



A-533-891

Investigation

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

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October 13, 2020

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

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

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

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## I. SUMMARY

The Department of Commerce (Commerce) 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 735 of the Tariff Act of 1930, as amended (the Act). The petitioners in this investigation are Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners).<sup>1</sup> The mandatory respondents are Nikoo Forge Pvt. Ltd. (Nikoo Forge), Shakti Forge Industries Pvt. Ltd. and Shakti Forge (collectively, Shakti), and Pan International (Pan).<sup>2</sup> The period of investigation (POI) is October 1, 2018 through September 30, 2019.

As a result of our analysis, we have made certain changes to the margin calculation for Shakti, the sole cooperative mandatory respondent in this proceeding. Additionally, we have modified the scope of the investigation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether Commerce Should Revise Its All-Others Methodology
- Comment 2: Whether Commerce Should Base Shakti’s Dumping Margin on Adverse Facts Available

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<sup>1</sup> 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).

<sup>2</sup> See Memorandum, “Antidumping Duty Investigation of Forged Steel Fittings from India: Selection of Respondents for Individual Examination,” dated January 2, 2020; *see also* Memorandum, “Antidumping Duty Investigation of Forged Steel Fittings from India: Selection of Additional Respondent for Individual Examination,” dated January 22, 2020.



- Comment 3: Whether Commerce Should Adjust Shakti's Direct Materials Consumption Cost
- Comment 4: Whether Commerce Should Disallow the Interest Expense Offset of Shakti Forge

## II. BACKGROUND

On May 28, 2020, Commerce published the *Preliminary Determination* in this investigation.<sup>3</sup>

Due to travel restrictions during the course of this investigation, we were unable to conduct on-site verification of Shakti's records and facilities in India.<sup>4</sup> In lieu of verification, we issued Shakti two post-preliminary questionnaires regarding its previously reported sales and cost information.<sup>5</sup> The post-preliminary questionnaires included a request for ten complete sales traces (*i.e.*, all documentation generated between the receipt of an order and the shipment of the product) corroborating information from Shakti's earlier responses, numerous requests for clarifications and supporting documentation suggested by the petitioners in post-preliminary comments, and questions concerning Shakti's cost allocation methodology. We also requested complete source documentation for each product Shakti sold in the U.S. and home markets, to corroborate the accuracy of its reported theoretical weights – a significant issue identified by Commerce and the petitioners.<sup>6</sup> In response to the post-preliminary questionnaires, Shakti provided 1,998 pages of information and documentation, most of which consisted of the type of corroborating documentation from Shakti's normal books and records that Commerce typically examines at verification (*e.g.*, ledgers, invoices, mechanical drawings and specifications, *etc.*).<sup>7</sup>

In addition to the post-preliminary questionnaires, Commerce solicited a response from Shakti concerning certain post-preliminary comments from the petitioners concerning Shakti's cost allocation methodology.<sup>8</sup> Shakti provided a response to these comments on July 13, 2020.<sup>9</sup> Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided, but the information cannot be verified, Commerce will use "facts otherwise available" in reaching the applicable determination. Accordingly, as we were unable to conduct on-site

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<sup>3</sup> See *Forged Steel Fittings from India: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 32007 (May 28, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>4</sup> See Memorandum, "Cancellation of Verification and Briefing Schedule," dated August 4, 2020 (Cancellation of Verification Memorandum).

<sup>5</sup> See Commerce's Letter, "Antidumping Duty Investigation of Forged Steel Fittings from the India," dated June 15, 2020 (June 15, 2020 SQ); see also Commerce's Letter, "Antidumping Duty Investigation of Forged Steel Fittings from India: Sixth Supplemental Questionnaire," dated July 2, 2020 (July 2, 2020 SQ).

<sup>6</sup> See, *e.g.*, Petitioners' Letter, "Forged Steel Fittings from India: Post Pre-Prelim Comments, SFIPL," dated June 11, 2020.

<sup>7</sup> See Shakti's Letter, "Full Response for 5th Supplemental Questionnaire Response: Forged Steel Fittings from India," dated July 6, 2020 (Shakti July 6, 2020 SQR); see also Shakti's Letter, "Response for 6th Supplemental Questionnaire Response: Forged Steel Fittings from India," dated July 23, 2020 (Shakti July 23, 2020 SQR).

<sup>8</sup> See Petitioners' Letter, "Forged Steel Fittings from India: Additional Post Pre-Prelim Comments, SFIPL," dated June 16, 2020; see also Petitioners' Letter, "Forged Steel Fittings from India: Additional Post Pre-Prelim Comments, SFIPL," dated June 24, 2020; and Memorandum, "Telephone Call with Petitioners' Counsel and for All Interested Parties to Comment," dated July 1, 2020.

<sup>9</sup> See Shakti's Letter, "SFIPL's Rebuttal Comment on Petitioner Second and Third Post Preliminary Comment: Forged Steel Fittings from India," dated July 13, 2020.

verification in this investigation for reasons beyond our control, we relied on the record information used in the *Preliminary Determination* (and further developed via responses to subsequent questionnaires), as facts available in making our final determination.

On August 11, 2020, the petitioners, Shakti, and interested parties, Tirupati Forge Ltd. (Tirupati) and Vijay Cycle & Steel Industries (Vijay Cycle), submitted affirmative case briefs.<sup>10</sup> On August 24, 2020, the petitioners and Shakti submitted rebuttal briefs.<sup>11</sup> Commerce held a public hearing via teleconference for this investigation on September 11, 2020.<sup>12</sup>

### **III. SCOPE OF THE INVESTIGATION**

The products covered by this investigation are forged steel fittings from India. For a complete description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

### **IV. SCOPE COMMENTS**

During the course of this investigation, Commerce received scope comments from certain interested parties. We issued a Preliminary Scope Decision Memorandum to address these comments and set aside a period of time for parties to file scope case and scope rebuttal briefs.<sup>13</sup> Between June and July 2020, we received additional scope comments from several interested parties, including the petitioners. In response to these comments, we have made changes to the scope of the investigation for this final determination. For a full discussion and analysis of the scope comments timely received, *see* the Final Scope Decision Memorandum.<sup>14</sup>

### **V. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCES**

In the *Preliminary Determination*, we assigned a dumping margin based entirely on adverse facts available (AFA) to the following nine companies: Nikoo Forge, Pan, Disha Auto Components Pvt. Ltd; Dynamic Flow Products; Kirtanlal Steel Pvt Ltd; Metal Forgings Pvt Ltd; Patton

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<sup>10</sup> *See* Shakti's Letter, "Shakti Forge Industries Pvt. Ltd. Submission of Case Brief: Forged Steel Fittings from India (A-533-891)," dated August 11, 2020 (Shakti Case Brief); *see also* Petitioners' Letter, "Forged Steel Fittings from India: Submission of Case Brief," dated August 11, 2020 (Petitioners Case Brief); and Tirupati and Vijay's Letter, "Forged Steel Fittings from India: Submission of Case Brief," dated August 11, 2020 (Tirupati and Vijay Cycle Case Brief).

<sup>11</sup> *See* Shakti's Letter, "Shakti Forge Industries Pvt. Ltd. Submission of Rebuttal Case Brief: Forged Steel Fittings from India (A-533-891)," dated August 24, 2020 (Shakti Case Brief); *see also* Petitioners' Letter, "Forged Steel Fittings from India: Submission of Rebuttal Brief," dated August 24, 2020 (Petitioners Rebuttal Brief).

<sup>12</sup> *See* Neal R. Gross and Co., Inc.'s Letter, "Public Hearing in the Matter of the Antidumping Duty Investigation of Forged Steel Fittings from India," dated September 18, 2020; *see also* Forged Steel Fittings from India: Shakti Forge Industries Pvt. Ltd. Request for Hearing in Antidumping Investigation," dated June 26, 2020; and Petitioners' Letter, "Forged Steel Fittings from India: Hearing Request," dated June 29, 2020.

<sup>13</sup> *See* Memorandum, "Forged Steel Fittings from India and the Republic of Korea: Scope Comments Preliminary Decision Memorandum," dated May 20, 2020 (Preliminary Scope Decision Memorandum).

<sup>14</sup> *See* Memorandum, "Forged Steel Fittings from India and the Republic of Korea: Final Scope Decision Memorandum," dated concurrently with this final determination (Final Scope Decision Memorandum).

International Limited; Sage Metals Limited; and Technotrak Engineers.<sup>15</sup> No party commented on our AFA methodology. Accordingly, consistent with the *Preliminary Determination* and for the reasons outlined below, we continue to find that these companies failed to cooperate to the best of their ability in this proceeding. Therefore, we have made no changes to the 293.40 percent dumping margin applicable to these non-cooperative companies for this final determination.

## 1. Statutory Framework

Sections 776(a)(1) and 776(a)(2)(A)-(D) 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 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.<sup>16</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>17</sup> 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."<sup>18</sup> 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

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<sup>15</sup> See PDM at 9-13.

<sup>16</sup> See 19 CFR 351.308(a).

<sup>17</sup> 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*).

<sup>18</sup> 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).

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.<sup>19</sup> 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.<sup>20</sup>

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

### *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.<sup>21</sup> 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, the necessary information required to calculate a dumping margin for Nikoo Forge and Pan is not available on the record. Therefore, we 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, for this final determination.

### *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.<sup>22</sup> 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

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<sup>19</sup> See SAA at 870.

<sup>20</sup> See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (*TPEA*).

<sup>21</sup> 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.

<sup>22</sup> 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).

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, for this final determination, we find 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 requested to submit the information in an alternate form.<sup>23</sup> Therefore, Commerce 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) for this final determination.<sup>24</sup>

#### *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.”<sup>25</sup> 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, for this final

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<sup>23</sup> 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.

<sup>24</sup> 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).

<sup>25</sup> See Q&V Questionnaire.

determination, we 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).<sup>26</sup>

#### 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 merchandise.<sup>27</sup> The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information used has probative value.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

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

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<sup>26</sup> 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).

<sup>27</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 870.

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

<sup>29</sup> 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).

<sup>30</sup> 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.

investigation, the highest dumping margin alleged in the Petition is 293.40 percent.<sup>31</sup> 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.<sup>32</sup> Accordingly, because we corroborated the Petition rate to the extent practicable within the meaning of section 776(c) of the Act, we find the 293.40 percent rate to be both reliable and relevant and, therefore, that it has probative value. Thus, consistent with the *Preliminary Determination*, we have assigned this AFA rate to Nikoo Forge, Pan, and the non-responsive companies for this final determination.

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

We calculated export price (EP), normal value (NV), and cost of production (COP) for Shakti, the sole cooperative respondent in this investigation, using the methodology stated in the *Preliminary Determination*,<sup>33</sup> except as follows:

1. We relied on Shakti's revised sales and cost databases.
2. We removed the SAS programming that deleted certain observations for products with a description containing the term "forge" that were coded as "finished."
3. We adjusted Shakti's reported scrap to align to the annual rate of scrap to total consumption for the first half of the POI.

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<sup>31</sup> 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.

<sup>32</sup> See Memorandum, "Corroboration of the Adverse Facts Available Rate for the Final Determination in the Antidumping Duty Investigation of Forged Steel Fittings from India," dated concurrently with this memorandum (Final AFA Corroboration Memorandum).

<sup>33</sup> See PDM; see also Memorandum, "Shakti Forge Industries Pvt. Ltd. Preliminary Determination Analysis," dated May 20, 2020 (Shakti Preliminary Analysis Memorandum); and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Shakti Forged Industries Pvt. Ltd. (SFIPL)" dated May 20, 2020 (Shakti Preliminary Cost Calculation Memorandum).



## VII. DISCUSSION OF THE ISSUES

### Comment 1: Whether Commerce Should Revise Its All-Others Methodology

*Tirupati and Vijay Cycle's Case Brief*:<sup>34</sup>

- Commerce selected three mandatory respondents, which were assigned rates based on either AFA or *de minimis*. To determine the all-others rate, Commerce took the simple average of the rates assigned to the three mandatory respondents ((0 percent + 293.40 percent + 293.40 percent) ÷ 3) and computed an all-others rate of 195.60 percent.<sup>35</sup>
- Neither Tirupati or Vijay Cycle were selected as mandatory respondents or sent a Q&V questionnaire; therefore, the companies' participation in this investigation is limited to filing case briefs.<sup>36</sup>
- Although there are no grounds to take adverse measures against either Tirupati or Vijay Cycle, both companies are subject to a highly adverse rate of 195.60 percent, which prohibits them from exporting to the United States as a result of Commerce's unfair all-others methodology. Additionally, the all-others rate is far in excess of rates that the Courts have deemed unreasonable.<sup>37</sup>
- The all-others companies did not exhibit any unwillingness to cooperate that could be cited as a legal justification for the punitive rate.<sup>38</sup>
- The only rate that is predictive of the potential dumping margins of non-investigated companies in the instant investigation is the zero rate assigned to Shakti. Accordingly, should the margin calculation for Shakti remain the same in the final determination, Commerce should assign the zero rate calculated for Shakti as the all-others rate.<sup>39</sup>
- Pursuant to section 735(c)(5)(B) of the Act, in cases such as here, where all mandatory respondents are subject to zero or AFA margins, Commerce is directed to use "any reasonable method" to calculate the all-others rate.<sup>40</sup> The SAA sets forth an "expected method" to determine the all-others rate in these circumstances, by which Commerce may average the zero, *de minimis* and AFA margins of the mandatory respondents.<sup>41</sup>
- The SAA further states that if the expected method "is not feasible or it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods."<sup>42</sup>
- The legislative history makes clear that the expected method should not be used in instances where the average of the margins assigned to the mandatory respondents would not be reasonably reflective of potential dumping margins of the "all other" companies.<sup>43</sup>
- Although Commerce is correct to note that the use of the expected method is specifically authorized by the statute, Commerce deemed the extreme all others margin of 195.60

<sup>34</sup> See Tirupati and Vijay Cycle Case Brief.

<sup>35</sup> *Id.* at 2.

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

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 3.

<sup>41</sup> *Id.* (citing *Albemarle Corp. v. United States*, 821 F.3d 1345, 1351 (Fed. Cir. 2016) (*Albemarle*)).

<sup>42</sup> *Id.* at 4.

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

percent to be “reasonable” without any analysis. Additionally, Commerce did not directly address the SAA’s admonition that the expected method should not be used in situations where the averaging of the rates is not reflective of the potential dumping margins of the all-others companies.<sup>44</sup>

- In *Thai Pineapple*, the Court of Appeals for the Federal Circuit (CAFC) recognized that “while various methodologies are permitted by the statute, it is possible for the application of a particular methodology to be unreasonable in a given case.”<sup>45</sup> Thus, the statute’s inclusion of an expected method does not grant Commerce unbounded discretion in selecting a separate company rate.<sup>46</sup> Rather, Commerce is obligated to employ methodologies to establish margins as accurately as possible.<sup>47</sup> Moreover, the calculated margins should be reasonably reflective of potential dumping margins for non-investigated exporters or producers.<sup>48</sup>
- Commerce’s all-others rate in this investigation exceeds the rate that the Courts have struck down as unreasonable under the same statute.<sup>49</sup> In *Bestpak*, the CAFC struck down Commerce’s use of the expected methodology (*i.e.*, averaging the *de minimis* margin of one mandatory respondent with the AFA margin of a second mandatory respondent (247.65 percent)) to establish a separate company rate of 123.83 percent. Despite acknowledging that the expected methodology was permissible under the statute, the Court found that the application of the 123.83 percent margin to the non-investigated companies did not reasonably reflect the potential dumping margins of the separate rate companies.<sup>50</sup> The Court further stated that, “assigning a non-mandatory, separate rate respondent a margin equal to over 120 {percent} of the only fully investigated respondent with no other information is unjustifiably high and may amount to being punitive, which is not permitted by the statute.”<sup>51</sup>
- There is no cause or rationale for assigning a punitive “all-others” rate to Tirupati and Vijay Cycle, as these companies were not affirmatively uncooperative, like Nikoo Forge or Pan.<sup>52</sup>
- As a matter of commercial reality, these companies cannot export the subject merchandise to the United States given the egregious level of the “all-others” rate. The CIT recently noted that, “[i]t does not stand to reason that the statutory directive not to consider ‘commercial reality’ in the AFA context obviated the fairness and accuracy concerns identified by *Bestpak* when applying a separate statutory provision to cooperative respondents.”<sup>53</sup> Thus, it is simply unfair and inaccurate to apply a rate of

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 5 (citing *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077 (Fed. Cir 2001) (*Thai Pineapple*)).

<sup>46</sup> *Id.* at 4-5. (citing *Chia Far Indus. Factory Co., Ltd. v. United States*, 343 F. Supp. 2d 1344, 1366 (CIT 2004) (*Chia Far Indus.*)).

<sup>47</sup> *Id.* at 5. (citing *Shakeproof Assembly of Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001) (*Shakeproof*); and *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990)).

<sup>48</sup> *Id.* at 5 (citing *Baroque Timber Industries (Zhongshan) Co., Ltd. v. United States*, 971 F. Supp. 2d 1333, 1342 (CIT 2014) (*Baroque Timber*)).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 6.

<sup>51</sup> *Id.* (citing *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013)).

<sup>52</sup> *Id.* at 7.

<sup>53</sup> *Id.* (citing *Bosun Tools Co., Ltd v. United States*, Slip Op. 20-97 (CIT 2020) (*Bosun Tools*)).

195.60 percent to Tirupati and Vijay Cycle when they did not demonstrate any unwillingness to cooperate.<sup>54</sup>

- Because neither Tirupati nor Vijay Cycle were uncooperative in this investigation, their potential dumping margins are reflective and representative of the zero margin assigned to the only mandatory respondent that cooperated with Commerce in this proceeding. Consequently, the zero rate calculated for Shakti does “bear some relationship to {the} actual dumping margins” of the “all others” companies.<sup>55</sup>
- In stark contrast, the 195.60 percent AFA margin assigned to the uncooperative respondents is neither reflective or representative and bears no relationship with the potential dumping margins of the “all others” companies who did not refuse to cooperate.<sup>56</sup> The Court has determined that the mere presence of non-cooperating parties, “fails to justify {Commerce’s} choice of dumping margin for the cooperative uninvestigated respondents.”<sup>57</sup>
- The fact that “the AFA rate applies to other companies is not evidence of dumping on the part of the separate rate companies.”<sup>58</sup> The same principle applies with respect to the “all other” companies. The fact that Nikoo Forge and Pan refused to cooperate with Commerce does not provide evidence that either Tirupati or Vijay Cycle are dumping at an exorbitant rate of 195.60 percent. The more “reasonable method” under the statute would be to assign Shakti’s zero rate to the “all-others” companies because it is the only rate that has actually been calculated in this investigation.<sup>59</sup>

*Petitioners’ Rebuttal Brief:*<sup>60</sup>

- The facts of the record demonstrate that Commerce’s decision to compute the all-others rate by taking a simple average of the margins determined for the mandatory respondents was reasonable, and is provided for by the statute which states Commerce may use “any reasonable method” to calculate such a rate.<sup>61</sup>
- The margin based on the weighted-average for the companies assigned individual dumping rates in the *Preliminary Determination* is significantly higher than the all-others rate using the simple average of the margins determined for the mandatory respondents; thus, Commerce’s all-others rate is a reasonable estimate of the industry’s likely amount of dumping.<sup>62</sup>
- In determining that nine different companies should be assigned the 293.40 percent rate, Commerce concluded that all nine companies would rather be assigned an AFA rate than participate. The experience of nine different producers/exporters provides the most reasonable basis for Commerce to choose an all-others rate.<sup>63</sup> Moreover, the CBP data

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.* (citing *Bestpak* at 1380).

<sup>56</sup> *Id.* at 8.

<sup>57</sup> *Id.* (citing *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1381 (CIT 2009) (*Amanda Foods*)).

<sup>58</sup> *Id.* (citing *Baroque Timber* at 1343).

<sup>59</sup> *Id.* at 8.

<sup>60</sup> See Petitioners Rebuttal Brief.

<sup>61</sup> *Id.* at 4.

<sup>62</sup> *Id.* at 4-6.

<sup>63</sup> *Id.* at 6.

shows no apparent shipments to the United States by either Tirupati or Vijay Cycle during the POI.<sup>64</sup>

- Tirupati and Vijay Cycle cite the CAFC decision in *Bestpak* for their proposition that an all-others rate must be reasonable and that an all-others rate of 123.83 percent was not reasonable. In *Bestpak*, Commerce was remanded for assigning Bestpak, a cooperative separate rate respondent, an all-others rate of 123.83 percent, which was calculated by averaging the *de minimis* margin assigned to a cooperative respondent and an AFA margin assigned to the other mandatory respondent. On remand, Commerce chose to review Bestpak individually to determine its actual dumping margin. However, Bestpak voluntarily chose to be subject to the all-others rate it previously argued was not reasonable rather than be subject to individual review. Noting these facts in separate CIT litigation, the Court stated that, “{o}ne wonders what Bestpak’s actual rate and commercial reality would have been had Commerce completed the individual review. Would it have been higher than 123.83 {percent}? In any event, although seemingly struck down by the Federal Circuit as unreasonable, the 123.83 {percent} separate rate now appears to have regained some validity.”<sup>65</sup>
- Commerce’s preliminary all-others rate is a reasonable reflection of the likely dumping levels of the industry, and we urge Commerce to select a final all-others rate that is reasonable in the context of this investigation.<sup>66</sup>

**Commerce’s Position:** Commerce agrees with the petitioners that basing the all-others rate on a simple average of the 293.40 percent AFA rate assigned to Nikoo Forge and Pan and Shakti’s calculated dumping margin of zero (*i.e.*, 195.60 percent) is reasonable in the context of this investigation. This method is permitted by statute, consistent with our practice, and has been upheld by the courts.<sup>67</sup> Accordingly, for the reasons outlined below, we disagree with Tirupati and Vijay Cycle that Commerce’s all-others methodology is unreasonable and continue to employ it for this final determination.

As an initial matter, Tirupati and Vijay Cycle are not included in the CBP data as exporters or producers of subject merchandise during the POI or in the Petition list of known Indian FSF producers/exporters.<sup>68</sup> Nonetheless, subsequent to the *Preliminary Determination*, Tirupati and Vijay Cycle identified themselves, for the first time, as producers and exporters of FSF sold to the United States.<sup>69</sup> The companies state that their only means of participating in this investigation is through filing case briefs;<sup>70</sup> however, as stated in the published *Initiation Notice*, all interested parties had the opportunity to submit comments regarding respondent selection and the CBP data for Commerce’s consideration.<sup>71</sup> Neither Tirupati nor Vijay Cycle submitted comments on the CBP data nor did either company request individual investigation. We also

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<sup>64</sup> *Id.* at 6.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 7.

<sup>67</sup> See, e.g., *Albemarle*, 821 F.3d at 1345, 1351.

<sup>68</sup> See Memorandum, “Antidumping Duty Investigation of Forged Steel Fittings from India: Release of U.S. Customs and Border Protection Entry Data,” dated November 16, 2019; see also Petition at Exhibit I-13.

<sup>69</sup> See Tirupati and Vijay Cycle’s Letter, “Entry of Appearance: A-533-891 Forged Steel Fittings from India,” dated June 25, 2020.

<sup>70</sup> See Tirupati and Vijay Cycle Case Brief at 2.

<sup>71</sup> See *Initiation Notice*.

provided *all* parties an opportunity to submit Q&V questionnaire responses, which neither Tirupati nor Vijay Cycle did.<sup>72</sup> Accordingly, these companies could have also participated in this investigation by requesting to participate as a voluntary respondent, responding to the Q&V questionnaire, or commenting on the CBP data, but did not do so.

Despite the fact that the CBP data does not indicate any POI shipments of FSF to the United States by either Tirupati or Vijay Cycle, the companies contend that Commerce's all-others methodology is "unfair" and results in a "highly adverse" all-others rate which "prohibits them from shipping to the United States."<sup>73</sup> As explained in the *Preliminary Determination*, section 735(c)(5)(B) of the Act provides that in cases where the estimated weighted-average dumping margins for all individually investigated respondents are zero, *de minimis* or based entirely on AFA, Commerce may use "any reasonable method" to establish the estimated "all others" rate for producers or exporters not individually investigated. The SAA further states that, "{t}he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available." Where the data do not permit weight-averaging rates, such as in the instant case because we were unable to verify the import data provided by Nikoo Forge and Pan due to the companies' noncooperation, the statute and the SAA provide that Commerce use "any reasonable method" to determine the all-others rate. As noted by the companies, Commerce has based the all-others rate on the "expected method" set forth by the SAA and the Act for circumstances where the dumping margins established for all exporters and producers individually examined are zero or based entirely on AFA.

Tirupati and Vijay Cycle state that "{a}lthough there are no grounds to take adverse measures against either Tirupati and Vijay Cycles, both companies find themselves subject to a highly adverse rate of 195.60 {percent};"<sup>74</sup> however, Commerce does not consider the inclusion of AFA rates in an average to be unreasonable or an application of an adverse inference because the statute explicitly permits such averaging. Moreover, as noted by the petitioners, a weighted-average margin based on Shakti's calculated rate and the AFA rate assigned to the *nine* uncooperative companies that withdrew from participation or failed to respond to the Q&Vs would be significantly higher than the all-others rate established by using a simple average.<sup>75</sup> Thus, the decision by Commerce to include only two of the uncooperative companies in the determination of the all-others rate is conservative.

Additionally, Tirupati and Vijay Cycle do not propose an alternative method to estimate the all-others rate. Instead, the parties argue that Commerce should simply assign Shakti's calculated rate of zero as the all-others rate in this investigation. Tirupati and Vijay Cycle assert that Shakti's estimated dumping margin of zero is somehow more reflective of the likely dumping levels of all-other Indian FSF producers and exporters than the simple average of the rates assigned to the individually investigated respondents. However, Commerce selected every FSF producer/exporter that responded to its Q&V questionnaire for individual investigation in order

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<sup>72</sup> See Memorandum, "Antidumping Duty Investigation of Forged Steel Fittings from India: Issuance of Quantity and Value Questionnaire to Exporters/Producers," dated December 3, 2020.

<sup>73</sup> See Tirupati and Vijay Cycle Case Brief at 2.

<sup>74</sup> *Id.*

<sup>75</sup> See Petitioners Rebuttal Brief at 5.

to obtain the broadest possible representation of the industry. In *National Knitwear*, the CIT explained that, “[t]he representativeness of the investigated exporters is the essential characteristic that justifies an ‘all others’ rate based on a weighted average for such respondents.”<sup>76</sup> In *Albemarle*, the CIT expanded on that notion, stating that, “[t]he very fact that the statute contemplates using data from the largest volume exporters suggests an assumption that those data can be viewed as representative of all exporters. The statute assumes that, absent such evidence, reviewing only a limited number of exporters will enable Commerce to reasonably approximate the margins of all known exporters.”<sup>77</sup> Tirupati and Vijay Cycle’s reasoning for requesting that the all-others rate be based exclusively on Shakti’s rate of zero is that the simple average of the rates assigned to the individually investigated companies is “excessive,” but fails to take into account the fact that the Indian FSF industry as a whole was uncooperative. As discussed above, Commerce’s practice assumes that the behavior of the largest producers or exporters in a given industry represents a reasonable reflection of the industry as a whole. In the instant investigation, Commerce issued Q&Vs to the ten largest exporters or producers identified in the CBP data. However, nine out of the ten largest Indian FSF producers or exporters decided that they would rather receive an AFA rate of 293.40 percent than cooperate.<sup>78</sup> Therefore, the record reflects that the Indian FSF industry as a whole was uncooperative in this proceeding.

Although Tirupati and Vijay Cycle are correct to note that they did not demonstrate any unwillingness to cooperate in this investigation, the companies did not demonstrate any willingness to participate either. The court decisions cited by Tirupati and Vijay Cycle as justification for their proposition that Commerce’s all-others rate methodology is “unfair,” were brought by cooperative companies that had participated in the respective proceedings by filing separate rate applications, which is not the case here. As highlighted above, Tirupati and Vijay Cycle, as well as the hundreds of other FSF exporters or producers included in the CBP data had the opportunity to provide Q&V data or request voluntary investigation, but did not do so. Therefore, we find that it would be unreasonable to base the all-others rate on the zero rate of a single company in light of the fact that the nine other largest Indian FSF producers are subject to a rate of 293.40 percent. A simple average of the margins of three mandatory respondents is reasonable in the context of the instant investigation because it is based on the full information available on the record, which indicates a range of dumping between zero, as calculated for Shakti, and 293.40 percent, as corroborated using Shakti’s data.<sup>79</sup>

In *Albermarle*, the CAFC ruled that “Commerce must find based on substantial evidence that there is a reasonable basis for concluding that the separate respondents’ dumping is different” in order to depart from the expected method.<sup>80</sup> Specifically, if the “expected method” is “not feasible” or the method “results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers,” Commerce may, instead, “use

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<sup>76</sup> See *National Knitwear & Sportswear Ass’n v. United States*, 779 F. Supp. 1364, 1373-74 (1991).

<sup>77</sup> See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle*).

<sup>78</sup> We note that Sigma Electric Manufacturing Corporation Pvt. Ltd. (Sigma) reported that it is not a producer or exporter of subject merchandise, and therefore reported zero exports of FSF during the POI. Sigma is subject to the all-others rate.

<sup>79</sup> See Final AFA Corroboration Memorandum.

<sup>80</sup> See *Albemarle*, 821 F.3d 1345, 1353.

other reasonable methods.”<sup>81</sup> Here, the parties have not pointed to any evidence on the record to demonstrate that the all-others rate is not reasonably reflective of the non-examined companies’ potential dumping margins during the POI, such that we should depart from the expected method. In fact, as discussed in the AFA Rate Corroboration Memoranda, Shakti’s sales data corroborates the Petition rate of 293.40 percent.<sup>82</sup> Based on this information, and in light of the fact that we have no information from any other Indian FSF producer or exporter due to the industry’s noncooperation in this proceeding, we find that the all-other’s rate of 195.60 percent reflects a reasonable approximation of the industry’s dumping. Therefore, we have no basis to justify a departure from using the “expected method.”

As support for their assertion that the all-others rate of 195.60 percent is “exorbitant,” Tirupati and Vijay Cycle cite the CAFC’s ruling in *Bestpak* that a separate rate of 123.83 percent was not reasonable. In the AD investigation of *Narrow Woven Ribbons from China* underlying the *Bestpak* decision, Commerce selected two mandatory respondents, one of which was assigned a margin based on total AFA.<sup>83</sup> In order to derive the all-others margin applicable to the cooperative separate rate companies in that investigation, Commerce averaged the *de minimis* rate of the sole cooperative mandatory respondent and the AFA rate for the noncooperative mandatory respondent.<sup>84</sup> One of the cooperating separate rate respondents, *Bestpak*, challenged the reasonableness of the 128.83 percent separate rate, and the CIT remanded the issue to Commerce for further consideration.<sup>85</sup> On remand, Commerce stated that the record contained very limited information from which to determine the commercial reality of the rate as applied to the separate rate respondents.<sup>86</sup> Acknowledging the limited data on the record, as well as the permissibility of using a simple average to derive the all-others rate, the CIT sustained Commerce’s explanation of the all-others rate as reasonable. *Bestpak* appealed the CIT ruling, and the CAFC, in *Bestpak*, ultimately rejected the reasonableness of including a total AFA rate for a noncooperative respondent in the all-others rate calculation, concluding that Commerce was to blame for the limited record as it had ample time to select another mandatory respondent.<sup>87</sup>

In the instant investigation, Commerce was likewise faced with a withdrawal from participation by one of the two companies originally selected as a mandatory respondent on January 13th (*i.e.*, 62 days after initiation of the investigation). In response to the respondent’s notice of non-participation, unlike in the investigation underlying the *Bestpak* litigation, Commerce selected a third mandatory respondent on January 22nd, 2020. The third mandatory respondent also subsequently withdrew from participation. Commerce could not select a fourth respondent for individual examination because only three producers or exporters of subject merchandise provided a response to Commerce’s Q&V questionnaires, and thus, there were no additional companies Commerce could select for individual investigation. Furthermore, Commerce

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<sup>81</sup> *Id.* at 1352 (citing the SAA at 4201).

<sup>82</sup> See Final AFA Corroboration Memorandum; see also Memorandum, “Corroboration of the Adverse Facts Available Rate for the Preliminary Determination in the Antidumping Duty Investigation of Forged Steel Fittings from India,” dated May 20, 2020.

<sup>83</sup> See *Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China and Taiwan*, 74 FR 39291 (August 6, 2009) (*Narrow Woven Ribbons from China*).

<sup>84</sup> See *Bestpak*, 716 F.3d 1370.

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

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

received no indication from any other producer or exporter that it wished to participate in this investigation. By selecting each company that responded to Commerce's Q&V's for individual investigation, Commerce made every attempt to determine an all-other's rate based on the most accurate commercial reality of the Indian FSF industry; therefore, the facts and circumstances in *Bestpak* are not analogous to the record of the instant investigation, and thus, not instructive.

## **Comment 2: Whether Commerce Should Base Shakti's Dumping Margin on Adverse Facts Available**

*Petitioners' Case Brief:*<sup>88</sup>

- Shakti has mis-reported material consumption, processing times, and processing costs. Because the mis-reporting is extensive, Shakti has (A) withheld information that has been requested by Commerce, an accurate allocation of costs; (B) failed to provide consistent information by the deadlines for submission established by Commerce; (C) significantly impeded the proceeding by providing information that cannot be relied upon; and (D) provided information that on its face is not verifiable. Thus, Shakti's cost reporting is not reliable and so meets the legal requirements for the use of adverse facts available (AFA).
- The Indian government has extended the due date for corporations to file financial year 2019-2020 annual reports to November 2020. This means that the only audited financial report for Shakti covering any part of the period of investigation (POI) that Commerce has is that for fiscal year 2018-2019. Thus, the only benchmark that Commerce has to compare Shakti's reporting to is the snapshot provided for March 2019 annual report.
- Commerce will not be verifying Shakti's information; therefore, it must rely on the information to date. Shakti has no cost accounting system which means it has developed a method for allocating its costs in order to provide product-specific costs in its questionnaire responses.
- Shakti's reporting of direct material costs is not accurately reconciled to its financial records and cannot be verified. The monthly material amounts reported are determined based on the standard cut-weight (*i.e.*, input weight) of the fittings that it produced each month. These figures are used to calculate Shakti's re-allocation rates which means that Shakti has reported two different figures for standard consumption and none for actual consumption.
- The only information of record on actual yield losses incurred by Shakti to manufacture subject merchandise is the yield loss rate for the final machining step. If this yield loss rate is extrapolated to each of the steps in the manufacturing process, cutting, forging, rough machining and final machining, then the net loss rate is more than what was reported.
- Shakti's reporting of machining times is not accurate. In its submission, it showed the actual time to produce one fitting was higher than what was reported cycle time for machining the product. It appears from the facts of the record that Shakti has under-reported its processing time.
- Shakti's reporting of cost for products sold to traders was not consistent with its description of its products and processing performed on them. Shakti stated that

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<sup>88</sup> See Petitioners Case Brief.



production of fittings sold to traders do not include certain processing steps related to roughing and finishing. However, there were several CONNUMs sold in the home market to traders that were reported to have machining, finishing and heat treatment costs.

- Shakti's reporting of costs for products sold to end-users in the home market and for export was not consistent with its description of its fittings and processing performed on them. Shakti has reported that it performed certain processing steps related to roughing and finishing for its U.S. sales and for its home market sales to end users. However, there were several CONNUMs reported for which no machining and finishing costs were reported, either in-house or from third party tollers.
- Shakti's cost reporting was not internally consistent. There were CONNUMs reported where there were a number of pieces that it performed rough machining and final machining in-house, but no corresponding power costs were reported.
- Should Commerce not determine to rely on total AFA to determine Shakti's dumping margin, Commerce should modify its preliminary determination to correct the direct material costs and adjust all of the processing times to reflect the loss rate, adjust the processing costs and modify the overhead and fixed overhead allocations using denominators that consist of material, labor and energy costs.

*Shakti's Rebuttal Brief:*<sup>89</sup>

- Petitioners' false claims raised in their case brief are mere wild allegations derived using random pick and choose data from Shakti exhibits and completely ignoring the context of the information. The petitioners had not raised a single issue for more than five months when they had four opportunities in petitioners' comments on the section D responses, its pre-preliminary comments and post preliminary comments.
- Shakti reported its complete audited financial statement included in their annual report and independent tax audit report for the financial year 2018-2019 of Shakti Forge, its affiliate. Even if Commerce had come for verification, the financial statements for FY 2019-20 would not have been ready due to the extension granted by the Indian Government. The cost calculations are exactly as per its responses and petitioners raised no objection to the submitted data earlier.
- Shakti does not have a cost accounting system. However, in many antidumping investigations/reviews, respondents do not have cost accounting systems. In these cases, Commerce has accepted reported costs as described and reported by respondent, as long as it is in line with Commerce's methodology for calculation of the margin.
- Shakti's materials consumption reflects the actual consumption and not standard. Shakti has calculated the standard consumption quantity based on the cut weight of each product multiplied by the number of actual pieces produced per month and the consumption quantity is compared with actual raw material available for the month and the difference is treated as inventory at month end.
- Petitioners are comparing incorrect figures. The provided machine time reports the variation in labor and power costs. However, the rate is an efficiency loss during the process and not the material loss as claimed by the petitioners.

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<sup>89</sup> See Shakti Rebuttal Brief.

- Shakti has used standard processing time as the standard to allocate the actual costs. The actual labor or power cost as per the financial statement is allocated based on the standard time as a parameter in order to reasonably capture the variation in actual cost amongst different products.
- Commerce should reject the entire analysis provided by the petitioners in their case brief because it is not generated based on finished and unfinished fittings and it is based on incorrect and partial data or assumptions. The petitioners inaccurately stated that some machining operations are not used for products sold to home market traders. SHAKTI previously clarified that unfinished fittings sold to traders do not require any machining operations. Based on this incorrect claim, the petitioners made an analysis using labor, power and jobwork which they believe shows inconsistency in the reported cost. The methodology used by petitioners is itself incorrect because it lacks the fundamental concept of unfinished fitting costs.
- The petitioners claimed that some CONNUMs do not have finishing costs or machining costs. The petitioners made a mistake by only considering just single machine time instead of all three process times (roughing, final machining/roughing and roughing + final machining). Thus, it appears that petitioners made an incorrect analysis just for the sake of submitting its case brief and baseless reports to undermine the record and create confusion.
- Shakti has reported in-house machining energy costs where petitioners state that there were no costs reported. The petitioners considered just one part of machining costs and disregarded the other part of machining costs.
- Commerce should not adjust the other variable and fixed overhead allocation to exclude the costs of outside tollers and Shakti Forge in the denominator to calculate the ratio. The petitioners are ignoring the fact that for Shakti, the total jobwork cost paid is in the nature of variable costs. It is also practically impossible to further break down the outside tollers' variable and fixed costs as implied by the petitioners, since Shakti has availed more than fifty job workers who have invoiced SHAKTI in totality on per piece or per kg basis. Shakti has no control over those job workers to ask for breakdown of the jobwork costs.

**Commerce's Position:** We disagree with the petitioners that applying total AFA in this case is warranted. Each of the major points raised by the petitioners to support AFA are discussed in turn below, however, where Commerce finds that an adjustment is necessary, the circumstances do not warrant total AFA.

First, concerning the petitioners' argument that Shakti mis-reported material costs through the use of standards, rather than actual figures, we agree that part of the calculation was based on standards. Shakti only determines inventories at year-end and thus did not have available to it a closing inventory balance against which it could square up the calculation of material consumption costs. In order to square up the use of standards to actuals, Shakti used actual material consumption calculated as purchases minus its increase in inventories. While we had some concerns with the calculated ending inventory, as a conservative approach, as we did at the

preliminary determination, we did not reduce purchases by the claimed increase in inventory in determining the actual material costs consumed.<sup>90</sup>

Second, we disagree with the petitioners that the processing time was not accurately reported. Shakti did not use the standard time to determine the actual cost but rather used the actual labor and power cost and allocated the cost to each product produced using the product-specific relative standard cycle times.

Third, concerning the petitioners' argument that processing costs were inaccurately reported when taken against narrative descriptions made in the responses, we disagree. The petitioners provided an analysis of the reported costs that was based on initial statements made by the respondent.<sup>91</sup> Shakti correctly points out that it revised or corrected these statements in subsequent filings<sup>92</sup> which petitioners did not take into account.

Lastly, we agree with Shakti that some of the unfinished products that were sold to traders in the home market were found to have no processing costs. Shakti explained that the cases where it was mentioned that several steps are not undertaken for sales to home market distributors are pertaining only to unfinished forged fittings. Since these fittings are not fully finished, these several steps are not required to be performed.<sup>93</sup> Shakti identified the unfinished fittings as those CONNUMs that start with "2" that do not require finishing costs. CONNUMs that start with "1" are finished fittings that require finishing costs, hence processing costs were assigned to those CONNUMs sold in the home market. The products that the petitioners included in their "exception" report were sold to traders in the home market that were found to have processing costs refer to finished fittings, "1," and are expected to have finishing costs. We note some products produced that were identified as having no finishing costs reported in "Jobwork1" schedule for third party tollers were done in-house and therefore, the finishing costs are allocated in the fields labor and power.

In the case of products sold to end users in the home market and for export found to be without processing costs, and those products that were produced in-house, but found to be without power costs, we disagree with the petitioners that the appropriate costs were not allocated for these products. We were able to confirm that, as Shakti explained, the processing costs are allocated under either one of the three processing steps/costs the product went through for finishing.<sup>94</sup> An item can undergo any of the three processes or in combination of above three processes, depending upon the market (domestic or export) where the product is sold and depending upon the availability of machines where the product is produced as per the actual experience of Shakti.<sup>95</sup>

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<sup>90</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determinations – Shakti Forge Industries Pvt. Ltd.," dated May 20, 2020 (Shakti Preliminary Cost Memo).

<sup>91</sup> See Shakti Section A Questionnaire Response (AQR) dated February 5, 2020 at Exhibit A-10(a).

<sup>92</sup> See Shakti Section A 4th Questionnaire Response dated May 4, 2020 at 1-2.

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

<sup>94</sup> See Shakti's 6th Supplemental Response dated July 23, 2020 at Exhibits S5-6, S5-7 and S5-8.

<sup>95</sup> See Shakti's Rebuttal Comments on Petitioners' Second and Third Post Preliminary Comment dated July 13, 2020 at 8-9.

According to petitioners, should Commerce not rely on adverse facts available, Commerce should adjust the material costs by the extrapolated loss rate based on the processing cost, to adjust all the processing times reported by Shakti based on the average loss rate of the processing cost and to modify Shakti's variable and fixed overhead. First, we disagree with the petitioners that we should adjust the material costs, processing times and modify the variable and fixed overhead. The processing loss percentage calculated by the petitioners is an efficiency rate. The processing loss does not relate to materials consumption but to production efficiency and therefore should not be used to adjust for direct material costs. In addition, because we did not take into account the increase in raw materials inventory when determining actual consumption, we already made a conservative adjustment in deriving actual materials consumed. Second, the processing cost likewise should not be adjusted as the actual costs for labor and power were already reflected in the reported cost. Shakti reasonably used the standard time to allocate the actual cost. And lastly, we disagree with the petitioners to revise the variable and fixed overhead calculation. The cost of the jobwork paid to third party tollers and to the affiliated company, Shakti Forge although those costs also include fixed and variable costs, all those costs are variable costs to Shakti and it would be impractical for Shakti to request several third party tollers to provide the breakdown of each component of the cost. All the variable and fixed costs were reasonably and fully allocated between subject and non-subject merchandise.

### **Comment 3: Whether Commerce Should Adjust Shakti's Direct Materials Consumption Cost**

*Shakti's Case Brief:*<sup>96</sup>

- In the *Preliminary Determination*, Commerce adjusted the reported DIRMAT because Commerce considered it to reflect standard consumption and not actual consumption.
- Since there was no closing inventory available as of April 30, 2018, Shakti has calculated the standard consumption quantity based on the cut weight of each product multiplied by the number of actual pieces produced during the month.
- Shakti then allocated the difference between the theoretical and total actual consumption to capture the variation in cost amongst products which differ by physical characteristic as requested by Commerce.
- The cost allocation is based on the audited financial statement which duly reconcile with overall reconciliation.
- Commerce's consumption value based solely on purchased quantity distorts the input-output analysis, which incorrectly increased the DIRMAT cost.

*Petitioners' Rebuttal Brief:*<sup>97</sup>

- The accounting consumption, which has been calculated based on standard cut weight, is being compared to standard consumption in order to calculate the difference used to square up the calculation. The actual material costs calculations are contradictory and provided no basis for a determination of actual steel consumption.

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<sup>96</sup> See Shakti Case Brief.

<sup>97</sup> See Petitioners Rebuttal Brief.

- The material loss for almost all of Shakti's production is so low. The original document provided by Shakti showed their production report has a higher loss rate. Shakti even included the costs of loss materials, which provided misleading picture of the viability of Shakti's business.
- Should Commerce decide not to employ total AFA to determine a margin for Shakti, it should certainly not reduce the consumption amount that it relied on for its preliminary determination, it should increase the amount.

**Commerce's Position:** We agree with the petitioners that Shakti's direct material consumption is based on standard cut-weight (*i.e.*, input weight). In the inventory movement schedule submitted by Shakti, the company specifically stated that it calculated the monthly inventory quantities based on the standard consumption (*i.e.*, input weight) required for the production quantity produced during the month.<sup>98</sup> In order to conservatively reflect actual consumption, we continue to adjust the raw material consumption to account for the maximum amount of additional consumption that could have been incurred by Shakti had the entire raw material inventory been consumed. We therefore have continued to calculate raw material consumption without taking into account the change in ending inventory, where we adjusted the raw material consumption to equal purchases.

In addition, we adjusted Shakti scrap offset to align annual rate of scrap evenly for the fiscal year that covers both the period before and during the POI. Shakti does not have a cost accounting system. In its financial accounting system, the sale of scrap is recorded as income and it is credited in the scrap sale account.<sup>99</sup> According to Shakti, because scrap is sold frequently, typically no quantity of scrap remains in stock, hence scrap sold during the POI is equal to the scrap generation.<sup>100</sup> However, based on the record evidence, when analyzing the scrap produced over the consumption cost during the fiscal year 2019, the scrap rate produced in the fiscal year prior to the POI is substantially lower than the scrap produced in the fiscal year that is covered by the POI. As all products normally go through the production processes of cutting, forging, turning and drilling, where the scrap is generated<sup>101</sup> and there have been no changes in the nature of the business during the year under investigation,<sup>102</sup> the scrap produced should be at of the same rate over a given period of time. Since Shakti only records the sale of scrap, there is no record evidence that the scrap sold during the POI was generated during the POI. Therefore, to remedy the disparity of the amount of scrap generated before the POI and during the POI, we calculated the percentage scrap sold over the consumption amount for the FY2019 (adjusted for the preliminary determination adjustment on material cost for the POI)<sup>103</sup> and applied that annual rate to the consumption amount during the second half of the FY2019, which is first half of the POI. We then added this amount to the scrap offset for the second half of the POI to obtain the revised scrap offset amount.

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<sup>98</sup> See Shakti's Section D Questionnaire Response (DQR) dated March 2, 2020 at Exhibit D-3.

<sup>99</sup> *Id.* at D-19.

<sup>100</sup> *Id.* at D-20.

<sup>101</sup> *Id.* at D-19.

<sup>102</sup> See Shakti's AQR dated February 5, 2020 at Exhibit A-9b.

<sup>103</sup> See Shakti Preliminary Cost Memo.

#### **Comment 4: Whether Commerce Should Disallow the Interest Expense Offset of Shakti Forge**

##### *Shakti's Case Brief:*<sup>104</sup>

- Commerce adjusted Shakti's forging costs from its affiliate, Shakti Forge, as a result of an adjustment to its interest expense ratio. Commerce excluded the interest income offset considering it earned from long-term deposits.
- The asset on which the interest was earned is essentially a demand deposit (for electric, gas and telephone) because the deposits are kept with authorities as earnest money as long as Shakti Forge is availing services from respective authorities. If Shakti Forge wishes to cancel the connection or change connection from one authority to another, Shakti Forge can do it without wait.
- All demand deposits are by nature a short-term asset and hence the interest earned on such asset should be allowed an offset from financial expense of Shakti Forge.

##### *Petitioners' Rebuttal Brief:*<sup>105</sup>

- Shakti states that these deposits are shown as a non-current asset in Shakti's 2018-2019 annual report.
- Shakti has characterized the deposits in its books and records as non-current and has not asserted that those records are not in accord with GAAP in India or demonstrated that they are not an accurate representation of its costs.
- Commerce should thus reject Shakti's claim that the interest on these deposits is short-term interest.

**Commerce's Position:** In accordance with section 773(b)(3)(B) of the Act, Commerce includes a net interest expense (*i.e.*, as a type of general expense) in its calculation of a respondent's cost of production. In calculating the net interest expense, Commerce allows a respondent to offset interest expenses with short-term interest income generated from working capital.<sup>106</sup> Working capital represents the net liquid assets available to the company to meet its short-term operating needs. At the *Preliminary Determination*, Commerce excluded as interest expense offset the interest income earned from utility deposits of Shakti's affiliated company, Shakti Forge, in the calculation of Shakti Forge's financial expenses.

Upon reviewing the information on the record, Commerce notes that the reported interest income was related to assets (*i.e.*, deposits) considered to be long-term, *i.e.*, not part of working capital. We disagree with Shakti's argument that the deposits to utility companies are not actually long-term because Shakti may cancel services or change connection from one authority to another without waiting. The company is a forging company and utilities (electric, gas and telephone) are essential to its operations. Essentially, Shakti argues that all long-term assets (and liabilities) are actually short-term because the company may stop operations and liquidate everything to cash. The fact remains that the deposits are tied up for the long-term and not available for operations, thus the interest is akin to interest earned on long-term investments.

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<sup>104</sup> See Shakti Case Brief.

<sup>105</sup> See Petitioners Rebuttal Brief.

<sup>106</sup> See *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 40848 (July 11, 2012) at Comment 6.

We agree with the petitioners that the deposits related to the interest income in question are shown as non-current assets in Shakti Forge's audited FY 2018-2019 financial statements.<sup>107</sup> The fact that these deposits are considered as non-current assets makes the related interest incomes sourced from non-current assets. Therefore, for the final determination, we continue to exclude the interest income from Shakti Forge's utility deposits as interest expense offset.

### VIII. RECOMMENDATION

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

☒

Agree

☐

Disagree

10/13/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>107</sup> See Shakti's DQR at Exhibit D-8(c).