



A-533-891

Investigation

POI: 10/1/2018-9/30/2019

Public Document

E&C/OVII: CM

May 20, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Forged Steel
Fittings from India

I. SUMMARY

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

II. BACKGROUND

On October 23, 2019, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions covering imports of FSF from India, filed in proper form on behalf of the Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners).¹ On October 28, 2019, Commerce issued supplemental questionnaires to the petitioners regarding the Petition, to which they timely responded on October 30, 2019.² At Commerce’s request, the petitioners submitted certain revisions to the scope on November 4, 2019.³ Also on November 4, 2019, Commerce spoke with counsel to the petitioners by phone

¹ See Petitioners’ Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from India and the Republic of Korea,” dated October 23, 2019 (Petition).

² See Commerce’s Letter, “Questions Concerning Volume III of the Petition,” dated October 28, 2019; *see also* Petitioners’ Letter, “Forged Steel Fittings from India: Response to Antidumping Questionnaire,” dated October 30, 2019; and Petitioners’ Letter, “Forged Steel Fittings from India and the Republic of Korea: Response to General Issues Questionnaire,” dated October 30, 2019.

³ See Petitioners’ Letter, “Forged Steel Fittings from India and the Republic of Korea: Response on Revisions to the Scope,” dated November 4, 2019.



and requested additional information concerning certain issues pertaining to their Petition calculations.⁴ The petitioners submitted a timely supplemental questionnaire response related to their calculations on November 6, 2019.⁵

Commerce initiated this investigation on November 12, 2019.⁶ In the *Initiation Notice*, we stated that, if necessary, we would select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of FSF from India under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁷ Accordingly, on November 6, 2019, Commerce released the CBP entry data to all interested parties under an administrative protective order (APO), and invited comments regarding the data and respondent selection.⁸ Between November 25 and November 26, 2019, Shakti Forge Industries Pvt. Ltd. (Shakti), an Indian producer and exporter of subject merchandise, and the petitioners submitted comments concerning respondent selection.⁹ Both the petitioners and Shakti argued that the HTSUS categories covered in the CBP data were overly broad, and thus, captured exporters who may not be the largest exporters of subject merchandise and, as such, requested Commerce issue quantity and value (Q&V) questionnaires to determine mandatory respondents.¹⁰ In response to these comments, Commerce issued Q&V questionnaires to the ten largest producers/exporters identified in the CBP data on December 3, 2019.¹¹

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of FSF to be reported in response to Commerce's AD questionnaire.¹² We received timely comments and rebuttal comments regarding the physical characteristics of merchandise under consideration.¹³ Further, we received scope comments and rebuttal scope comments from certain interested parties, including the petitioners, between December 9, 2019, and May 13, 2020.¹⁴ As explained

⁴ See Memorandum, "Phone Call with Counsel to the Petitioners," dated November 4, 2019.

⁵ See Petitioners' Letter, "Forged Steel Fittings from India and the Republic of Korea: Response to General Issues Questionnaire," dated November 6, 2019.

⁶ See *Forged Steel Fittings from India and Republic of Korea: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 64265 (November 21, 2019) (*Initiation Notice*).

⁷ See *Initiation Notice*, 84 FR at 64268.

⁸ See Memorandum, "Forged Steel Fittings from India: Release of U.S. Customs and Border Protection Entry Data," dated November 6, 2019.

⁹ See Shakti's Letter, "Forged Steel Fittings from India: Comments on CBP Data," dated November 25, 2019; see also Petitioners' Letter, "Forged Steel Fittings from India: Respondent Selection Comments," dated November 26, 2019.

¹⁰ *Id.*

¹¹ See Memorandum, "Antidumping Duty Investigation of Forged Steel Fittings from India: Issuance of Quantity and Value Questionnaire to Exporters/Producers," dated December 3, 2019 (Q&V Questionnaire).

¹² See *Initiation Notice*, 84 FR at 64266.

¹³ See Petitioners' Letter, "Forged Steel Fittings from India: Comments on Product Characteristics," dated December 2, 2019; see also Samyoung Fitting Co., Ltd. (Samyoung)'s Letter, "Forged Steel Fittings from India and the Republic of Korea and India [sic], Case Nos. A-533-891 and A-580-904: Comments on Product Characteristics and Model Matching Hierarchy," dated December 2, 2019; and Samyoung's Letter, "Forged Steel Fittings from the Republic of Korea and India, Case Nos. A-533-891 and A-580-904: Rebuttal Comments on Product Characteristics and Model Matching Hierarchy," dated December 12, 2019.

¹⁴ See Memorandum, "Forged Steel Fittings from India and Korea: Preliminary Scope Decision Memorandum," dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

below, we addressed the scope comments placed on the record of this investigation by interested parties in the Preliminary Scope Decision Memorandum.¹⁵

On December 12, 2019, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of FSF from India.¹⁶

As noted above, we issued Q&V Questionnaires to the ten largest producers/exporters identified in the CBP data for respondent selection purposes.¹⁷ We also published the Q&V Questionnaire electronically on ACCESS.¹⁸ On December 13, 2019, we confirmed that each of the Q&V Questionnaires were successfully delivered to the following ten companies: Disha Auto Components Pvt. Ltd, Dynamic Flow Products, Kirtanlal Steel Pvt Ltd, Metal Forgings Pvt Ltd, Nikoo Forge Pvt. Ltd. (Nikoo Forge), Patton International Limited, Sage Metals Limited, Shakti, Sigma Electric Manufacturing Corporation Pvt. Ltd. (Sigma), and Technotrak Engineers.¹⁹

We received timely responses to the Q&V Questionnaire from the following four companies: Nikoo Forge, Shakti, Pan International (Pan) and Sigma.²⁰ We did not receive responses to the Q&V Questionnaire from the following seven companies: Disha Auto Components Pvt. Ltd, Dynamic Flow Products, Kirtanlal Steel Pvt Ltd, Metal Forgings Pvt Ltd, Patton International Limited, Sage Metals Limited, and Technotrak Engineers.²¹

On January 2, 2020, Commerce limited the number of mandatory respondents selected for individual examination to the two largest producers or exporters of subject merchandise by volume based on the Q&V Questionnaire responses, Nikoo Forge and Shakti.²² The same day, we issued Nikoo Forge and Shakti the Initial AD Questionnaire.²³ On January 13, 2020, Nikoo Forge withdrew from participation in this investigation.²⁴ On January 22, 2020, Commerce selected Pan as an additional mandatory respondent in this investigation, and issued the Initial

¹⁵ *Id.*

¹⁶ See *Forged Steel Fittings from India and Korea; Preliminary Determinations*, 84 FR 67959 (December 12, 2019).

¹⁷ See Memorandum, “Antidumping Duty Investigation of Forged Steel Fittings from India: Issuance of Quantity and Value Questionnaire to Exporters/Producers,” dated December 3, 2019.

¹⁸ *Id.*

¹⁹ See Commerce’s Letter, “Confirmed Delivery of Quantity and Value Questionnaires,” dated December 13, 2019.

²⁰ See Nikoo Forge’s Letter, “Forged Steel Fittings from India: Nikoo Forge Pvt. Ltd. Response to Quantity & Value Questionnaire,” dated December 12, 2019; see also Shakti’s Letter, “Forged Steel Fittings from India: Shakti Forge Industries Pvt. Ltd. Response to Quantity and Value Questionnaire,” dated December 13, 2019; Pan’s Letter, “Forged Steel Fittings from India: Pan’s Response to Quantity & Value Questionnaire,” dated December 13, 2019; and Sigma’s Letter, “Forged Steel Fittings from India: Quantity and Value Questionnaire,” dated December 20, 2019. Because Sigma provided a timely response to the Q&V Questionnaire, but was not selected as a mandatory respondent, it will receive the applicable all-others rate.

²¹ See *supra* n.19, we received confirmation that the Q&V Questionnaires were successfully delivered to each company.

²² See Memorandum, “Antidumping Duty Investigation of Forged Steel Fittings from India: Selection of Respondents for Individual Examination,” dated January 2, 2020.

²³ See Commerce’s Letters, “Initial AD Questionnaire,” dated January 2, 2020 (Initial AD Questionnaire).

²⁴ See Nikoo Forge’s Letter, “Forged Steel Fittings from India: Notice of Withdrawal from Investigation,” dated January 13, 2020.

AD Questionnaire to Pan on the same day.²⁵ On January 28, 2020, Pan withdrew from participation in this investigation.²⁶

On February 5, 2020, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.²⁷ Based on this request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on February 28, 2020, Commerce published a postponement of the preliminary determination until no later than May 20, 2020, in the *Federal Register*.²⁸

On February 5, 2020, we received a timely response to section A of the Initial AD Questionnaire (*i.e.*, the section relating to general information) from Shakti.²⁹ Between February 24, 2020, and March 2, 2020, Shakti timely filed its responses to sections B through D of the Initial AD Questionnaire (*i.e.*, sections relating to comparison market sales, U.S. sales, and cost of production (COP)/constructed value (CV)), after receiving over two weeks of additional time.³⁰ Between March and May 2020, we issued multiple supplemental questionnaires to Shakti and received timely responses to these questionnaires.³¹

In the *Initiation Notice*, we set a deadline for the submission of a particular market situation (PMS) allegation and supporting factual information as, “no later than 20 days after submission of a respondent’s initial section D questionnaire response.” The petitioners subsequently requested two extensions to the PMS allegation deadline, totaling ten days, which we granted.³² On April 1, 2020, the petitioners submitted an allegation and supporting factual information that a PMS existed in India during the period of investigation (POI).³³ We accepted the PMS allegation as timely on April 3, 2020, and invited interested parties to submit information to rebut, clarify, or correct information concerning the allegation.³⁴ In April 2020, Shakti and the

²⁵ See Memorandum, “Antidumping Duty Investigation of Forged Steel Fittings from India: Selection of Additional Respondent for Individual Examination,” dated January 22, 2020; *see also* Commerce’s Letter, “Initial AD Questionnaire,” dated January 22, 2020.

²⁶ See Pan’s Letter, “Forged Steel Fittings from India: Notice of Withdrawal from Investigation,” dated January 28, 2020.

²⁷ See Petitioners’ Letter, “Forged Steel Fittings from India: Request for Extension of Preliminary Determination,” dated February 5, 2020.

²⁸ See *Forged Steel Fittings from India and the Republic of Korea: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 11965 (February 28, 2020).

²⁹ See Shakti’s February 5, 2020 Section A Questionnaire Response (Shakti’s February 5, 2020 AQR).

³⁰ See Shakti’s February 24, 2020 Sections B and C Questionnaire Response (Shakti’s February 24, 2020 BCQR); *see also* Shakti’s Section D Questionnaire Response (Shakti’s March 2, 2020 DQR).

³¹ See Shakti’s March 27, 2020 First Supplemental Questionnaire Response (Shakti’s March 27, 2020 SQR); *see also* Shakti’s April 27, 2020 Second Supplemental Questionnaire Response (Shakti’s April 27, 2020 SQR); Shakti’s May 4, 2020 Third Supplemental Questionnaire Response; and Shakti’s May 4, 2020 Fourth Supplemental Questionnaire Response (Shakti’s May 4, 2020 SQR).

³² See Commerce’s Letter, “Second Extension to Submit Particular Market Situation Allegation,” dated March 26, 2020.

³³ See Petitioners’ Letters, “Forged Steel Fittings from India: Particular Market Situation Allegation – Qualitative Submission,” and “Forged Steel Fittings from India: Particular Market Situation Allegation – Quantitative Submission,” dated April 1, 2020 (collectively, Petitioners’ PMS Allegation).

³⁴ See Memorandum, “Antidumping Duty Investigation of Forged Steel Fittings from India: Acceptance of the Particular Market Situation Allegation and Deadline for Comments,” dated April 3, 2020; *see also* Memorandum,

petitioners submitted rebuttal factual information regarding the Petitioners' PMS allegation.³⁵ On April 29, 2020, we issued the petitioners a supplemental questionnaire regarding the Petitioners' PMS allegation, requesting that they revise their regression analysis to conform to Commerce's practice.³⁶ The petitioners timely submitted the new regression on May 6, 2020, along with a supplementary regression containing a smaller subset of the requested data.³⁷

Between May 7, and May 12, 2020, we received pre-preliminary comments from the petitioners and rebuttal comments from the petitioners and Shakti.³⁸ The petitioners and Shakti also requested that Commerce postpone the final determination in this investigation for a period of 135 days from the date of publication of the preliminary determination.³⁹

We are conducting this investigation in accordance with section 773(b) of the Act.

III. PERIOD OF INVESTIGATION

The POI is October 1, 2018 through September 30, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was October 2019.⁴⁰

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,⁴¹ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁴² Certain interested parties commented on the scope of the FSF investigations, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.⁴³

"Antidumping Duty Investigation of Forged Steel Fittings from India: Extension of Deadline to Comment on Particular Market Situation Allegation," dated April 9, 2020.

³⁵ See Shakti's Letter, "Antidumping Duty Investigation of Forged Steel Fittings from India: Initial Comments in Response to Petitioners' Particular Market Situation Allegation," dated April 20, 2020 (Shakti's PMS Rebuttal Comments); *see also* Petitioners' Letter, "Forged Steel Fittings from India: Response to Particular Market Situation Comments," dated April 27, 2020 (Petitioners' PMS Rebuttal Comments).

³⁶ See Commerce's Letter, "PMS Allegation Supplemental Questionnaire," dated April 29, 2020.

³⁷ See Petitioners' Letter, "Forged Steel Fittings from India: Response to PMS Allegation Supplemental Questionnaire," dated May 6, 2020.

³⁸ See Petitioners' Letter, "Forged Steel Fittings from India: Pre-Preliminary Determination Comments, SFIPL," dated May 7, 2020; *see also* Shakti's Letter, "Rebuttal Comments on Petitioner' {sic} Pre-Preliminary Determination Comments: Forged Steel Fittings from India," dated May 11, 2020; and Petitioners' Letter, "Forged Steel Fittings from India: Sur-Reply, Pre-Preliminary Determination Comments, SFIPL," dated May 12, 2020.

³⁹ See Petitioners' Letter, "Forged Steel Fittings from India: Request for Extension of Final Determination," dated May 11, 2020; *see also* Shakti's Letter, "Forged Steel Fittings from India: Request to Postpone the Final Determination," dated May 12, 2020.

⁴⁰ See 19 CFR 351.204(b)(1); *see also* *Initiation Notice*, 84 FR at 64265.

⁴¹ See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁴² See *Initiation Notice*, 84 FR at 64266.

⁴³ See Preliminary Scope Decision Memorandum for further discussion.

We have evaluated the scope comments filed by the interested parties and, as a result, we are preliminarily modifying the scope language as it appeared in the *Initiation Notice*. In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties. We will issue a final scope decision on the records of the FSF investigations after considering the comments submitted in the scope case and rebuttal briefs.

V. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, *see* the accompanying *Federal Register* Notice at Appendix I.

VI. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On May 11, 2020, the petitioners requested, pursuant to 19 CFR 351.210(b)(2)(i) and (e)(1), that Commerce postpone the final determination in the event of a negative preliminary determination.⁴⁴ In addition, on May 12, 2020, Shakti requested, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination, and that provisional measures be extended to a period not to exceed six months.⁴⁵ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

VII. AFFILIATION AND COLLAPSING

A. Shakti

As set forth below, we preliminarily determine that Shakti and Shakti Forge are affiliated, pursuant to section 771(33) of the Act. Furthermore, based on the evidence provided in the consolidated questionnaire responses and pursuant to 19 CFR 351.401(f), we preliminarily determine that Shakti and Shakti Forge both produce subject merchandise, and based on additional factors, should be collapsed and treated as a single entity in this investigation.

1. Legal Framework

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

⁴⁴ See Petitioners’ Letter, “Forged Steel Fittings from India: Request for Extension of Final Determination,” dated May 11, 2020.

⁴⁵ See Shakti’s Letter, “Forged Steel Fittings from India: Request to Postpone the Final Determination,” dated May 12, 2020.

- A. Members of a family, including brothers and sisters (whether by whole or by 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; or,
- G. Any person who controls any other person and such person.

“Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”⁴⁶ The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm ‘operationally in a position to exercise restraint or direction’ over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.⁴⁷

Section 351.102(b)(3) of Commerce’s regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, Commerce considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs Commerce not to find that control exists on the basis of 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.” The regulation also directs Commerce to consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Section 351.401(f) of Commerce’s regulations, which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

(1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing

⁴⁶ See 19 CFR 351.102(b).

⁴⁷ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 838.

priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.

(2) Significant potential for manipulation, in identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

- (i) The level of common ownership;
- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.⁴⁸

2. Analysis

Shakti identified a number of affiliated companies in its questionnaire responses, but no subsidiaries or holding companies.⁴⁹ Of these companies, Shakti identifies Shakti Forge as an affiliate that produces subject and non-subject merchandise on a tolling basis, as well as a number of other affiliates that are not involved in the development, manufacture, or sale of the subject merchandise.⁵⁰ Merchandise is initially hot-forged by Shakti Forge before it is sent to Shakti, which performs additional machining and finishing activities (*e.g.*, drilling, turning, threading, inspection, marking, bore drilling, cleaning, and packing) for both subject and non-subject merchandise.⁵¹ In a supplemental questionnaire response, Shakti further explains that Shakti Forge did not sell any merchandise that it produced during the POI, and instead acted only as a tolling unit that performed forging and heat-treating activities for Shakti.⁵²

Both Shakti and Shakti Forge are wholly owned by members of the Pipaliya and Dhandha families.⁵³ Information submitted to the record further indicates that two of Shakti's directors also serve as partners in the management of Shakti Forge, which qualifies both directors as affiliated parties under section 771(33)(C) of the Act.⁵⁴ Furthermore, Commerce finds that Shakti and Shakti Forge are to be considered affiliated parties under section 771(33)(F) of the Act as they are under the common control of the aforementioned affiliated directors. For additional information regarding the relationship between Shakti and Shakti Forge, *see* the Preliminary Analysis Memorandum.⁵⁵

⁴⁸ See 19 CFR 351.401(f).

⁴⁹ See Shakti's February 5, 2020 AQR at A-8, A-9 and Exhibit A-3.

⁵⁰ *Id.* at A-7, A-9, A-12, and Exhibits A-3 and A-4. We note that while Shakti Forge's name was initially bracketed, it was subsequently released as public information.

⁵¹ See Shakti's February 5, 2020 AQR at A-6, A-7 and A-9.

⁵² See Shakti's March 27, 2020 SQR at 1.

⁵³ See Shakti's February 5, 2020 AQR at A-7, A-11 and Exhibits A-2 and A-4.

⁵⁴ *Id.* at Exhibit A-3.

⁵⁵ See Shakti Preliminary Analysis Memorandum, dated concurrently with this memorandum

As discussed above, the affiliation prerequisite for an examination of the record to determine whether the two affiliated entities determined above meet the standard for being collapsed into a single entity has been satisfied.⁵⁶ After the affiliation prerequisite has been satisfied, Commerce next determines whether affiliated companies have production facilities for similar or identical merchandise that would not require substantial retooling to restructure manufacturing priorities, as described under 19 CFR 351.401(f)(1). As described in Shakti's questionnaire responses, Shakti Forge produces rough forged steel fittings for Shakti that are not technically considered "finished" merchandise, but nevertheless qualify as subject merchandise under the scope of this investigation.⁵⁷ Shakti is a producer of subject merchandise that has the ability to process rough forged steel fittings into finished fittings that also qualify as subject merchandise.⁵⁸ Based on this description, both Shakti and Shakti Forge have production facilities capable of manufacturing subject merchandise, regardless of its status as a "finished" or "unfinished" product, in accordance with 19 CFR 351.401(f)(1).

Finally, Commerce must examine whether a "significant potential for manipulation" exists between two companies that may be considered a single entity, in accordance with 19 CFR 351.401(f)(2). Shakti and Shakti Forge meet this standard based on Commerce's evaluation of record evidence. Shakti and Shakti Forge describe themselves as "partnership firms" whose operations are "totally intertwined," and whose day-to-day activities (*e.g.*, production, finance, and sales) are managed by the same personnel.⁵⁹ Thus, there is a significant potential for manipulation of price or production, within the meaning of 19 CFR 351.401(f)(2), among Shakti and Shakti Forge. Accordingly, Commerce preliminarily determines that Shakti and Shakti Forge should be treated as a single entity, pursuant to 19 CFR 351.401(f).

VIII. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCES

1. Statutory Framework

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the AD statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity

⁵⁶ Shakti's ownership information includes Business Proprietary Information. For a full discussion, *see* Shakti Preliminary Analysis Memorandum.

⁵⁷ *See* Shakti's March 27, 2020 SQR at 1.

⁵⁸ *Id.* at 2.

⁵⁹ *See* Shakti's February 5, 2020 AQR at A-9 and A-12.

to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses from that party, as appropriate. Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.⁶⁰ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁶¹ 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 investigation, a previous administrative review, or other information placed on the record.

When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."⁶² In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.

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. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁶³ Further, and under the *Trade Preferences Extension Act of 2015 (TPEA)*, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁶⁴

Finally, under the new section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The *TPEA* also makes clear that 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.

2. Use of Facts Available

⁶⁰ See 19 CFR 351.308(a).

⁶¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); see also *Preamble*, 62 FR at 27340; and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003) (*Nippon Steel*).

⁶² See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998) (*Semiconductors from Taiwan*).

⁶³ See SAA at 870.

⁶⁴ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (*TPEA*).

Nikoo Forge and Pan

Nikoo Forge and Pan were selected for examination as mandatory respondents in this investigation, but withdrew from participation prior to responding to Commerce's initial questionnaire.⁶⁵ By refusing to respond to Commerce's Initial AD Questionnaire, Nikoo Forge and Pan withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Consequently, necessary information required to calculate a dumping margin for Nikoo Forge and Pan is not available on the record. Therefore, we preliminarily determine that the use of facts available is warranted in determining the dumping margin for these companies, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.

Non-Responsive Companies

As noted above, seven companies did not respond to the Q&V Questionnaire, despite confirmation that this questionnaire was successfully delivered to them.⁶⁶ By refusing to respond to the Q&V Questionnaire, these companies withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested Q&V information. Moreover, necessary Q&V information required to determine the largest producers/exporters of subject merchandise, pursuant to section 777A(c)(2)(B) of the Act, is not available on the record because of these non-responsive companies. Accordingly, we preliminarily determine that the use of facts available is warranted in determining the dumping margin for these companies, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.

3. Use of Adverse Inferences

Section 776(b) of the Act provides that Commerce, in selecting from among the facts otherwise available, may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Nikoo Forge and Pan

Given that Nikoo Forge and Pan failed to provide a response to the Initial AD Questionnaire and withdrew from participation in this investigation, it is reasonable to conclude that these companies have not acted to the best of their abilities to comply with Commerce's request for information. While Nikoo Forge and Pan both cited difficulties in responding to the Initial AD Questionnaire due to the amount of resources that participation would require, neither company

⁶⁵ See Nikoo Forge's Letter, "Forged Steel Fittings from India: Notice of Withdrawal from Investigation," dated January 13, 2020; see also Pan's Letter, "Forged Steel Fittings from India: Notice of Withdrawal from Investigation," dated January 28, 2020.

⁶⁶ The seven non-responsive companies are: Disha Auto Components Pvt. Ltd; Dynamic Flow Products; Kirtanlal Steel Pvt Ltd; Metal Forgings Pvt Ltd; Patton International Limited; Sage Metals Limited; and Technotrak Engineers (collectively, Non-Responsive Companies).

requested to submit the information in an alternate form.⁶⁷ Therefore, Commerce preliminarily finds that Nikoo Forge and Pan failed to cooperate, and thus, an adverse inference is warranted in selecting from among the facts otherwise available in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁶⁸

Non-Responsive Companies

In the Q&V Questionnaire, we stated that, “{i}f you fail to respond or fail to provide the requested quantity and value information, please be aware that Commerce may find that you failed to cooperate by not acting to the best of your ability to comply with the request for information, and may use an inference that is adverse to your interests in selecting from the facts otherwise available, in accordance with section 776(b) of the Act.”⁶⁹ The seven companies that refused to respond to Commerce’s request for information in the Q&V Questionnaire did not indicate that they were having difficulty providing the requested information, nor did they request to submit the information in an alternate form. Therefore, it is reasonable to conclude that these Non-Responsive Companies were not cooperative. Accordingly, we preliminarily find that an adverse inference is warranted in selecting from among the facts otherwise available, with respect to these Non-Responsive Companies, in accordance with section 776(b) of the Act and 19 CFR 351.308(a).⁷⁰

4. Selection and Corroboration of the AFA Rate

As noted above, relying on an adverse inference in selecting from the facts available may include reliance on information derived from the Petition, the final determination in the investigation, any previous review, or any other information placed on the record. Section 776(c) of the Act provides that when Commerce relies on secondary information (such as the Petition) in making an adverse inference, rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject

⁶⁷ See Nikoo Forge’s Letter, “Forged Steel Fittings from India: Notice of Withdrawal from Investigation,” dated January 13, 2020; see also Pan’s Letter, “Forged Steel Fittings from India: Notice of Withdrawal from Investigation,” dated January 28, 2020.

⁶⁸ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014) (*NOES LTFV Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014) (*NOES LTFV Final*); see also *Notice of Final Determinations of Sales at less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (*Stainless Steel Japan*) (where Commerce applied total AFA when the respondent failed to respond to the AD questionnaire).

⁶⁹ See Q&V Questionnaire.

⁷⁰ See, e.g., *NOES LTFV Prelim* PDM at 7-11, unchanged in *NOES LTFV Final*; see also *Stainless Steel Japan*, 65 FR at 42986 (where Commerce applied total AFA when the respondent failed to respond to the AD questionnaire).

merchandise.⁷¹ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information used has probative value.⁷² To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an “alleged commercial reality” of the party.⁷³ Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. If Commerce is unable to corroborate the highest petition margin using individual-transaction specific margins; Commerce may use the component approach.⁷⁴

In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. In an investigation, Commerce’s practice with respect to assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the Petition; or (2) the highest calculated dumping margin of any respondent in the investigation. In this investigation, the highest dumping margin alleged in the Petition is 293.40 percent.⁷⁵ In order to determine the probative value of the dumping margin alleged in the Petition in assigning an AFA rate, we examined the information on the record. When we compared the highest dumping margin alleged in the Petition to the transaction-specific dumping margin for the only cooperating mandatory respondent, Shakti, we found the Petition rate of 293.40 percent to be significantly higher than Shakti’s highest calculated transaction-specific dumping margin.

Because we were unable to corroborate the highest Petition margin with individual transaction-specific margins from Shakti, we next applied a component approach and compared the normal value (NV) and net U.S. price underlying the highest dumping margin alleged in the Petition to the range of NVs and net U.S. prices calculated for Shakti. We found that we were able to corroborate the highest Petition margin of 293.40 percent through this component approach. Specifically, Commerce finds that NVs and net U.S. prices calculated for Shakti are within the range of the NVs and net U.S. prices underlying the highest margin alleged in the Petition.⁷⁶ Accordingly, because we corroborated the Petition rate to the extent practicable within the

⁷¹ See SAA at 870.

⁷² *Id.*

⁷³ See section 776(d)(3) of the Act; see also, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁷⁴ See, e.g., *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

⁷⁵ See *Initiation Notice*; see also Antidumping Duty Investigation Initiation Checklist: Forged Steel Fittings from India (India AD Initiation Checklist) at 11; and Second India AD Supplement at Exhibit SQIII-5.

⁷⁶ See Memorandum, “Corroboration of the Adverse Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of Forged Steel Fittings from India,” dated concurrently with this memorandum.

meaning of section 776(c) of the Act, we preliminarily find the 293.40 percent rate to be both reliable and relevant and, therefore, that it has probative value. Thus, we preliminarily assigned this AFA rate to Nikoo Forge, Pan, and the Non-Responsive Companies.

IX. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

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

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 constructed export prices (CEPs)), (*i.e.*, the average-to-average (A-to-A) method), unless Commerce determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with EPs (or CEPs) of individual transactions (*i.e.*, the average-to-transaction (A-to-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a "differential pricing" (DP) analysis for determining whether application of the A-to-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁷⁷ Commerce finds that the DP 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 A-to-A method in calculating a respondent's weighted-average dumping margin.

The DP 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 DP analysis evaluates whether such differences can be taken into account when using the A-to-A 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

⁷⁷ 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).

defined using the reported destination codes (*i.e.*, states) 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 (CONNUM) 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 DP 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 A-to-T method to all sales as an alternative to the A-to-A 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 A-to-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen’s *d* test under the “mixed method.” 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 A-to-A 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 DP analysis, Commerce examines whether using only the A-to-A 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 A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-

to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative 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 margin between the A-to-A 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 A-to-A 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 DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁷⁸

B. Results of the DP Analysis

Based on the results of the DP analysis, Commerce preliminarily finds that 83.16 percent of the value of Shakti's U.S. sales pass the Cohen's *d* test, and, therefore, confirms the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Further, Commerce preliminarily determines that the A-to-A method appropriately accounts for such differences because there is not a meaningful difference in the weighted-average dumping margins calculated for Shakti when calculated using the A-to-A method and the A-to-T method applied to all U.S. Sales. Accordingly, Commerce has preliminarily determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Shakti.⁷⁹

X. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁸⁰ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁸¹

⁷⁸ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. July 12, 2017) recently affirmed much of our differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁷⁹ See Shakti Preliminary Analysis Memorandum.

⁸⁰ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sales' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

⁸¹ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum (IDM) at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

For home market sales, Shakti reported the tax invoice date as the date of sale, as the material terms of sale are not set until that date.⁸² For U.S. sales, Shakti reported the commercial invoice date as the date of sale, as material terms of sale are not set until that date.⁸³ We have preliminarily determined that Shakti's reported dates of sale are the most appropriate selection for the date of sale for sales in both the home and U.S. markets.

XI. PRODUCT COMPARISONS

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

In making product comparisons, we matched subject merchandise and foreign like products based on the physical characteristics reported by Shakti in the following order of importance: finish, surface, specification, pressure rating, fitting type, nominal pipe sizes and end finishes. For Shakti's sales of FSF in the United States, the reported CONNUM identifies the characteristics of FSF, as exported by Shakti. We note that due to discrepancies in Shakti's reporting of product codes and the "finish" variable, we are excluding certain observations for this preliminary determination. See the Preliminary Analysis Memorandum for a full discussion of the issue.⁸⁴ We intend to address the issue further in another supplemental questionnaire.

XII. EXPORT PRICE

A. Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." In accordance with section 772(a) of the Act, we calculated EP for all of Shakti's U.S. sales because the subject merchandise was first sold directly to the first unaffiliated U.S. purchaser prior to importation into the United States, and the CEP methodology was not otherwise warranted based on the facts of the record.

We calculated EP for Shakti based on ex-works or CIF prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses (*i.e.*, inland freight from the factory to the port of exportation, container lifting charges, domestic brokerage

⁸² See Shakti's February 24, 2020 BQR at B-21 and B-22.

⁸³ See Shakti's February 27, 2020 BCQR, at C-20 and C-21.

⁸⁴ See Shakti Preliminary Analysis Memorandum.

and handling, international freight, marine insurance, credit, and bank charges), other direct selling expenses, indirect selling expenses, and packing expenses in accordance with section 772(c)(2)(A) of the Act.⁸⁵

XIII. NORMAL VALUE

Section 773(a)(1)(B)(i) of the Act defines NV as “the price at which foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as {EP} or {CEP}.” Pursuant to section 771(15) of the Act, Commerce shall find “sales and transactions” to be “outside the ordinary course of trade” in situations in which it “determines that the particular market situation prevents a proper comparison with the export price or constructed export price.”

A. Particular Market Situation

1. Background

As noted above, the petitioners alleged that a cost-based PMS exists with respect to steel bar, a major input used to produce FSF, and that Commerce should increase Shakti’s steel bar purchase costs by at least 10.87 percent to account for the PMS created by the distorted price of steel bar in India.⁸⁶ Between April and May 2020, Shakti and the petitioners submitted factual information, comments, and rebuttal comments concerning the PMS allegation.⁸⁷

2. Interested Parties’ Arguments

Petitioners’ Qualitative Arguments:

The petitioners assert that a PMS existed in India such that the prices of steel bar in India were distorted during the POI due to the collective impact of the following three factors: (1) the Government of India (GOI)’s ownership and control over iron ore and steel bar producers; (2) GOI involvement in the markets for coal and electricity; and (3) global steel overcapacity and resulting distortions to steel bar input costs in India that are not offset by GOI remedies.⁸⁸ Specifically:

- By controlling Indian producers of iron ore, an essential raw material for the iron and steel industries, and limiting exports, the GOI has distorted the allocation of resources and prices in the iron ore market. These distortions travel down the value chain, and, as the iron and

⁸⁵ *Id.*

⁸⁶ See Petitioners’ PMS Allegation; see also Petitioners’ Letter, “Forged Steel Fittings from India: Response to PMS Allegation Supplemental Questionnaire,” dated May 6, 2020.

⁸⁷ *Id.*; see also Shakti’s PMS Rebuttal Comments; see also Petitioners’ PMS Rebuttal Comments

⁸⁸ See Petitioners’ PMS Allegation at 4.

steel industries are the largest consumers of iron ore in India, they are also the largest beneficiaries of distorted iron ore prices.⁸⁹

- The GOI exerts administrative control over India's second largest steel producer, Steel Authority of India Ltd. (SAIL), which also produces steel bar. Such control distorts the cost of production of Indian FSF producers such as Shakti.⁹⁰
- In *CORE from Korea*, Commerce determined that government control over electricity prices contributed to the existence of a PMS.⁹¹ The GOI provides market-distorting assistance to steel bar producers through underpriced electricity facilitated by government control of electricity generation and transmission, and underpriced coal achieved through a near monopoly of coal production and pricing by state-owned Coal India Limited (CIL), which reduces Shakti's energy acquisition costs and thus lowers the COP of FSF.⁹²
- Commerce has recognized the impact of overcapacity on the global steel market with regard to hot-rolled coil (HRC) inputs. The crisis, however, extends equally to products like steel bar, that is also priced at artificially low levels due to excess capacity.⁹³
- Driven primarily by domestic steel overcapacity in China, the global steel market continued to suffer from excess capacity during the POI, resulting in depressed prices and profitability.
- India is vulnerable to China's steel overcapacity because it is one of the world's largest steel bar importers and China accounted for 55 percent of its total steel bar imports in 2018.⁹⁴
- Between 2011 and 2019, Chinese exports of steel bar to India increased by 61 percent, while the average unit value (AUV) of Chinese steel bar exports to India declined by 29.5 percent and was lower than the AUV of the other top ten import sources.⁹⁵ The surge of imports has resulted in pressure on prices and profitability in the Indian steel industry.⁹⁶
- The GOI itself recognizes the distortive effects of steel bar exports to India through the imposition of AD orders on steel wire rod and bar from China.⁹⁷ The duties on China range from 50 to 100 percent; however, the GOI does not collect the full amount of offsetting duties on these imports if they are used to produce goods such as FSF that are subsequently exported.⁹⁸ In fact, Shakti, benefits from the GOI's Duty Drawback program which remits the duties on Chinese imports used in the manufacture of exported goods. As a result, the distorted price of imported steel bar is not remedied.⁹⁹

⁸⁹ *Id.* at 11.

⁹⁰ *Id.* at 12.

⁹¹ *Id.*; see also *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*CORE from Korea*) and accompanying IDM at Comment 2.

⁹² *Id.* at 12-14.

⁹³ *Id.* at 14-19.

⁹⁴ *Id.* at 17.

⁹⁵ *Id.* at 17-18.

⁹⁶ *Id.* at 18-19.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 19.

⁹⁹ *Id.* at 19-20.

Shakti's Qualitative Rebuttal Argument:

Shakti rejects each of the petitioners' arguments, and notes that the PMS allegation framework employed by the petitioners applies to cases with vastly different fact patterns, and has been struck down by the U.S. Court of International Trade (CIT).¹⁰⁰ Shakti also argues that the petitioners' claims are unsubstantiated and do not pertain to the inputs used by Shakti, and as such, Commerce should determine that no PMS existed during the POI. Specifically, Shakti makes the following points:

- The record does not support the petitioners' claim that global steel overcapacity caused particularized price suppression for steel round bar and billets (*i.e.*, the inputs used by Shakti to produce subject merchandise) in the Indian market during the POI.¹⁰¹ As an initial matter, the petitioners' argument relies on data which erroneously defines Shakti's inputs under four HTS codes, only one of which includes the inputs used by Shakti to produce FSF.¹⁰² Because the petitioners failed to provide a particularized analysis of the prices of steel bar, Commerce should find the petitioners' overcapacity argument unsupported, following case precedent, and the CIT's rulings.¹⁰³
- The petitioners' data demonstrates that between 2011 and 2019, Chinese steel bar exports declined by 28 percent globally and by 30 percent to India, and that the AUV of Chinese steel bar exports declined by 29.5 percent during the same period, thus, Indian steel bar prices mirrored global trends.¹⁰⁴ Further, the Chinese export AUVs corresponding to the inputs used by Shakti increased by 5.7 percent from 2011 to 2018.¹⁰⁵ Commerce has previously found claims that steel overcapacity contributed to a PMS unsupported where import AUVs remained consistent or increased during the POR.¹⁰⁶
- In *NEXTEEL I*, the CIT stated that the petitioners must demonstrate that the global steel crisis manifested in a way which was "unique" to the market under investigation. Even if we are to accept the petitioners' claim and erroneous data, the price effects in the Indian market are almost identical to global price trends, such that "costs would be lowered on both sides of the less than fair value equation," as determined in *Husteel*.¹⁰⁷
- The record does not support the petitioners' claim that input producers were subsidized by the GOI because Commerce has never initiated a CVD investigation of steel bar or billet

¹⁰⁰ See Shakti's PMS Rebuttal Comments.

¹⁰¹ *Id.* at 11.

¹⁰² *Id.* at 12.

¹⁰³ *Id.* at 11-12, citing *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020), and accompanying IDM at Comment 1. We note that while the petitioners and Shakti abbreviated this proceeding as "*CWP from India*" the abbreviation, as set forth in the IDM, is "*Pipe and Tube from India*;" and *Carbon and Alloy Steel Threaded Rod From India: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 8818 (*CASTR from India*), and *NEXTEEL Co. v. United States*, 355 F. Supp. 3d 1336, 1350 (CIT) (*NEXTEEL I*).

¹⁰⁴ *Id.* at 12.

¹⁰⁵ *Id.* at 13.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 12, citing *Husteel Co. Ltd., v. United States*, 426 F. Supp.3d 1376, 1391-1392 (CIT 2020).

from India and, thus, has never found that Indian input producers benefit from subsidies.¹⁰⁸ Moreover, there is no evidence that Shakti purchased any allegedly subsidized inputs.¹⁰⁹

- The petitioners do not cite any prior case where generalized claims of government control over certain industries, otherwise unsubstantiated by Commerce in any previous proceeding, have been found to contribute to an affirmative PMS finding.¹¹⁰ The petitioners only cite *CORE from Korea*, which includes a CVD order on producers of the steel-based input used to produce subject merchandise, as support for their argument that government involvement in markets for major inputs can contribute to the existence of a PMS. However, the degree of intervention in the Korean electricity market by the GOK is not comparable to the claimed scale of intervention by the GOI.¹¹¹
- The record does not support the claim that the GOI's imposition of AD and safeguard duties on steel bar imports contributes to a PMS because the GOI did not impose any AD or safeguard duties on the inputs used by Shakti.¹¹² The GOI's AD Order on Wire Rod referenced by the petitioners does not cover imports of *any* inputs used by Shakti.¹¹³ Moreover, all of Shakti's input purchases were from domestic sources, thus, Shakti did not and could not have engaged in non-payment of AD or safeguard duties.¹¹⁴ The evidentiary standard established in *Pipe and Tube from India* and *CASTR from India* requires that the trade remedy action by the GOI encompass all inputs potentially used in the production of FSF, and that "record evidence show that these measures were intended to combat prices of unfairly traded {steel-based inputs} imported into the Indian market."¹¹⁵
- In concluding that the Indian steel market was flooded with imports of unfairly traded inputs in *Pipe and Tube from India*, Commerce established that India's import volume of the input increased during the POR relative to the data window provided by the petitioner, and that it had previously found subsidization of producers of the input from the three largest import sources to India.¹¹⁶ The petitioners claim that Chinese exports of steel bar to India increased by 61 percent from 2011 to 2019; however, the petitioners' data includes HTS codes that do not correspond to the inputs used by Shakti.¹¹⁷ The steel bar and billet exports from China under the HTS codes used by Shakti declined by 31.94 percent during the POI relative to the data window provided by the petitioners, thus, there is insufficient evidence that the Indian market was flooded with unfairly traded steel bar imports during the POI.¹¹⁸ Furthermore, Commerce has not previously found subsidization of steel bar or billet producers from the three largest import sources to India (China, Korea, Japan), and no CVD order for steel bar or billet exists for these countries.¹¹⁹

¹⁰⁸ *Id.* at 14-15.

¹⁰⁹ *Id.* at 14.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 15.

¹¹² *Id.* at 16.

¹¹³ *Id.* at 21.

¹¹⁴ *Id.* at 20.

¹¹⁵ *Id.* at 17-18, citing *Pipe and Tube from India*, and accompanying IDM at Comment 1, and *CASTR from India* and accompanying PMS Decision Memorandum, "Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India: Decision on Particular Market Situation Allegation," dated January 9, 2020 at 7.

¹¹⁶ *Id.* at 18.

¹¹⁷ *Id.* at 19.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Petitioners' Qualitative Rebuttal Arguments:

In addition to reiterating its original arguments, the petitioners also state the following:¹²⁰

- Commerce has the full authority to adjust the COP to account for the PMS. Further, the CIT cases cited by Shakti are still subject to appeal and do not dictate the outcome of Commerce's determinations.¹²¹
- The statute does not require the record to demonstrate that global overcapacity resulted in "particularized" input price suppression in India, and Commerce has confirmed the lasting effects of the global steel overcapacity crisis and how the crisis manifests itself differently from country to country which is evidenced by the regression analysis.¹²²
- Regarding Shakti's argument that the HTS codes it uses to produce FSF are not captured in the HTS codes for steel bar reasonably chosen by the petitioners, Shakti likely used imports under HTS 7227 and 7228 to produce subject merchandise.¹²³ Further, Shakti's arguments concerning steel billet prices are irrelevant because the PMS allegation does not include billets.¹²⁴
- Regarding Shakti's argument that the cited GOI Order on Wire Rod does not pertain to the inputs used by Shakti to produce FSF, Shakti likely did use inputs under one of the HTS numbers covered by the Order. Moreover, the fact that the Order did not cover all types of bar that may be used to produce FSF is irrelevant because Commerce has recognized in the past that distortions to one subcategory of input may affect other subcategories of inputs in the marketplace.¹²⁵

1. Analysis

Section 504 of the *TPEA* added the concept of "particular market situation" to the definition of the term "ordinary course of trade," under section 771(15) of the Act, and for purposes of CV under section 773(e) of the Act. Through section 773(e), "particular market situation" also applies to COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the {COP} in the ordinary course of trade, {Commerce} may use another calculation methodology under this subtitle or any other calculation methodology." The statute does not define "particular market situation," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."¹²⁶ Prior to the *TPEA*, in a limited number of cases, Commerce found that particular market situations existed and, as a result, declined to use comparison market prices of the foreign like

¹²⁰ See Petitioners' PMS Rebuttal Comments.

¹²¹ *Id.* at 2-10.

¹²² *Id.* at 10-12.

¹²³ *Id.* at 11-12.

¹²⁴ *Id.* at 11.

¹²⁵ *Id.* at 13-14.

¹²⁶ See SAA at 822.

product as the basis for NV, as provided for in section 773(a)(1) of the Act and 19 CFR 351.404(c)(2).¹²⁷ More recently, Commerce determined that a PMS may exist where a component of the COP is distorted and outside the ordinary course of trade.¹²⁸

The petitioners allege that a PMS existed in India during the POI which distorted the COP of FSF based on the following factors: (1) the GOI's ownership and control over iron ore and steel bar producers; (2) GOI involvement in the markets for coal and electricity; and (3) global steel overcapacity and resulting distortions to steel bar input costs in India that are not offset by GOI remedies.¹²⁹ While section 504 of the *TPEA* does not specify whether to consider these allegations individually or collectively, we considered the three elements of the petitioners' allegation as a whole, based on their cumulative effect on the Indian FSF market through the COP for FSF and their inputs, consistent with our practice.¹³⁰

Based on the totality of the record evidence, Commerce preliminarily finds that the petitioners have not supported their claims that a PMS exists, as explained below, and finds that there is insufficient evidence to warrant a decision that a PMS existed in India during the POI such that the costs of producing FSF do not accurately reflect the COP in the ordinary course of trade. Consequently, we find that it is unnecessary to make an adjustment to the price of steel bar in calculating the costs of FSF.

GOI Ownership and Control Over Iron Ore and Steel Bar Producers

The petitioners argue that the GOI's involvement in the Indian iron ore market distorts the prices of iron ore (*i.e.*, an input into steel), which in turn distorts steel bar (*i.e.*, an input into FSF) prices, and consequently leads to distortion in the COP of FSF. In support for their argument, the petitioners note that India's public iron ore sector accounted for 35.5 percent of the country's total iron ore production in 2017-2018, and India's largest iron ore producer is under administrative control of the GOI.¹³¹ The petitioners also state that the GOI maintains duties of thirty percent on certain iron ore exports in order to guarantee adequate and affordable iron ore

¹²⁷ Examples of investigations or reviews where we have found a PMS include *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998); *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Administrative Order in Part*, 63 FR 37331 (July 10, 1998); and *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007).

¹²⁸ See, e.g., *OCTG 14-15 IDM* at Comment 3; *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017), and accompanying PDM at 18-24, unchanged in *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018), and accompanying IDM at Comments 2 and 3; *CWP Thailand 16-17 IDM* at Comment 2; *Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019), and accompanying IDM at Comment 1.

¹²⁹ See Petitioners' PMS Allegation at 4.

¹³⁰ See, e.g., *Circular Welded Carbon-Quality Steel Pipe from Oman: Issues and Decision Memorandum for the Final Results of Administrative Review; 2017-2018*, 85 FR 22997 (April 24, 2020) (*CWP from Oman*) and accompanying IDM at Comment 1.

¹³¹ See Petitioners' PMS Allegation at 8.

supply for the domestic iron and steel industries.¹³² Similarly, the petitioners argue that steel prices are distorted by cause of the GOI's "administrative control" over India's second largest steel producer.

As an initial matter, the petitioners cite no precedent where Commerce has considered minority state-ownership in general industries as evidence of a PMS. In prior proceedings where Commerce has found distortive government intervention as a contributing factor to a PMS, record evidence indicated that the respective government controlled a significant portion of the input market and that the government set input prices for the entire market, which were not market-based.¹³³ Here, the petitioners provide no evidence that the GOI sets iron ore or steel bar prices for the entire market through state-owned companies nor is there evidence that the input proffered prices by these companies are not competitively set. In fact, the record does not indicate the GOI's ownership percentage in SAIL or how much steel bar SAIL produces. Absent this information, Commerce cannot make a finding that the GOI's "control" over these companies leads to a distortion in India's iron and steel sectors or a PMS in India with respect to steel bar.

Regarding the GOI's imposition of duties on certain iron ore exports, we note that information submitted by the petitioners also indicates that there are several circumstances in which iron ore exports from India are "freely allowed,"¹³⁴ and domestic iron ore imports in India have been increasing, including by nearly 90 percent in 2017-2018 compared to the preceding year.¹³⁵ Even if we were to consider the GOI's involvement in the iron ore sector as distortive, it is unclear what impact, if any, distorted input prices (*i.e.*, iron ore) of another input (*i.e.*, steel bar) would have on the COP of finished merchandise (*i.e.*, FSF). Commerce has also previously found that a respondent's purchase of subsidized inputs may contribute to a PMS when such inputs are used in the production of subject merchandise. While the petitioners do not make this argument, we note that there is no indication that Shakti's steel bar suppliers purchased iron ore from state-owned entities, or that Shakti purchased steel bar from the GOI-owned steel producer. Accordingly, we preliminarily find the petitioners' argument that the GOI's control over certain iron ore and steel producers distorts the COP of FSF unsupported by record evidence.

GOI Involvement in Coal and Electricity Markets

The petitioners argue that the GOI's involvement in the electricity sector and control over the coal market results in distorted energy acquisition costs, and thus, lower input prices.¹³⁶ As support for this argument, the petitioners cite *CORE from Korea*,¹³⁷ where Commerce found that the Government of Korea (GOK)'s involvement in the Korean electricity market contributed to a PMS.¹³⁸ However, the GOK's control over the electricity market in Korea is not entirely analogous to the facts and claims in the instant investigation. Specifically, in *CORE from Korea*,

¹³² *Id.* at 10.

¹³³ *See, e.g., CORE from Korea* and accompanying IDM at Comment 2.

¹³⁴ *See* Petitioners' PMS Allegation at Exhibit 8, page 23.

¹³⁵ *Id.* at Exhibit 10, page 3.

¹³⁶ *Id.* at 12-14.

¹³⁷ *See CORE from Korea* IDM at Comment 2.

¹³⁸ *Id.* at 23.

information on the record indicated that the price of electricity in Korea is set by the GOK through its majority ownership and control of the Korea Electric Power Corporation (KEPCO),¹³⁹ which is responsible for 93 percent of Korea's electricity generation,¹⁴⁰ and that electricity in Korea functions as "a tool of the government's industrial policy."¹⁴¹ We further stated that, "a PMS may exist when there is government control over prices to such an extent that home-market prices cannot be considered to be competitively set,"¹⁴² and cited KEPCO's trillion won losses as evidence of a lack of market-based electricity prices and the GOK's control of the market.¹⁴³

In contrast to *CORE from Korea*, the petitioners do not allege that the GOI sets all electricity prices in India, controls nearly all electricity generation or that state-owned electricity companies are unprofitable. Rather, the petitioners allege that "central and state sectors" account for 53.2 percent of India's total power generation capacity and that the GOI is responsible for central and regional transmission networks.¹⁴⁴ However, the petitioners fail to demonstrate or otherwise quantify how the public sector's electricity generation capacity or its control over an unknown number of transmission networks leads to underpriced electricity prices that distort the cost of steel bar.

The petitioners also cite *Pipe and Tube from India*, where Commerce determined that a PMS existed where HRC inputs were subsidized.¹⁴⁵ As additional support for their argument that the GOI provides significant assistance to steel bar producers through underpriced electricity, the petitioners cite a World Bank study purportedly demonstrating that, "India's electricity tariffs are constantly below the cost of supply with the gap financed by cross-subsidies and government budgetary support."¹⁴⁶ However, the cited document exclusively refers to below-cost electricity rates and commensurate electricity subsidies for two categories of consumers in India: farmers and households.¹⁴⁷ Thus, it is unclear how electricity subsidies provided to agriculture and residential consumers are at all relevant to an analysis of steel bar prices. Additionally, information submitted by the petitioners that is pertinent to the steel industry, states that Indian steel producers, "have been procuring power at high costs," which undermines the argument that the GOI's intervention leads to lower energy acquisition costs.¹⁴⁸

With respect to coal, the petitioners state that 54.2 percent of India's electricity is generated from coal, noting that it is also a key raw material for steelmaking, and allege that the GOI heavily subsidizes the price of coal in India, especially for power generation.¹⁴⁹ As support for its argument, the petitioners cite a World Bank study which estimated underpricing of coal for

¹³⁹ *Id.*

¹⁴⁰ See Shakti's Rebuttal PMS Comments at 15.

¹⁴¹ See *CORE from Korea* IDM at 23.

¹⁴² *Id.*; see also SAA at 882.

¹⁴³ See *CORE from Korea* IDM at 23.

¹⁴⁴ See Petitioners' PMS Allegation at 13 and Exhibit 14.

¹⁴⁵ See *Pipe and Tube from India*, and accompanying IDM at Comment 1.

¹⁴⁶ *Id.* at 13, citing Exhibit 13, page 146.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at Exhibit 7, page 27, and Exhibit 8, page 20.

¹⁴⁹ *Id.* at 13.

regulated sectors (*i.e.*, power, fertilizer, and defense) to range from 17 to 100 percent of the existing tariff when compared to benchmarks for imported prices, spot market prices, and deregulated sector prices.¹⁵⁰ Information on the record also indicates that state-owned CIL produced 83 percent of India's coal in 2016 (*i.e.*, before the GOI opened the sector for private, commercial mining in 2018), sets coal prices for all coal producers,¹⁵¹ and supplies coal at discounted prices.¹⁵² However, the same World Bank study states that, "there is no direct subsidies to coal and CIL is a profit-making entity."¹⁵³ Additionally, the record indicates that Indian iron and steel producers significantly depend on the import of raw materials, including coal,¹⁵⁴ which they import at higher costs.¹⁵⁵ Although the GOI's influence in the coal market through CIL could be considered distortive, the petitioners fail to demonstrate or quantify how such influence impacts steel bar prices. Moreover, while we have considered a government's involvement in the energy sector, such as electricity, as one factor among others that may contribute to a PMS, we have consistently found that government intervention in the energy market is insufficient evidence in and of itself to demonstrate the existence of a PMS.¹⁵⁶

Because the petitioners have not demonstrated or otherwise quantified how the GOI's involvement in the Indian electricity market results in distorted electricity or coal prices such that it affected the price of steel bar or the COP of FSF during the POI, we preliminarily determine that the petitioners' argument is unsupported.

Global Overcapacity

The petitioners' argument that Chinese-driven steel overcapacity resulted in price suppression in the Indian steel bar market during the POI is not supported by the record. The petitioners cite previous cases where Commerce found a PMS with respect to HRC inputs based on evidence of declining input prices and increased imports into the home market to support the contention that global steel overcapacity was distorting the COP of the merchandise under consideration. However, in the instant investigation, rather than evidence of price depression or increased imports, the data on the record indicate that, prior to and during the POI, the price of steel bar in India was rising and steel bar imports to India were decreasing.¹⁵⁷ Commerce has previously found arguments of overcapacity unsupported when prices for the input at issue are increasing and imports of the input are decreasing or remaining constant.¹⁵⁸ The data for Chinese exports of the inputs corresponding to the HTS codes used by Shakti to produce FSF confirm similar trends.¹⁵⁹ Further, Commerce has not determined that a PMS exists based solely on

¹⁵⁰ *Id.* at 13-14, and Exhibit 13, page 121-124.

¹⁵¹ *Id.* at 115.

¹⁵² *Id.* at 13-14.

¹⁵³ *Id.* at 121.

¹⁵⁴ *Id.* at Exhibit 7, page 21.

¹⁵⁵ *Id.* at Exhibit 13, page 120.

¹⁵⁶ *See, e.g., Phosphor Copper from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2018*, 84 FR 69720 (December 19, 2019) (*Phosphor from Korea*) and accompanying IDM at 14.

¹⁵⁷ *See* Petitioners' PMS Allegation at Exhibit 21.

¹⁵⁸ *See, e.g., CWP from Oman* IDM at 11.

¹⁵⁹ *See* Shakti's PMS Rebuttal Comments at 13 and 19.

overcapacity, but rather in conjunction with other factors that exacerbate the distortive effects of injuriously priced imports.¹⁶⁰

The petitioners note that the GOI's recognition of the overcapacity crisis is evidenced by its imposition of AD duties on wire rod; however, the remedy is offset by the GOI's duty drawback schemes, which Shakti was found to benefit from in the concurrent CVD investigation.¹⁶¹ As an initial matter, the GOI order referenced by the petitioners concerns imports of steel wire rod, which Shakti did not report using as an input to FSF. In determining that nonpayment of duties contributed to the existence of a PMS in *Pipe and Tube from India*, Commerce found that the respondent had imported inputs and that corresponding non-payment of duties on these imports had occurred.¹⁶² In contrast, in *CASTR from India*, Commerce determined that the GOI's imposition of trade remedies on certain inputs "only provides limited support" for the PMS allegation because the respondent relied on domestically sourced inputs and, thus, could not have benefited from a duty exemption scheme, and also because the AD duties did not cover all inputs potentially used to produce subject merchandise.¹⁶³ In the instant investigation, Shakti reported that all of its purchases of FSF inputs were domestically sourced, and stated that the GOI's Order on wire rod does not cover the inputs used by Shakti to produce subject merchandise.¹⁶⁴ Further, although Commerce did countervail a duty drawback scheme in the companion CVD investigation, the particular drawback scheme at issue is not tied to duties paid on any particular imported products.¹⁶⁵

Therefore, based on the foregoing analysis, we preliminarily determine that the record of this investigation does not support a finding that a PMS existed with respect to the COP of FSF in India during the POI. Accordingly, because we preliminarily determine that the petitioners' allegations are insufficient to support a PMS finding, we have used Shakti's COP, as reported, for the purposes of Shakti's margin calculation for the preliminary determination. Further, because we are preliminarily not finding that a PMS with respect to steel bar prices existed in India during the POI, the petitioners' quantitative arguments are moot.

B. Home Market Viability

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

¹⁶⁰ *Id.*

¹⁶¹ See Petitioners' PMS Allegation at 19.

¹⁶² See, e.g., *Pipe and Tube from India* IDM at Comment 1.

¹⁶³ See *CASTR from India* and accompanying memorandum, "Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India: Decision on Particular Market Situation Allegation," dated January 9, 2020 at 7.

¹⁶⁴ See Shakti's Rebuttal PMS Comments at 20.

¹⁶⁵ See *Forged Steel Fittings from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 17536 (March 30, 2020) and accompanying preliminary decision memorandum at Duty Drawback (DDB) Scheme.

comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

Based on a comparison of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, we preliminarily determine, pursuant to 19 CFR 351.404(b), that the aggregate volume of Shakti's home market sales of the foreign like product is greater than five percent of the aggregate volume of its U.S. sales of the merchandise. Therefore, we used home market sales as the basis for NV for Shakti, in accordance with section 773(a)(1)(B) of the Act.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales.¹⁶⁶ Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).¹⁶⁷ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.¹⁶⁸ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),¹⁶⁹ we consider the starting prices to be the gross unit prices less all discounts and rebates. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.¹⁷⁰

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market to the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.¹⁷¹

¹⁶⁶ See section 773(a)(7)(A) of the Act.

¹⁶⁷ See 19 CFR 351.412(c)(2).

¹⁶⁸ *Id.*; see also *Certain Orange Juice from Indonesia: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Indonesia*).

¹⁶⁹ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

¹⁷⁰ See *Micron Tech, Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

¹⁷¹ See, *e.g.*, *OJ from Brazil* at Comment 7.

Shakti provided information regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.

In the home market, Shakti made sales through two channels of distribution each taking place at a different LOT (*i.e.*, direct sales to traders and distributors (LOT 1); and sales to end-users (LOT 2), which require several additional selling activities).¹⁷² These selling activities, as identified by Commerce in its initial questionnaire, are grouped into five selling function categories: (1) provision of sales support; (2) provision of training services; (3) provision of technical support; (4) provision of logistical services; and (5) performance of sales-related administrative activities.¹⁷³ We find that Shakti performed selling functions related to four of the five selling function categories. Additional information regarding Shakti's reported breakdown of sales activities, including levels of intensity for the different levels of trade in the home market, are of a business proprietary nature.¹⁷⁴ Shakti also provided a narrative response listing the additional steps required to finalize sales to end-users in the home market, including preparing and finalizing quality assurance plans (QAP) for these customers, and specified that it incurred additional costs for these sales, including costs for conveyance, inspection and certain employees that are dedicated to negotiating the QAP.¹⁷⁵ Accordingly, based on Shakti's marketing process, including its reported selling functions, we preliminarily find there are two distinct LOTs in the home market.¹⁷⁶

With respect to the U.S. market, Shakti reported that it made sales through one channel of distribution (*i.e.*, sales to U.S. traders and distributors).¹⁷⁷ We find that Shakti performed selling functions related to four of the five selling function categories identified above.¹⁷⁸ Additional information regarding Shakti's reported breakdown of sales activities, including levels of intensity for the different levels of trade in the U.S. market, are of a business proprietary nature.¹⁷⁹ Accordingly, based on Shakti's marketing process, including its reported selling functions, we preliminarily find there is one LOT in the U.S. market.

We compared the U.S. LOT to the home market LOTs and found that the selling functions Shakti performed for its U.S. customers are most similar to home market LOT 1 (*i.e.*, sales to traders and distributors). Specifically, we find that Shakti performed many of the same selling functions at the same level of intensity across the U.S. LOT and home market LOT 1.¹⁸⁰ In contrast, we find that Shakti performed selling functions related to four of the five categories referenced above at significantly different levels of intensity when comparing its U.S. sales to home market LOT 2. Because Shakti's response indicates that it performed comparable selling

¹⁷² See Shakti's February 5, 2020 AQR, at A-17 and Exhibit A-5; *see also* Shakti's February 24, 2020 BCQR, at B-32.

¹⁷³ See Shakti's February 5, 2020 AQR, at Exhibit A-5.

¹⁷⁴ See Shakti Preliminary Analysis Memorandum.

¹⁷⁵ See Shakti's May 4, 2020 SQR, at 15-17.

¹⁷⁶ See Shakti Preliminary Analysis Memorandum for a full discussion of the issues.

¹⁷⁷ See Shakti's February 24, 2020 BCQR, at C-29 to C-30.

¹⁷⁸ See Shakti Preliminary Analysis Memorandum.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

functions in the U.S. market as compared with home market LOT 1, we find that these two LOTs are the same, pursuant to section 773(a)(7)(A) of the Act.

Based on the findings above, we compared Shakti's U.S. sales to sales at the same home market LOT, where possible. When we are unable to match U.S. sales to sales in the home market at the same LOT, Commerce compared the U.S. sale to sales at a different LOT in the home market. In comparing U.S. sales to sales at a different LOT in the home market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

D. COP Analysis

1. Calculation of COP

In accordance with section 773(b)(e) of the Act, we calculated COP based on the sum of costs of material and fabrication for the foreign like product, plus amounts for general, and administrative (G&A) expenses and interest expenses. We examined Shakti's cost data and determined that our quarterly cost methodology is not warranted, and therefore, we are applying our standard methodology of using annual costs based on Shakti's reported data. We relied on the COP data submitted by Shakti except as follows:¹⁸¹

- We adjusted Shakti's reported direct material costs to increase the consumption value of raw materials to reflect actual costs.
- We adjusted Shakti's reported affiliate (Shakti Forge)'s forging costs to exclude the interest income offset from the interest expense numerator to calculate the affiliate's interest expense ratio.

2. Test of Comparison Market Sales Prices

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

3. Results of COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less

¹⁸¹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Shakti Forge Industries Pvt. Ltd." dated May 20, 2020.

than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in “substantial quantities.” Where 20 percent or more of a respondent’s sales of a given product are at prices less than the COP, we disregard the below-cost sales because: (1) they were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act; and, (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where we found that, for certain products, more than 20 percent of a Shakti’s home market sales were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for Shakti, we based NV on comparison market prices. We calculated NV based on packed, delivered or ex-works prices to unaffiliated customers in India. We made deductions, where appropriate, from the starting price for other discounts, advertising expenses, and bank charges in accordance with 19 CFR 351.401(c). We made deductions from the starting price for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. We deducted comparison-market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, imputed credit expenses and other direct selling expenses, and added U.S. direct selling expenses, *i.e.*, imputed credit expenses and direct selling expenses. In addition, Shakti also reported freight and packing revenue for certain sales. We are following our normal practice with regard to capping the amount of freight revenue and packing revenue allowed by the amount of corresponding freight expense and packing expense incurred, respectively.⁹⁹

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, Commerce also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and subject merchandise.¹⁸²

F. Calculation of NV Based on CV

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for Shakti’s products for which we could not determine the NV based on comparison market sales because, as noted in the “Results of the COP Test” section above, certain sales of the comparable products failed the COP test, we based NV on CV.

¹⁸² See 19 CFR 351.411(b).

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For Shakti, we calculated the cost of materials and fabrication based on the methodology described in the “Cost of Production Analysis” section. We based SG&A and profit for Shakti on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

For comparisons to Shakti’s EP sales, we made circumstances-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses, to CV, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

XIV. CURRENCY CONVERSION

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

XV. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify Shakti’s information relied upon in making our final determination.

XVI. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES IN COMPANION CVD INVESTIGATION

In LTFV 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 CVD 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.”

Commerce determined in the preliminary determination of the companion CVD investigation that Shakti, and all other exporters benefitted from export subsidies.¹⁸³ Therefore, for Shakti and all other producers/exporters, we find that an export subsidy adjustment of 2.53 percent to the AD cash deposit rate is warranted because this reflects the amount of preliminary export subsidies found in the companion CVD proceeding for Shakti and all others (which was based on Shakti’s rate).¹⁸⁴ Accordingly, consistent with our practice,¹⁸⁵ we will apply the applicable export subsidy offset to the cash deposit rates, as reflected in the accompanying *Federal Register*

¹⁸³ See Memorandum, “Countervailing Duty Investigation of Forged Steel Fittings from India: Preliminary Analysis Determination for Shakti,” dated March 23, 2020

¹⁸⁴ *Id.*

¹⁸⁵ See, e.g., *Glycine from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 18487 (May 1, 2019).

Notice. However, because we are preliminarily finding that Shakti's AD margin is *de minimis*, we are not collecting cash deposits for Shakti.

XVII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

☐

Agree

Disagree

5/20/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance