should continue to include Simmonds Marshall Ltd. (Simmonds) and Sundram Fasteners Ltd. (Sundram) because each manufactures and sells fasteners that are in the same general category as subject merchandise and engage in sales within India.¹⁸
- Contrary to Mangal's arguments (*see below*), Udehra Fastener Ltd. (Udehra) is not the only company that meets all of the selection criteria set forth by Commerce. Accordingly, Commerce should continue to calculate CV profit and selling expenses ratios using an average of the CV profit and selling expense ratios derived from the financial statements that represent the best available information, because there are several financial statements on the record of equal probative value.¹⁹

Mangal's Comments

- Commerce should revise selection of the financial statements it used to calculate CV profit and selling expenses ratios to ensure that the CV profit and selling expense ratios are based on the best available information.²⁰
- Specifically, Commerce should reverse its decision to average the financial statements of Udehra, Mita Fasteners Ltd. (Mita), Ratnam, Simmonds, and Sundram to calculate Mangal's CV profit and selling expenses ratios.²¹
- Commerce should only use Udehra's financial statements to calculate Mangal's CV profit and selling expenses ratios, thereby adhering to Commerce's general practice of calculating CV profit and selling expenses ratios based on the financial statement of the single most representative entity on the record.²²
- Alternatively, Commerce should use an average of the Udehra's, Mita's, and Ratnam's financial statements.²³

¹⁵ *Id.* at 12.

¹⁶ *Id.* at 13.

¹⁷ *See* Petitioner's Rebuttal Brief at 1-3.

¹⁸ *Id.* at 3-6.

¹⁹ *Id.* at 6.

²⁰ *See* Mangal's Case Brief at 2-15 (citing *Husteel Co. v. United States*, 180 F. Supp. 3d 1330, 1344 (Court of International Trade 2016)).

²¹ *Id.* at 1.

²² *Id.* at 2 (citing 19 U.S.C. 1677b(e)(2)(A) and 19 U.S.C. 1677b(e)(2)(B)(iii)).

²³ *Id.*

- Commerce should not use Simmonds' and Sundaram's financial statements in calculating CV profit and selling expense ratios because they make products that are outside the general category of products similar to steel threaded rod, and, therefore, their experience is not representative of Mangal's experience selling subject merchandise in the Indian market.²⁴
- If Commerce persists in using Simmonds' and Sundram's financial statements in calculating CV profit and selling expenses ratios, it must explain why Ganpati and Jai are not at least equally appropriate surrogate entities (or, alternatively, incorporate information from their financial statements in the CV profit and selling expense ratios calculated for the final determination).²⁵
- Commerce should continue to decline to use the financial statements from EVRAZ and Sterling Tools Ltd. (Sterling) to calculate CV profit and selling expenses ratios due to similar deficiencies.²⁶
- If Commerce does not solely rely on Udehra's financial statements to calculate CV profit and selling expense ratios, it should rely on an average of Udehra's, Mita's, and Ratnam's financial statements.²⁷ Ratnam is plainly not an integrated producer and can be reasonably understood to produce merchandise that is in the same general category of products as the subject merchandise.²⁸
- EVRAZ does not produce merchandise that is in the same general category of products as the subject merchandise.²⁹

Commerce's Position:

In this *Final Determination*, we have continued to use the CV profit and selling expense ratios calculated from the financial statements of Udehra, Mita, Ratnam, Simmonds, and Sundram.³⁰ As explained below, we continue to find that the CV profit and selling expense rates for these companies represent the best source for determining Mangal's CV profit and selling expenses in the instant investigation, based on the criteria established under section 773(e)(2)(B)(iii) of the Act and in *Pure Magnesium from Israel* and *CTVs from Malaysia*.³¹ In contrast to the alternative data sources submitted by Mangal and the petitioner, Udehra, Mita, Ratnam, Simmonds, and Sundram's financial data constitute the best information for the CV profit and selling expense ratios. Udehra, Mita, Ratnam, Simmonds, and Sundram are all Indian companies that produce and sell fasteners comparable to threaded rod, and they sell their products predominantly in the domestic market, India. In addition, the related financial statements are all contemporaneous with the POI. Accordingly, we have continued to rely on Udehra's, Mita's, Ratnam's,

²⁴ *Id.*

²⁵ *Id.* at 6 -12.

²⁶ *Id.* at 12-13

²⁷ See Mangal's Rebuttal Brief at 7-11.

²⁸ *Id.* at 8-10.

²⁹ *Id.* at 10-11.

³⁰ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Mangal Steel Enterprises Limited," dated September 19, 2019.

³¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001) (*Pure Magnesium from Israel*), and accompanying IDM at Comment 8; and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004) (*CTVs from Malaysia*), and accompanying IDM at Comment 26.

Simmonds', and Sundram's CV profit and selling expense ratios to derive Mangal's CV profit and selling expense ratios for the final determination.

In the instant investigation, Mangal did not have a viable home or third country market to serve as a basis for NV. Thus, we based NV on CV, consistent with section 773(a) of the Act. Likewise, absent a viable home or third country market, we are unable to calculate CV profit and selling expenses 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.

In situations where we cannot calculate CV profit and selling expenses under section 773(e)(2)(A) of the Act, section 773(e)(2)(B) of the Act establishes three alternatives. They are:

(i) The actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review...for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise, (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i))...for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or, (iii) the amounts incurred and realized...for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in a foreign country, of merchandise that is in the same general category of products as the subject merchandise {(*i.e.*, the "profit cap")}.

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit and selling expenses.³² Moreover, as noted in the SAA, "the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data."³³ Thus, Commerce has the discretion to select from any of the three alternative methods, depending on the information available on the record. We continue to find that Commerce cannot rely on alternative (i) because there is no general category of merchandise profit information on the record for Mangal. Further, Commerce cannot rely on alternative (ii) because there are no other cooperating respondents in this investigation. Therefore, Commerce must resort to the alternative under subsection (iii), *i.e.*, any other reasonable method.

In conducting this analysis, we note that the specific language of both the preferred and alternative methods appears to show a preference that the profit and selling expenses reflect: (1) production and sales in the foreign country; and (2) the foreign like product, *i.e.*, the merchandise under consideration. However, when selecting a profit rate from available record evidence, we

³² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994) (SAA) at 840 ("At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.").

³³ *Id.*

may not be able to find a source that reflects both factors. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Consequently, we must weigh the quality of the data against these factors. For example, we may have profit information that reflects production and sales in the foreign country of merchandise that is similar to the foreign like product, but also includes significant sales of completely different merchandise, or profit information that reflects production and sales of the merchandise under consideration but no sales in the foreign country. Determining how specialized the foreign like product is, what percentage of sales are of the foreign like product or general category of merchandise, what portion of sales are to which markets, *etc.*, judged against the above criteria, may help to determine which profit source to rely on.

Interested parties have argued for the following possible sources from which to calculate CV profit and selling expenses for the final determination: (1) financial statements of Udehra, an Indian producer of fasteners;³⁴ (2) financial statements of Ganpati, an Indian producer of fasteners;³⁵ (3) financial statements of Mita, an Indian producer of fasteners;³⁶ (4) financial statements of Simmonds, an Indian producer of fasteners;³⁷ (5) financial statements of Jai, an Indian producer of fasteners;³⁸ (6) financial statements of Ratnam, an Indian producer of fasteners;³⁹ (7) financial statements of Sterling, an Indian producer of fasteners;⁴⁰ (8) financial statements of Sundram, an Indian producer of fasteners;⁴¹ and (9) financial statements of EVRAZ, a multinational producer of steel, iron ore, and vanadium.⁴²

In evaluating the different alternatives under subsection (iii), we followed the analysis established in *Pure Magnesium from Israel*.⁴³ In *Pure Magnesium from Israel*, Commerce set out three criteria for choosing among surrogate data under section 773(e)(2)(B)(iii) of the Act: (1) the similarity of the potential surrogate companies' business operations and products to the respondent's business operations and products; (2) the extent to which the financial data of the surrogate company reflect sales in the home market and do not reflect sales to the United States; and (3) the contemporaneity of the data to the POI. In *CTV's from Malaysia*, Commerce added a fourth criterion of the extent to which the customer base of the surrogate and the respondent were

³⁴ 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 (Mangal CV and ISE Comments), at Exhibits CV-2 (a), (b), (c), and (d).

³⁵ *Id.* at Exhibit CV-3 (a), (b), (c), and (d).

³⁶ *Id.* at Exhibit CV-4 (a), (b), (c), and (d).

³⁷ *Id.* at Exhibit CV-5 (a), (b), (c), and (d); *see also* Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from India: Rebuttal Information for Constructed Value Profit and Selling Expense Comments and Information," dated July 31, 2019 (Petitioner CV and ISE Rebuttal Comments), at Exhibit 4.

³⁸ *Id.* at Exhibit CV-6 (a), (b), (c), and (d).

³⁹ *Id.* at Exhibit CV-7 (a), (b), (c), and (d).

⁴⁰ See Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from India: Response to Request for Constructed Value Profit and Selling Expense Comments and Information," dated July 22, 2019 (Petitioner CV and ISE Comments), at Exhibit 1.

⁴¹ *Id.* at Exhibit 2.

⁴² See Petitioner's Letter, "Carbon and Alloy Steel Threaded Rod from India: Rebuttal Factual Information," dated June 26, 2019 (Petitioner Rebuttal Factual Information), at Exhibit 1.

⁴³ See *Pure Magnesium from Israel* IDM at Comment 8.

similar (*e.g.*, original equipment manufacturers versus retailers).⁴⁴ These four criteria have been followed in subsequent cases to assess the appropriateness of using various financial statements on the record of a given case under subsection (iii).

In our analysis, we eliminated Ganpati and Sterling from consideration because we do not have a complete set of financial statements for them on the record, and we, therefore, are missing critical information for a complete analysis.⁴⁵ We eliminated Jai from consideration because Jai's financial statements⁴⁶ do not have information concerning the market to which it had sales. Our preference is to rely on surrogates with significant sales in the comparison market, and insignificant sales to the U.S. market. Without details on the market of sales, we are unable to evaluate these criteria. We eliminated EVRAZ because it is a multinational company, not Indian, and its financial statements make no mention of its having sales in India or of its being a producer of comparable merchandise.⁴⁷ Therefore, the financial statements of Ganpati, Sterling, Jai, and EVRAZ are not viable options.

We disagree with Mangal that Simmonds and Sundram should be excluded from the calculation of CV profit and selling expense ratios. While Mangal asserts that Simmonds' and Sundram's financial information should not be used because these companies produce products outside the general category of fasteners, we disagree. We find that, as producers of nuts, bolts, and studs, these companies are manufacturers of comparable merchandise, fasteners, and they have significant sales in India to a broad range of industries. Further, the sales of these companies are not primarily to the United States.⁴⁸

We also disagree with Mangal that Commerce should solely rely on Udrehra's financial statements. We find all five selected financial statements equally reasonable choices from which to calculate CV profit and selling expense ratios, and by including more sources in the calculation, we end up with a more representative result. We also disagree with the petitioner that Ratnam is not a viable option because it is an integrated steel producer. Upon consideration of all the factors enumerated above and the quality of the data on the record, we find that Ratnam is an equally reasonable option as the other selected surrogates, because Ratnam is an Indian manufacturer of comparable merchandise, fasteners, which are sold in India, and Ratnam's data are contemporaneous with the POI. While level of integration is normally more of a concern in non-market economy cases, where we calculate a fixed overhead rate using the surrogate financial statements, in this case, contrary to the petitioner's claim, the record does not indicate that Ratnam is an integrated steel producer. In summary, Udehra, Mita, Ratnam, Simmonds, and Sundram all are producers and sellers of products comparable to steel threaded rod, and all have

⁴⁴ See *CTVs from Malaysia* IDM at Comment 26.

⁴⁵ See Mangal CV and ISE Comments at Exhibit CV-3 (a), (b), (c), and (d) and CV-3 (a), (b), (c), and (d).

⁴⁶ *Id.* at Exhibit CV-6 (a), (b), (c); see also Petitioner CV and ISE Comments at Exhibit 1.

⁴⁷ See Petitioner Rebuttal Factual Information at Exhibit 1 ("We do not consider the manufacture of flat rolled steel, rebar, railway products, vanadium *etc.* comparable merchandise to steel threaded rod.").

⁴⁸ See Mangal's Letter, "Antidumping Duty Investigation of Carbon Alloy Steel Threaded Rod from India: Constructed Value Profit and Selling Expense Rebuttal Comments," dated July 29, 2019 (Mangal CV and ISE Rebuttal Comments), at 9-14; see also Mangal CV and ISE Comments at Exhibit CV-5 (a); Petitioner CV and ISE Rebuttal Comments at Exhibit 4; and Petitioner CV and ISE Comments at Exhibit 2.

significant sales within India.⁴⁹ As such, the financial statements for Udehra, Mita, Ratnam, Simmonds, and Sundram reflect the business operations, production processes, and products most similar to Mangal's own. Additionally, we find that Udehra's, Mita's, Ratnam's, Simmonds', and Sundram's financial statements are all contemporaneous with the POI. Therefore, for the final determination, after considering the record evidence and the arguments raised by the parties' case and rebuttal briefs, we have continued to use a simple average of the CV profit and selling expenses from the five surrogate financial statements for Udehra, Mita, Ratnam, Simmonds, and Sundram.⁵⁰

As discussed, in the *Preliminary Determination*, Commerce considered whether information on the record could be useable as a facts available profit cap. We determined that no financial statement on the record of this proceeding would better fulfill the purpose of the profit cap than the financial statements we use to calculate CV profit under any other reasonable method.⁵¹ We stated that Congress recognized that there may be instances where, due to a lack of data, Commerce would need to use facts available and calculate a CV profit rate pursuant to section 773(e)(2)(B)(iii) of the Act without quantifying a profit cap.⁵² Congress intended the profit cap to be: (1) based on home market sales information of the same general category of products as the subject merchandise, (2) non-aberrational to the industry under consideration (*i.e.*, "the amount normally realized"), and (3) not based on the data of the respondent for which Commerce is calculating CV.⁵³ We concluded in the *Preliminary Determination*, and continue to conclude for the final determination, that there is no information on the record that would meet these standards, and we are unable to calculate the profit normally realized by producers other than Mangal in connection with domestic market sales of merchandise in the same general category as the subject merchandise. The Court of International Trade (CIT) recently affirmed Commerce's decision not to use a profit cap in the investigation of *Certain Steel Nails from the Sultanate of Oman*.⁵⁴ In its decision, the CIT found that Commerce properly explained why none of the other CV profit rates on the record of the investigation fulfill the statute better than no cap.⁵⁵ Accordingly, for the final determination, Commerce continues to

⁴⁹ See Mangal CV Profit Submission 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 CV and ISE Rebuttal Comments at 6-8; Petitioner CV and ISE Rebuttal Comments at Exhibit 4; and Petitioner CV and ISE Comments at Exhibit 2.

⁵⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Biodiesel from Indonesia*, 83 FR 8835 (March 3, 2018) (*Biodiesel from Indonesia*), and accompanying IDM at Comment 6.

⁵¹ See *Preliminary Determination PDM* at 14.

⁵² See SAA at 841.

⁵³ See *Stainless Steel Plate in Coils from Belgium: Antidumping Duty Administrative Review, 2010-2011*, 77 FR 73013 (December 7, 2012), and accompanying IDM at Comment 3; see also *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 10876 (February 28, 2011), and accompanying IDM at Comment 3; and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012), and accompanying IDM at Comment 26.

⁵⁴ See *Final Results of Redetermination Pursuant to Court Order*, Consolidated Court No. 15-00214 (May 18, 2017) at 11-14; *aff'd Mid Continent Steel & Wire, Inc. v. United States*, 273 F. Supp. 3d 1348 (CIT 2017) appealed, *Mid Continent Steel & Wire, Inc. v. United States*, Consol. Ct. Nos. 18-1250, 1296 (Fed. Cir. docketed Dec. 4 and 12, 2017).

⁵⁵ *Id.*

calculate CV profit without a profit cap, which is consistent with Commerce’s practice and the recent CIT decision.⁵⁶

Finally, with respect to 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 final determination, Commerce has continued to use the same financial statements that it used to calculate CV profit (*i.e.*, Udehra, Mita, Ratnam, Simmonds, and Sundram), in accordance with section 773(e)(2)(B)(iii) of the Act.

Comment 2: Excluded Electricity Costs

Petitioner’s Comments

- Commerce stated in its verification report that Mangal misallocated the costs of its “Heat Treatment 600” department to non-subject merchandise when a portion should have been assigned to subject merchandise.⁵⁷
- Record evidence demonstrates that the manner in which Mangal allocated its power costs associated with the “Heat Treatment 600” department is incorrect.⁵⁸
- In sections A and D of Commerce’s questionnaire, Mangal was asked to describe its production processes. In its response, Mangal provided no indication that its threaded rods were heat treated.⁵⁹
- Mangal’s misreporting of heat treatment necessarily affects its reporting of labor, variable overhead, and fixed overhead costs.⁶⁰
- Because Mangal failed to report the processes and costs associated with heat treatment – a significant step in the production of subject merchandise – Commerce should apply partial AFA in the final determination. Commerce could accomplish this by:
 - computing the difference between the amounts of these expenses attributed by Mangal to subject merchandise and the totals for the expenses,
 - computing the ratio of that difference to the total amount of subject merchandise costs, and
 - increasing the costs reported in Mangal’s cost database by the ratio.⁶¹

Mangal’s Comments:

- Mangal’s minor clerical error in reporting power costs for “Heat Treatment 600” is the sort of minor clerical mistake that Commerce explicitly accepts without applying AFA.⁶²

⁵⁶ *Id.*

⁵⁷ See Petitioner’s Case Brief, at 4 (citing Mangal’s August 13, 2019 Supplemental Section D Questionnaire Response at Exhibit D1-9(b) “Allocation of power & fuel cost Unit 2”).

⁵⁸ *Id.*

⁵⁹ *Id.* at 2-3.

⁶⁰ *Id.* at 9.

⁶¹ *Id.* at 9-10.

⁶² See Mangal’s Case Brief at 6.

- The petitioner has misread Commerce’s cost verification report to suggest that production of subject merchandise involves an additional and unreported heat treatment step.⁶³ In fact, neither Mangal nor Commerce has ever claimed, nor has Commerce ever found, that subject merchandise is subject to heat treatment at any point in the production cycle.⁶⁴
- While electricity costs associated with the “Heat Treatment 600” department were misallocated, this minor clerical error was duly accounted for at the cost verification.⁶⁵
- Partial AFA is not warranted because Mangal has cooperated with Commerce to the best of its ability, provided all information by the deadlines for submission, and provided information in the form or manner requested.⁶⁶
- The petitioner’s claims regarding the implications of increased power costs and labor costs as it relates to variable and fixed overhead for heat treatment are similarly moot, because steel threaded rods do not go through a heat treatment process.⁶⁷

Commerce’s Position:

At verification, we noted that Mangal failed to include electricity costs for subject merchandise associated with a department labeled as “Heat Treatment 600.” The petitioner extrapolated from this that Mangal failed to report an additional heat treatment process and failed to report all costs associated with this heat treatment (*i.e.*, labor and overhead costs). Accordingly, the petitioner argued that partial AFA associated with these costs is warranted.

The department in question involves heating and forming products.⁶⁸ While we noted at verification, and agree with the petitioner, that Mangal inappropriately assigned electricity from this department to only non-subject merchandise, when both subject and non-subject merchandise used electricity from this department, we disagree with the petitioner that Mangal excluded other costs associated with this department from the reported costs. We verified that Mangal fully accounted for all labor and overhead costs, and that the production steps involved in producing subject merchandise did not include heat treatment, as argued by the petitioner.⁶⁹ We have adjusted the reported costs to include the excluded electricity costs; however, we disagree that partial AFA is appropriate in this case, because we have not found that Mangal failed to report an additional heat treatment process.

⁶³ See Mangal’s Rebuttal Brief at 3.

⁶⁴ *Id.*

⁶⁵ *Id.* at 4.

⁶⁶ *Id.* at 5-7.

⁶⁷ *Id.* at 5.

⁶⁸ See Mangal Cost Verification Report at 5, 6, 17, 18, and 19; *see also* Mangal Sales Verification Report at 7.

⁶⁹ *Id.*

Comment 3: Mangal's G&A Expenses

Petitioner's Comments

- Commerce noted in its cost verification report that Mangal did not include donations as part of its G&A expenses.⁷⁰
- Commerce has previously held that donations are properly treated as G&A expenses, as they are part of overall administrative expense attributable to all production.⁷¹
- These expenses should be included in Mangal's G&A expenses, because they are rightly attributed to Mangal's cost of production.⁷²

Mangal's Comments:

- Commerce should not include Mangal's charitable donations in its calculation of Mangal's G&A expenses, because they represent expenses incurred outside of the general operations of the company.⁷³
- The antidumping manual describes "G&A expenses" as "those non-manufacturing period expenses...which relate to the general operations of the company as a whole rather than to a particular production processes, product or a division."⁷⁴
- The donation costs reported by Mangal were earmarked by the Board of Directors to be dispersed to Charitable Trusts that are undertaking charity work in education, social welfare, and medical welfare in the local community and in no way otherwise relate to the general operations of the company.⁷⁵
- The petitioner's citation is not controlling, because, in that case, Commerce found that the donation and football expenses were related to administrative expenses attributable to all production, including production of subject merchandise.⁷⁶
- There are numerous cases enshrining the principle that costs unrelated to the general operations of the company, or even from the production of subject merchandise, are properly excluded from the calculation of G&A expenses.⁷⁷

Commerce's Position:

We agree with the petitioner and have included the donation expenses in Mangal's G&A expenses for the final determination.

⁷⁰ See Petitioner's Case Brief at 13.

⁷¹ *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30820 (June 8, 1999) (*SSSSC from France*), and accompanying IDM at Comment 22).

⁷² *Id.* at 13 (citing Mangal Cost Verification Report at 21).

⁷³ See Mangal's Rebuttal Brief at 11.

⁷⁴ *Id.* at 11.

⁷⁵ *Id.* at 12.

⁷⁶ *Id.* at 12 (citing *SSSC from France* IDM at Comment 22).

⁷⁷ *Id.* at 12 (citing *Television Receivers, Monochrome and Color, from Japan: Final Results of Antidumping Duty Administrative Review*, 56 FR 5392 (February 11, 1991), at Comment 5; see also *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan, Final Results of Antidumping Administrative Review*, 56 FR 41508 (August 21, 1991), at Comment 40).

Section 773(b)(3)(B) of the Act states that for purposes of calculating COP, Commerce shall include “an amount for selling, general, and administrative expenses based on the actual data pertaining to the production and sales of the foreign like product by the exporter in question.” The antidumping law does not prescribe a specific method for calculating the G&A expense ratio. When the statute is silent or ambiguous, the determination of a reasonable and appropriate method is left to the discretion of Commerce.⁷⁸ Because there is no bright-line definition in the Act of what a G&A expense is or how the G&A expense ratio should be calculated, Commerce has, over time, developed a consistent and predictable practice for calculating and allocating G&A expenses. This reasonable, consistent, and predictable method is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company’s company-wide cost of sales and not on a consolidated, divisional, or product-specific basis.⁷⁹

By definition, G&A expenses relate to the general operations of the company as a whole and not to specific products or processes. In addition, G&A expenses represent period costs, not product costs, and as such they should be spread proportionately over all merchandise produced in that period.⁸⁰ In calculating the G&A expense ratio, Commerce normally includes certain expenses and revenues that relate to the general operations of the company as a whole, as opposed to including only those expenses that directly relate to the production of the subject merchandise.⁸¹ Accordingly, the G&A expense category covers a diverse range of items.⁸² The CIT has agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole, rather than to a particular product or the production process.⁸³ In determining whether it is appropriate to include particular items in G&A expenses, Commerce reviews the nature of the items and their relationship to the general operations of the company.⁸⁴

Based on record evidence, we have determined that the donation expenses Mangal incurred for charitable causes relate to Mangal’s general operations of the company as a whole.⁸⁵ Donating to local charities builds relations with the local community, improving social and medical welfare, education, and overall quality of life.⁸⁶ Donations are not a separate profit-making activity, and they are not investment-related. Making donations is a normal part of doing business, which relates to the general operations of the company as a whole. Further, we

⁷⁸ See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984).

⁷⁹ See *Notice of Final Results of First Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921 (December 20, 2004), and accompanying IDM at Comment 23.

⁸⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 30710, 30745 (June 8, 1999).

⁸¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24350 (May 6, 1999).

⁸² See *Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan*, 64 FR 56308, 56323 (October 19, 1999).

⁸³ See *U.S. Steel Group a Unit of USX Corporation, USS/Kobe Steel Co., and Koppel Steel Corp. v. United States*, 998 F. Supp 1151, 1154 (CIT 1998) (citing *Rautaruukki Oy v. United States*, 19 CIT 438, 444 (1995)).

⁸⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy*, 67 FR 3155 (January 23, 2002), and accompanying IDM at Comment 46.

⁸⁵ See Mangal Cost Verification Report at 7, 8, 21, and 22, and Exhibits 3 and 15.

⁸⁶ See Mangal’s Rebuttal Brief at 12.

disagree with Mangal that its cited cases support its position that these charitable expenses are not general expenses of the company as they do not address charitable donations. Consistent with Commerce's practice,⁸⁷ for the final determination, we have included charitable donation expenses in the numerator of Mangal's G&A expense ratio calculation.

Comment 4: AFA for Daksh Fasteners

Petitioner's Comments

- Daksh did not respond to Commerce's questionnaire or otherwise participate in this investigation. Accordingly, Commerce must apply AFA to assign a dumping margin to the Daksh.

No Other Party Commented on this Issue.

Commerce's Position:

We agree with the petitioner. Section 776(a) of the Act provides that Commerce will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: (1) withholds information that has been requested by Commerce; (2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. The SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁸⁸ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁸⁹

Daksh Fasteners did not respond to Commerce's antidumping questionnaire. As a result, we find that necessary information is not available on the record, that Daksh Fasteners withheld information Commerce requested, that it failed to provide information by the specified deadlines, and that it significantly impeded the proceeding. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we hereby rely upon facts otherwise available to determine Daksh Fasteners' dumping margin. In addition, we conclude that Daksh Fasteners failed to cooperate to the best of its ability to comply with our request for information because

⁸⁷ See *Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 83 FR 40745 (August 16, 2018), and accompanying IDM at Comment 9 (where Commerce stated that we adjusted the numerator of the G&A ratio by including charitable donations because such expenses relate to the general operations of the company); see also *Certain Polyethylene Terephthalate Resin from India, Final Determination of the Less-than-Fair-Value Investigation* 81 FR 13327 (March 4, 2016), and accompanying IDM at Comment 6.

⁸⁸ See SAA at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁸⁹ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003).

Daksh Fasteners was not responsive to Commerce’s request for information and may obtain a more favorable result by failing to cooperate than if it had cooperated fully and, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), we used an adverse inference when selecting from among the facts otherwise available.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying 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 doing so, and under the Trade Preferences Extension Act of 2015 (TPEA), Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with Commerce’s request for information.⁹⁰ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.⁹¹

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁹² The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.⁹³ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning subject merchandise.⁹⁴

Finally, section 776(d) of the Act also makes clear that when selecting information as AFA, Commerce is not required to estimate what the weighted-average dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the information used as AFA reflects an “alleged commercial reality” of the interested party.⁹⁵

In an investigation, Commerce’s general practice with respect to the assignment of a rate as AFA is to assign the higher of the highest dumping margin alleged in the petition or the highest calculated dumping margin of any respondent in the investigation.⁹⁶ The highest petition rate is permissible as an adverse rate in this instance because we find the rate calculated for the participating respondent is not sufficiently adverse to induce cooperation.⁹⁷ In this investigation, the highest dumping margin alleged in the petition is 28.34 percent.⁹⁸ Therefore, Commerce

⁹⁰ See section 776(b)(1)(B) of the Act; *see also* TPEA, Pub. Law 114-27 (June 29, 2015), section 502(1)(B).

⁹¹ See 19 CFR 351.308(c).

⁹² See 19 CFR 351.308(d).

⁹³ See SAA at 870.

⁹⁴ *Id.*; *see also* 19 CFR 351.308(d).

⁹⁵ See section 776(d)(3) of the Act; and TPEA at section 502(3).

⁹⁶ See *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying IDM at Comment 20.

⁹⁷ See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

⁹⁸ See *Carbon and Alloy Steel Threaded Rod from India, Taiwan, Thailand, and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 10034, 10037 (March 19, 2019).

finds it appropriate to assign to Daksh Fasteners, as AFA, the highest margin found in the Petition, *i.e.*, 28.34 percent.

Thus, because the AFA rate applied to Daksh Fasteners is derived from the petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable. We determined that the petition margin is reliable where, to the extent appropriate, information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this final determination.⁹⁹

Specifically, we examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margin alleged for use as AFA for purposes of this final determination. During our pre-initiation analysis, we also examined the key elements of the alleged dumping margin calculation, *i.e.*, export price (EP) and CV.¹⁰⁰ Further, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and CV calculations used to derive the dumping margin alleged in the Petition.¹⁰¹

Based on our examination of the information, as discussed in detail in the Initiation Checklist,¹⁰² we consider the petitioner's EP and CV calculations to be reliable. Because we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the EP and CV calculations provided in the Petition, based on our examination of the aforementioned information, we consider the EP and CV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margin alleged in the Petition by examining source documents and affidavits, as well as publicly available information, we determine that the dumping margin alleged in the Petition is reliable for the purpose of this investigation.

In making a determination as to the relevant aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with section 776(d)(3) of the Act, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party. Based on Commerce's analysis of the dumping margin for the participating respondent Mangal, the 28.34 percent petition rate is within the range of dumping margins observed for Mangal, and, thus, it is relevant for the purpose of assigning an AFA rate.¹⁰³

Accordingly, Commerce determines that the highest dumping margin alleged in the Petition has probative value, and Commerce has corroborated the AFA rate of 28.34 percent to the extent

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See Antidumping Duty Investigation Initiation Checklist for Carbon and Alloy Steel Threaded Rod from India, dated March 13, 2019 (Initiation Checklist).

¹⁰³ See Mangal's Final Analysis Memorandum at Attachment 2.

practicable, within the meaning of section 776(c) of the Act, by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation (and there is no information on the record indicating otherwise); and (2) is relevant to the uncooperative mandatory respondent.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weight-averaged dumping margins in the *Federal Register*.

☒

Agree

☐

Disagree

2/7/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance