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Investigation
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December 7, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Negative
Determination in the Less-Than-Fair-Value Investigation of
Forged Steel Fluid End Blocks from India

I. SUMMARY

The Department of Commerce (Commerce) determines that forged steel fluid end blocks (fluid end blocks) from India are not being, or are not likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2018 through September 30, 2019. Two companies, Bharat Forge Limited (Bharat) and Ultra Engineers, were examined.

After analyzing the comments submitted by interested parties, we have made certain changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Comment 1: Application of Adverse Facts Available

Comment 2: Direct Material Costs

Comment 3: Constructed Value Profit

Comment 4: Major Input Adjustment and the Appropriate Level of Aggregation

II. BACKGROUND

On July 23, 2020, Commerce published in the *Federal Register* its preliminary negative determination in the LTFV investigation of fluid end blocks from India. On August 5, 2020, the

¹ See *Forged Steel Fluid End Blocks from India: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 85 FR 44517 (July 23, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



petitioners² submitted post-preliminary determination comments.³ On September 2, 2020, Bharat submitted a reply to the petitioners' post-preliminary determination comments.⁴ On August 24, 2020, pursuant to 19 CFR 351.310(c), the petitioners requested that Commerce hold a public hearing.⁵ On September 2, 2020, Commerce issued questionnaires requesting additional information from Bharat in lieu of performing on-site verifications as required under section 782(i) of the Act.⁶ On September 14, 2020, we received a timely response from Bharat to our inquiry.⁷ On October 2, 2020, we invited parties to comment on the *Preliminary Determination* and the September 14, 2020, response to Commerce's request for additional information.⁸ On October 19, 2020, we received case briefs each from the petitioners and Bharat.⁹ On October 28, and October 29, 2020, we received rebuttal briefs each from the petitioners and Bharat.¹⁰ On November 16, 2020, we held a virtual public hearing.

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation, as provided for in section 782(i) of the Act. However, we took additional steps in lieu of on-site verification and requested additional documentation and information.¹¹ 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, we relied on the information submitted on the record as facts available in making our final determination, except as detailed in the Analysis of Comments section, below.

III. CHANGES FROM THE PRELIMINARY DETERMINATION

For Bharat, for this final determination, we applied partial adverse facts available (AFA) in the following situations:

² The petitioners are the FEB Fair Trade Coalition; Ellwood Group (comprised of Ellwood City Forge Company; Ellwood Quality Steels Company; and Ellwood National Steel Company); and A. Finkl & Sons, Company (collectively, the petitioners).

³ See Petitioners' Letters, "Forged Steel Fluid End Blocks from India: Petitioner's Comments Following Preliminary Determination," dated August 5, 2020.

⁴ See Bharat's Letter, "Forged Steel Fluid End Blocks from India: Response to Petitioner's Comments Following Preliminary Determination," dated September 2, 2020.

⁵ See Petitioners' Letter, "Forged Steel Fluid End Blocks from India: Petitioner's Request for Public Hearing," dated August 24, 2020.

⁶ See Commerce's Letter to Bharat, dated September 2, 2020 (Questionnaire in Lieu of Verification).

⁷ See Bharat's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Post-Preliminary Response," dated September 14, 2020 (Bharat's Questionnaire in Lieu of Verification Response 1)).

⁸ See Commerce's Letter dated October 2, 2020.

⁹ See Petitioners' Letter, "Forged Steel Fluid End Blocks from India: Case Brief of Petitioner," dated October 19, 2020 (Petitioners' Case Brief); see also Bharat's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Administrative Case Brief," dated October 19, 2020.

¹⁰ See Petitioners' Letter, "Forged Steel Fluid End Blocks from India: Rebuttal Brief of Petitioner," dated October 28, 2020; see also Bharat's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Rebuttal Case Brief," dated October 29, 2020 (Bharat's Rebuttal Brief).

¹¹ See Questionnaire in Lieu of Verification; see also Bharat's Questionnaire in Lieu of Verification Response 1; and Bharat's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Post-Preliminary Response," dated September 15, 2020 (Bharat's Questionnaire in Lieu of Verification Response 2).

- (1) For Net Weight, we have assigned the highest reported net weight from any product to the merchandise under consideration (MUC) products and recalculated the submitted allocation factors accordingly. Based on the revised allocation factors, we adjusted the conversion costs for the MUC cost of manufacturing (COM).
- (2) For the Costs for Certain Parts, we added the highest reported costs for certain parts from any product control number (CONNUM) to the COM for one CONNUM that reported no parts costs for certain parts.
- (3) For U.S. sales of two specific CONNUMs, we included them in the dumping analysis and applied the highest transaction-specific dumping margin to these U.S. sales.¹²

Additionally, we made adjustments to Bharat's reported costs and profit for constructed value (CV). Specifically, we adjusted the material costs for inputs from affiliated suppliers pursuant to the major input rule, conversion costs, and calculated the CV profit rate to reflect the effect of the other changes in Bharat's reported production costs.¹³

IV. DISCUSSION OF THE ISSUES

Comment 1: Application of Adverse Facts Available

Petitioners' Comments:

- Bharat failed to follow Commerce's instruction that it report the "actual percent content ... by weight" of chromium, nickel, copper, and molybdenum; however, Bharat deviated from this instruction in its reporting of these physical characteristics.¹⁴
- A pair of mill test certificates that "purport to be the same mill test certificate" are, in fact, different, and therefore either one or both certificates have been falsified.¹⁵
- Bharat provided unsolicited new factual information in its response to our Questionnaire in Lieu of Verification.
- Bharat underreported its costs by failing to capture all relevant costs in the reported costs that were contained in Exhibit D-71 of the Questionnaire in Lieu of Verification response.
- Bharat underreported general and administrative (G&A) expenses by not including certain cost centers from Exhibit D-71 of the Questionnaire in Lieu of Verification response in the calculation of the employee benefits costs included in the G&A expense ratio calculation.

¹² For further details of these adjustments, *see* Memorandum, "Forged Steel Fluid End Blocks from India – Preliminary Determination Analysis Memorandum for Bharat Forge Limited," dated December 7, 2020 (Bharat's Final Sales Analysis Memorandum).

¹³ For further details of these adjustments, *see* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Bharat Forge Limited," dated December 7, 2020 (Bharat's Final Cost Analysis Memorandum).

¹⁴ *See* Petitioners' Letter, "Forged Steel Fluid End Blocks from India: Case Brief of Petitioner," dated October 19, 2020 (Petitioners' Case Brief) at 6 (citing Commerce's Letter, "Antidumping Duty Investigations of Forged Steel Fluid End Blocks from Germany, Italy, and India - Product Characteristics," dated February 13, 2020 and Attachment; and Bharat's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's 2nd Supplemental Sections A & C Response, Questions 7-9 and 11," dated June 2, 2020 at 2).

¹⁵ *See* Petitioners' Case Brief at 7-9 (citing Bharat's Questionnaire in Lieu of Verification Response 1 at 11-12).

- Bharat “failed verification” with respect to its reporting of heat treatment costs because source documentation provided by Bharat in the Questionnaire in Lieu of Verification response does not match the values that Commerce sought to verify.
- Bharat did not cooperate to the best of its ability because the reported product costs do not account for differences in the heat treatment characteristics between CONNUMs, and Bharat had more specific information on heat treatments that it could have used to differentiate these costs.
- Bharat did not cooperate to the best of its ability because it did not report product specific costs for two CONNUMs for the physical characteristic “parts.”

Bharat’s Rebuttal Comments:

- Bharat argues that a negligible difference in the two mill test certificates, identified as falsified by the petitioners, were received at different times from its supplier, and the difference is negligible, and likely the result of a rounding error.¹⁶
- Further, the chemical percent content identified in these mill test certificates (and additional mill test certificates on the record) indicate that these products should be excluded because they are outside the scope of this investigation.¹⁷
- Bharat has consistently made its best efforts to provide all data regarding the production of all FEBs manufactured and sold during the POI.¹⁸
- The cost centers cited by the petitioners that were included in response to Commerce’s Questionnaire in Lieu of Verification exhibit were not new unsolicited factual information. These cost centers were either breakouts of main cost centers from a previously submitted exhibit or were cost centers that were already included in the reported COM.
- Bharat has reported all manufacturing costs appearing in cost centers related to subdivisions involved in the manufacture of MUC at all locations in India.
- Bharat properly reported all G&A costs in accordance with Commerce’s established methodology.
- Heat treatment costs reported by Bharat are consistent with source documentation. Cost centers cited by petitioners as being related to heat treatments and excluded from the reporting of heat treatment costs were not related to heat treatments.
- Heat treatment costs are generally captured together by Bharat, and a specific hourly cost for each heat treatment sub-process cannot be identified from Bharat’s accounting system.
- Bharat appropriately reported the cost for CONNUMs with parts.

Commerce’s Position: Based on our examination of the record of this investigation, we find that the application of total AFA is not warranted with respect to Bharat’s reported cost and sales information. In this investigation, we find that Bharat cooperated, in general, with Commerce’s

¹⁶ See Bharat’s Rebuttal Brief at 1 (citing Bharat’s Questionnaire in Lieu of Verification Response 1 at Exhibits C-64 and C-65.)

¹⁷ *Id.*

¹⁸ See Bharat’s Rebuttal Brief at 2 (citing Bharat’s Letter, “Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited’s Section D Response,” dated March 13, 2020 (Bharat’s March 13, 2020 DQR); Bharat’s Letter, “Forged Steel Fluid End Blocks from India: Submission of 2nd Supplemental Section D Response,” dated June 11, 2020 (Bharat’s June 11, 2020 2SDQR); and Bharat’s Questionnaire in Lieu of Verification Response 2).

multiple requests for information by timely responding to Commerce's questionnaires, including the Questionnaire in Lieu of Verification. However, we do find, as described below, that the use of partial AFA is appropriate in some instances.

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party or any other person: (1) withholds information that has been requested by Commerce; (2) fails to provide information within the established deadlines or in the form or manner requested, subject to section 782(c)(1) and section 782(e) of the Act; (3) significantly impedes a proceeding; or (4) provides information but the information cannot be verified, then Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁹

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) noted that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."²⁰ Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.²¹ The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.²²

Cost Centers

We disagree with the petitioners that Commerce should apply total AFA because Bharat failed to follow Commerce's instructions in its Questionnaire in Lieu of Verification by adding unsolicited factual information to the record. We find that, in general, Bharat complied with our requests for information, acted to the best of its ability to be transparent in its response, and supplied supporting information that was in greater detail than that contained in prior submissions. The petitioners allege that Bharat added 25 new cost centers to the cost center report submitted by Bharat in its response to the Questionnaire in Lieu of Verification. However, we compared the cost center report filed with the Questionnaire in Lieu of Verification

¹⁹ See SAA at 870; see also *Notice of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

²⁰ See *Nippon Steel*, 337 F. 3d at 1382.

²¹ *Id.*

²² *Id.*

response²³ to the cost center report that was previously submitted²⁴ and find that the additional cost centers were either cost centers already included in the calculation of the reported costs or represent a more detailed breakout from main cost centers related to merchandise not under consideration.²⁵ We disagree with the petitioners' reasoning that Bharat did not act to the best of its ability in providing requested information to Commerce, but find instead that Bharat responded thoroughly to our request for information by supplying extensive details to support its reported costs as requested by Commerce in the Questionnaire in Lieu of Verification.

The petitioners further assert that Bharat underreported its costs and did not demonstrate that all costs from Bharat's cost center report at Exhibit D-71 of the Questionnaire in Lieu of Verification response were included in the reported costs, thereby "failing verification." However, record evidence shows that Bharat did include the costs in question in the calculation of its reported costs.²⁶ Bharat separately identified these costs in several different line items and were included in the buildup of the reported costs at Exhibit D-32.2 and Exhibit D-32.6 of Bharat's June 11, 2020 supplemental Section D response. The petitioners compare the total costs from the cost center report to the total cost of the MUC from the cost reconciliation, and conclude that the costs for the MUC are underreported.²⁷ However, this analysis is flawed because the cost center report includes costs of both merchandise under consideration and merchandise not under consideration, and, thus, reasonably reports greater costs than those in the cost reconciliation, which reports only the total cost of the MUC.

G&A Expenses

The petitioners argue that Bharat underreported its G&A expenses by not including certain cost centers from Bharat's cost center report in the calculation of the costs for employee benefits which is included in the numerator of the G&A expense ratio. However, it is expected that the numerator of the G&A expense ratio does not reconcile to the total POI G&A cost center costs referred to by the petitioners. The fiscal year financial statements (*i.e.*, the basis upon which the G&A expense ratio is calculated) report costs by cost element (*e.g.*, employee benefits, miscellaneous, *etc.*), whereas the cost center report reflects POI costs in aggregate by cost center.²⁸ Contrary to the petitioners' assertion, all of the cost centers from the cost center report may not include employee benefits, so it is expected that some of the cost centers from the cost center report may not be included in the calculation of the employee benefits costs. For example, cost centers may include several different types of cost elements, such as power and fuel costs, consumables stores and spares, and machinery repairs and maintenance.²⁹

²³ See Bharat's Questionnaire in Lieu of Verification Response 2 at Exhibit D-71.

²⁴ See Bharat's June 11, 2020 2SDQR at Exhibit D-29.

²⁵ See Bharat's June 11, 2020 2SDQR at Exhibit D-29; *see also* Bharat's Questionnaire in Lieu of Verification Response 2 at Exhibit D-71. Because we have determined this information had already been placed on the record as a part of Bharat's June 11, 2020 2SDQR and Bharat's Questionnaire in Lieu of Verification Response 2, we will not be rejecting this information as NFI as requested by the petitioners.

²⁶ See Bharat's Questionnaire in Lieu of Verification Response 2 at Exhibit D-72; *see also* Bharat's June 11, 2020 2SDQR at Exhibits D-32.2 and Exhibit D-32.6; and Bharat's Rebuttal Brief at Exhibit CB-2.

²⁷ See Petitioners' Case Brief at 18.

²⁸ See Bharat's March 13, 2020 DQR at Exhibit D-59; *see also* Bharat's Questionnaire in Lieu of Verification Response 2 at Exhibit D-71.

²⁹ See Bharat's June 11, 2020 2SDQR at Exhibit D-32.2.

Further, there is an expected difference in costs between the cost center report and the G&A expense ratio because of the difference in the time periods between the two calculations (*i.e.*, POI versus fiscal year). Given these differences, in order to evaluate the petitioners' claim that the total G&A expenses were underreported, we reconciled the reported G&A expenses to Bharat's audited financial statements. We analyzed the reasonableness of the reported fiscal year G&A expense ratio by comparing the reported G&A expense ratio to a calculated POI G&A expense ratio using the cost center costs referred to by the petitioners and found that this ratio was actually lower than the G&A expense ratio that was reported by Bharat.³⁰ In light of all of the points noted above, we conclude that the record does not support the petitioners' claim that the reported G&A expense ratio has been understated. Bharat demonstrated that it properly reported G&A expenses based on its audited financial statements for the fiscal year.³¹

Heat Treatment Costs

With respect to Bharat's reporting of heat treatment costs, we disagree with petitioners' assertion that Bharat failed to adequately report its costs associated with its heat treatment of the MUC. Commerce will, in accordance with section 773(f)(1)(A) of the Act, normally calculate the costs of production based on the records of the producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise.³²

In this investigation, Commerce's physical characteristics include seven different types of heat treatments, which Commerce defined as normalized, austenitized, annealed, solution annealed, tempered, age hardened, and quenched processes.³³ Bharat does not separately track the costs associated with each of these types of heat treatment processes in the normal course of business; therefore, Bharat developed an approach to report heat treatment costs based on the relative processing time for each type of heat treatment processes, which is information it keeps in its normal books and records. Bharat's methodology allocates total heat treatment costs based on the total heat treatment hours for each type of heat treatment process associated with each product.³⁴ In this way, each product was allocated a proportional amount of costs based on the total time it spent being heat treated. For example, if the production of a product calls for it to receive normalized and hardened heat treatments requiring a certain number of hours, then the product would be assigned costs based on those proportional number of hours for each type of heat treatment.

The petitioners assert that Bharat had more specific information and could have used a different methodology to allocate heat treatment costs. However, we find that Bharat's methodology was CONNUM specific, reasonable, and based on information kept in Bharat's normal books and records. The petitioners further argue that certain cost centers that were

³⁰ See Bharat's Questionnaire in Lieu of Verification Response 2 at Exhibit D-71; Bharat's Final Cost Analysis Memorandum.

³¹ See Bharat's March 13, 2020 DQR at Exhibits D-59 and D-60.

³² See *Light-Weight Rectangular Pipe and Tube from Mexico*, Notice of Final Determination of Sales at Less Than Fair Value, 73 FR 35649 (June 24, 2008) and accompanying IDM at Comment 10.

³³ See Bharat's March 13, 2020 DQR at 17-19.

³⁴ See Bharat's June 11, 2020 2SDQR at Exhibit D-32.6.

related to heat treatments were excluded from the calculation of the reported costs.³⁵ However, the record shows that these cost centers either relate to merchandise not under consideration or their descriptions indicate that they do not relate to heat treatments.³⁶

Net Weights

We disagree with the petitioners' assertion that Bharat "failed verification" because source documentation provided by Bharat did not match the values that Commerce sought to verify. Bharat provided the underlying support for each of the allocation factors related to the calculation of heat treatment costs that we requested in our Questionnaire in Lieu of Verification with the exception of one (*i.e.*, net weight). For two products, Commerce requested that Bharat provide source documentation for the net weight of the products as a means to test the accuracy of the allocation of the common cost center costs. However, instead of providing support for the requested net weights, Bharat provided support for the supply weights of the products. The supply weights are not relevant in testing the common cost center allocation factors, and, as such, our testing is only partially complete.

We find that the application of facts available is appropriate pursuant to section 776(a)(1) of the Act, which provides that if the necessary information is not on the record, Commerce shall use the facts otherwise available in reaching its determination. We do not have the necessary information on the record to substantiate the product-specific net weights as used in the formula to allocate the heat treatment costs. Therefore, we must base the allocation on facts available. Section 782(d) of the Act does not change this decision because, although Commerce issued supplemental questionnaires to Bharat, Commerce was not aware of these reporting deficiencies until receipt of the Questionnaire in Lieu of Verification response, and, thus, it was unable to provide Bharat with an opportunity to remedy the deficiency through a supplemental questionnaire given the late stage of the investigation. Further, we find that Bharat failed to provide information on the net weight by the deadlines for submission of the information, within the meaning of section 776(a)(2)(B) of the Act. Bharat did not inform Commerce of any difficulties in reporting the net weight, and, therefore, section 782(c)(1) of the Act does not apply. Likewise, section 782(e) of the Act does not apply, because, as just mentioned, Bharat did not meet the relevant deadlines and, as discussed below, it did not act to the best of its ability.

In addition, we find that Bharat's failure to report the requested information, accurately and in the manner requested, using the records over which it maintained control, indicates that Bharat did not act to the best of its ability to comply with our requests for information. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.³⁷ We find that Bharat's failure to keep reporting requirements in mind and the failure to provide support for the product-specific net weight, as requested in the Questionnaire in Lieu of Verification, and providing instead support for the supply weight are not indicative of doing the maximum to comply with Commerce's request. Hence, we find that the application of partial AFA is appropriate under

³⁵ See Petitioners' Case Brief at 29.

³⁶ See Bharat's Questionnaire in Lieu of Verification Response 2 at Exhibit D-71.

³⁷ See *Nippon Steel*, 337 F.3d at 1382.

section 776(b) of the Act for Bharat's unsupported product-specific net weight as is used in the common cost center allocation ratios.

As partial AFA, we assigned the highest reported net weight from any product to the MUC products and recalculated the submitted allocation factors, accordingly.³⁸ Because we are relying on Bharat's own information obtained during the course of this investigation for this partial AFA plug, there is no requirement that Commerce corroborate this information pursuant to section 776(c) of the Act. Based on the revised allocation factors, we also adjusted the conversion costs for the MUC COM and the CV profit rate.³⁹

Costs for Certain Parts

With respect to the petitioners' argument that Bharat failed to use best efforts with respect to its cost reporting for CONNUMs with the physical characteristic "parts" (*e.g.*, flanges, sleeve, o-ring, *etc.*), we note that costs of certain parts represent a relatively small portion of Bharat's COM. The petitioners cite two CONNUMs where the costs of certain parts were excluded from the CONNUM cost build up.⁴⁰ The record demonstrates that the costs for certain parts were included for one of the CONNUMs cited by the petitioners.⁴¹ For the second CONNUM, we find that the application of facts available is appropriate pursuant to section 776(a)(1) of the Act because we do not have the necessary information on the record for costs of certain parts for the second CONNUM. Therefore, we must base the costs of certain parts on facts available.

Section 782(d) of the Act does not change this decision because, although Commerce issued supplemental questionnaires to Bharat, Commerce was not aware of this reporting deficiency until the petitioners filed their case brief and, thus, it was unable to provide Bharat with an opportunity to remedy the deficiency through a supplemental questionnaire given the late stage in the investigation. Similarly, we find that Bharat failed to provide information on the costs for certain parts for the second CONNUM by the deadlines for submission of the information, within the meaning of section 776(a)(2)(B) of the Act. Bharat did not inform Commerce of any difficulties in reporting parts cost for the one CONNUM and, therefore, section 782(c)(1) of the Act does not apply. Likewise, section 782(e) of the Act does not apply because Bharat did not meet the relevant deadlines and, as discussed below, it did not act to the best of its ability.

In addition, we find that Bharat's failure to report the requested information, accurately and in the manner requested, using the records over which it maintained control, indicates that Bharat did not act to the best of its ability to comply with our requests for information. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁴² We find that Bharat's failure to keep reporting requirements in mind and the failure to provide the costs of certain parts for the second CONNUM as requested is not indicative of doing the maximum one is able to do.

³⁸ See Bharat's Final Cost Analysis Memorandum.

³⁹ *Id.*

⁴⁰ We cannot identify the specific CONNUMs here because they are designated business proprietary information. For information on the CONNUMs at issue, see Bharat's Final Cost Analysis Memorandum.

⁴¹ See Bharat's June 11, 2020 2SDQR at Exhibit D-32.4.

⁴² See *Nippon Steel*, 337 F.3d at 1382.

Hence, we find that the application of AFA is appropriate under section 776(b) of the Act for Bharat's costs of certain parts for the second CONNUM.

For the CONNUM cited by the petitioners, which was reported as having parts, but included no separately reported costs, we relied on partial AFA by adding the highest reported costs for certain parts for any CONNUM to the second CONNUM that reported no costs for certain parts.⁴³ Because we are relying on Bharat's own information obtained during the course of this investigation, there is no requirement that Commerce corroborate this information pursuant to section 776(c) of the Act.

Physical Characteristics of the Merchandise Under Consideration

The petitioners assert that Bharat failed to follow Commerce's instructions to report the physical characteristics of the MUC. The petitioners allege that Bharat must report the actual alloy content by weight of chromium, copper, nickel and molybdenum, but that Bharat reported the physical characteristics for these four alloying elements using, in the petitioners' view, different parts of the steel grade's range of content requirements for these four alloy elements rather than based on actual content as would be provided by mill test certificates. The steel grades have ranges of acceptable content requirements for specific alloy elements, including chromium, copper, nickel and molybdenum. For some steel grades, the ranges of the permissible alloy content overlap multiple reporting codes established in Commerce's physical characteristic reporting instructions or more broadly the alloy content limits which define the MUC.⁴⁴

In this investigation, we did not conduct an onsite verification, and instead issued a questionnaire in-lieu-of verification.⁴⁵ Bharat's response to the Questionnaire in Lieu of Verification included mill test certificates which reflect the fact that Bharat's reporting codes are based on actual alloy content as reported in the mill test certificates and not reported based on some other logic as alleged by the petitioners.⁴⁶ Because this information was provided in response to a questionnaire in lieu of verification, we were unable to request additional information concerning the supplier's reporting methods. Based on the information submitted by Bharat in response to the Questionnaire in Lieu of Verification, in general, we find that Bharat accurately reported the physical characteristics of the MUC.

In the *Preliminary Determination*, Commerce included Bharat's U.S. sales of two CONNUMs for which Bharat reported molybdenum content outside the range defined by the scope of this investigation because of the uncertainty concerning Bharat's reporting of the molybdenum content of two CONNUMs.⁴⁷ As discussed above, Bharat responded that it based its reporting of the four physical characteristics for chrome, copper, nickel and molybdenum on mill test certificates, but it was unclear how Bharat determined what physical characteristic reporting codes it used to report the content of alloying elements. Further, Bharat provided mill test

⁴³ See Bharat's Final Cost Analysis Memorandum.

⁴⁴ See Bharat's Questionnaire in Lieu of Verification Response 1 at Exhibits C-64 – C-68.

⁴⁵ See Questionnaire in Lieu of Verification.

⁴⁶ See Bharat's Questionnaire in Lieu of Verification Response 1 at Exhibits C-64 – C-67.

⁴⁷ See Memorandum, "Forged Steel Fluid End Blocks from India – Preliminary Determination Analysis Memorandum for Bharat Forge Limited," dated July 16, 2020 (Bharat's Prelim Analysis Memorandum) at 2.

certificates for certain U.S. sale observations as requested by Commerce in the Questionnaire in Lieu of Verification.⁴⁸ The petitioners argue that Bharat has “failed verification” with respect to these two CONNUMs because two mill certificates from the same heat are different with respect to molybdenum content, and, therefore, the petitioners assert that Bharat has falsified its mill test certificates.

To report the physical characteristics for chrome, copper, nickel and molybdenum, Commerce instructed respondents to report the “actual percent content” of chrome, copper, nickel and molybdenum “by weight...as reflected in the material specification report.”⁴⁹ Bharat did not explain the method it used to report these requirements prior to its response to the Questionnaire in Lieu of Verification, in which we asked Bharat to supply mill test certificates for selected U.S. sale observations which represented each of the steel grades for which Bharat reported U.S. sales. Analysis of the reported mill certificates indicates that Bharat’s physical characteristic codes were reported based on the mill test certificates.⁵⁰

The petitioners claim that Bharat falsified its mill test certificates is based on a single discrepancy in Bharat’s reported mill test certificates for the input steel ingot, for a pair of sales for two different CONNUMs for the same steel grade.⁵¹ The specification for this steel grade is used to determine whether sales are within the scope of the investigation, based on the molybdenum content, because of the steel grade’s permissible range of molybdenum content.⁵² There is no information on the record to substantiate the source of the difference in the two mill test certificates in question. Other mill certificates for the same steel grade, from the same supplier, indicate that the molybdenum content places these products outside of the scope of this investigation. The petitioners argue that this discrepancy indicates that all of the mill test certificates have been falsified.

As noted above, Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation, as provided for in section 782(i) of the Act. Accordingly, we relied on the information submitted on the record as facts available in making our final determination. Further, we find that Bharat has not cooperated to the best of its ability in accordance with 776(b) of the Act because Bharat failed to act to the best of its ability when, in submitting its response to our Questionnaire in Lieu of Verification, it did not explain the method used by its supplier to generate two mill certificates for the same ingot with different results. Although this information was not produced by Bharat, it was being reported by Bharat as support for excluding certain sales during the verification process. In *Nippon Steel*, the CAFC stated that the “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains”.⁵³ Here Bharat’s lack of familiarity with records, including those produced by other parties, but submitted in support of Bharat’s claimed exclusion of products as out of scope

⁴⁸ See Bharat’s Questionnaire in Lieu of Verification Response 1 at Exhibits C-64 – C-67.

⁴⁹ See Commerce’s Letter, “Antidumping Duty Investigations of Forged Steel Fluid End Blocks from Germany, Italy, and India - Product Characteristics,” dated February 13, 2020 at 4-5.

⁵⁰ See Bharat’s Final Sales Analysis Memorandum at 2 (BPI discussion).

⁵¹ See Petitioners’ Case Brief at 6-10.

⁵² See Bharat’s Prelim Analysis Memorandum at 2.

⁵³ See *Nippon Steel*, 337 F. 3d at 1382.

merchandise, led to Bharat's reporting of information that is not useable to ascertain the molybdenum content of the CONNUMs in question.⁵⁴

The mill test certificates both from the unaffiliated supplier and another affiliated supplier, indicate that Bharat reported chrome, copper, nickel and molybdenum content based on the actual alloy contents of the merchandise sold in the United States during the POI. We find that the difference in molybdenum content in the mill certificates at issue does not impugn the mill test certificates from the supplier, as a whole. The discrepancy does, however, impugn their validity with respect to establishing that the products in question are not within the alloy content requirements of the scope of this investigation. Further, there is no other information on the record to demonstrate that the steel grade in these two CONNUMs is not within the scope of this investigation. Consequently, for this final determination, as partial AFA, we have continued to include the sales of these two CONNUMs in the margin calculation for the final determination. Further, in applying an adverse inference as a result of Bharat's failure to act to the best of its ability, we applied the highest transaction-specific dumping margin from among these U.S. sales based on an average-to-average comparison to each of the U.S. sales of these two CONNUMs. Because we are relying on Bharat's own information obtained during the course of this investigation for this partial AFA plug, there is no requirement that Commerce corroborate this information pursuant to section 776(c) of the Act.

Comment 2: Direct Material Costs

Petitioners' Comments:

- Differences in direct material costs between CONNUMs are not driven by the physical characteristics which define the CONNUMs and, therefore Commerce should have "smoothed" Bharat's costs.

Bharat's Rebuttal Comments:

- Commerce should use the costs reported by Bharat, as these are specific to each physical characteristic instead of the "smoothed" cost methodology proposed by the petitioners. There is no evidence to prove that the costs reported by Bharat vary due to factors other than the physical characteristics determined by Commerce.
- The difference in reported direct material costs between products with the same grade can be explained by the differences among products in the proportion of input quantity of metal to the end quantity of finished product supplied to the customer. Because each

⁵⁴ On November 23, 2020, the petitioners submitted a letter requesting that Commerce strike a portion of Bharat's rebuttal brief which was filed on October 19, 2020. Raising these issues approximately two weeks before the deadline for our final determination leaves Commerce little opportunity, if any, to engage in our usual process of examining whether information is in fact untimely new factual information and taking the necessary steps to remove such information from the record (*e.g.*, alerting the party and requesting that its refile its submission with the untimely new factual information redacted). Further, not only did the petitioners have the opportunity to raise these issues prior to the hearing, which was held on November 16, 2020, but these issues were also discussed at the hearing and the petitioners did not raise an objection at the hearing. *See* Transcript of Hearing at pages 60-63. In light of these factors, we are deeming the information concerning the mill certificates to constitute part of the administrative record. Nevertheless, we note that the information in Bharat's Rebuttal Case Brief related to this potential new factual information is not probative to our determination here, as we have relied on other record evidence.

product manufactured by Bharat has a custom design, the differences in raw material input weights to final weight between products are bound to occur to accommodate the differences in design specifications given by the customer.

Commerce's Position: We disagree with the petitioners that the differences in direct material costs between CONNUMs are not driven by the physical characteristics of the CONNUMs. We found in our review that the reported differences in direct material costs between CONNUMs, based on the differing physical characteristics, was appropriate. The petitioners argue that products with identical grade of steel ingot and the same level of machining should not have significant differences in their reported direct material costs. However, although the input per-unit cost of steel may be the same between CONNUMs, the petitioners' assertion does not consider the effect of yield loss on the final per-unit direct material costs of each product. For example, two CONNUMs with different yield losses would cause the final finished goods weight to differ between products. As the reported final per-unit direct material cost for the products is determined using finished goods weights, the differing final per-unit direct material costs between products is expected. Therefore, for the final determination, we used the costs as reported by Bharat because they are specific to the product's physical characteristics.

Comment 3: Constructed Value Profit

Petitioners' Comments:

- Commerce's choice of CV profit in the *Preliminary Determination* was improper because Bharat placed untimely and unsolicited new factual information on the record, the overall financial results of the Heavy Forging Division (HFD).
- The overall financial results of the HFD are driven by the profitability of U.S. sales of the MUC. The worksheets calculating profit for the HFD division were not source accounting documents, and Bharat inappropriately overallocated costs to non-subject merchandise, and distorted home market profits on non-FEB forgings.
- Commerce should have based CV profit on Bharat's unconsolidated financial statements because the unconsolidated financial statements include the sales of products in the same general category as the MUC. Further, the unconsolidated financial statements are audited, and therefore "self-verified," and a significant portion of sales included in Bharat's unconsolidated financial statements were domestic sales.

Bharat's Rebuttal Comments:

- Commerce has applied the correct CV profit rate in accordance with section 773(e)(2)(B)(i) of the Act.
- The petitioners' argument as to the untimeliness of new factual information being placed on the record is irrelevant because the information used for CV profit from Bharat's HFD was already properly on the record (*i.e.*, prior to Bharat's CV profit submissions) in response to another information request by Commerce. Accordingly, Commerce was entitled to use that information to calculate Bharat's CV profit rate.
- The overall profitability of the HFD was not used for CV profit, consistent with the statute. Bharat partitioned the actual amount of profit attributed only to home market sales of comparable products based on revenues and expenses allocated to those domestic sales.

- The petitioners wrongly allege that the difference between the HFD's overall profit rate and the domestic profit rate are attributed to a misallocation of reported costs.
- Bharat's unconsolidated financial statements are not a reasonable basis on which to calculate the CV profit rate because they encompass all of Bharat's sales, not merely its home market sales, including its export sales to the United States. Use of Bharat's unconsolidated financial statements would lead to an "irrational" result, and it is not a reasonable method for approximating Bharat's CV home market profit experience.

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

We disagree with the petitioners that Bharat improperly placed new factual information on the record with regard to CV profit. Bharat did not have a viable home or third-country market; however, Bharat did sell non-subject comparable merchandise in the home market during the POI. Accordingly, we calculated profit under section 773(e)(2)(B)(i) of the Act, *i.e.*, based on home market sales of the same general category of product. The profit experience on sales in India of merchandise in the same general category as the MUC from Bharat's HFD which was used as the basis for CV profit in the *Preliminary Determination* was already on the record in response to a previous request from Commerce.⁵⁵

We disagree with the petitioners' assertion that the worksheets prepared by Bharat depicting this information were not source accounting documents. These worksheets constituted verifiable information and were prepared using Bharat's internal accounting records and audited financial statements. Accordingly, we find that the petitioners' argument is without merit.

We disagree with the petitioners' recommendation to use Bharat's audited financial statements to calculate Bharat's CV profit ratio. Bharat's financial statements reflect significant sales of the MUC to the United States.⁵⁶ If we were to use Bharat's audited financial statements to calculate the CV profit ratio, we would be using profit on sales of fluid end blocks to the United States to calculate normal value, to be compared to those same U.S. sales prices. This approach is circular

⁵⁵ See Bharat's June 11, 2020 2SDQR at Exhibit D-32.1.

⁵⁶ See Bharat's Letter, "Forced Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Section A Response," dated February 20, 2020 at Exhibit A-1.

and unreasonable. Consequently, for the final determination, under section 773(e)(2)(B)(i) of the Act we used the profit experience of HFD's Indian sales of merchandise in the same general category as merchandise under consideration as submitted by Bharat in its supplemental Section D response.⁵⁷

Comment 4: Major Input Adjustment and the Appropriate Level of Aggregation

Bharat's Comments:

- In applying section 773(f)(3) of the Act (*i.e.*, the major input rule), Commerce inappropriately aggregated different grades of steel when determining the average transfer price and market price of purchases of the input steel ingots.
- Bharat argues that one of the steel grades has a higher content of alloys than the other steel grades and is therefore costlier than the other steel grades.
- Commerce wrongly applied the major input adjustment to CONNUMs that were not produced from steel purchased from affiliates.

Petitioners' Rebuttal Comments:

- Commerce correctly classified the grade of steel in question in the *Preliminary Determination* because of how Bharat classified it in its supplemental questionnaire response.
- Bharat's citation to certain verification exhibits supporting its claim about the chemistry of steel ingots is suspect and must be disregarded because these verification exhibits contain mill test certificates that appear to have been falsified.
- If Commerce decides to apply only partial facts available to Bharat, then it should use the purchase cost of a certain grade of steel ingot on the record to adjust upward all steel ingot purchase prices paid to affiliated suppliers.

Commerce's Position: While we agree with the petitioners that Bharat purchased inputs from affiliates at prices that were below unaffiliated market prices for the same inputs during the POI, we agree with Bharat that when evaluating Bharat's purchases of steel ingots under the major input rule, Commerce should not aggregate the costs of high-alloy grades of steel ingots with the costs of low-alloy steel grades when determining the transfer price and market price of the steel ingots purchased from affiliated and unaffiliated suppliers.

Although Bharat grouped the purchases of low- and high-alloy grades of steel together in an exhibit showing the purchases of the steel ingots,⁵⁸ the record shows that there are significant differences in chemistry and associated costs between these grades of steel purchased by Bharat.⁵⁹ Therefore, it would not be appropriate to commingle the purchase prices of low- and high-alloy steel grades when comparing the market price, transfer price and cost of production under section 773(f)(3) of the Act. Further, we note that the exhibits⁶⁰ cited by Bharat showing

⁵⁷ See Bharat's June 11, 2020, 2SDQR at Exhibit D-32.1.

⁵⁸ See Bharat's Letter, "Forged Steel Fluid End Blocks from India: Submission of Bharat Forge Limited's Supplemental Section A Response," dated April 17, 2020 (Bharat's SAQR) at Exhibit A-22.

⁵⁹ See Bharat's Questionnaire in Lieu of Verification Response 1 at Exhibit C-66 and Exhibit C-67; *see also* Bharat's SAQR at Exhibit A-22.

⁶⁰ See Bharat's Questionnaire in Lieu of Verification Response 1 at Exhibit C-66 and Exhibit C-67.

the chemistry for the low- and high-alloy steel grades did not include the mill test certificates that we determined to be unreliable as discussed in Comment 1 above, and so we relied on the information supporting the chemistry of the various grades of steel when performing our analysis. Therefore, for the final determination, we separated the purchase prices of the low- and high-alloy grades of steel for the purpose of determining the transfer price and market price when applying the major input rule. We also agree with Bharat that the major input adjustment should be applied only to CONNUMs that were produced from steel grades purchased from affiliates. As noted above, we have considered the other adjustments to Bharat's production costs when calculating the CV profit rate for the final determination.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, then we will publish the final determination of the investigation with the final estimated weighted-average dumping margins in the *Federal Register* and will notify the International Trade Commission of our final determination.



Agree



Disagree

12/7/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance