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Remand (Slip Op. 20-140)
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FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

Echjay Forgings Private Limited v. United States
Consol. Court No. 18-00230, Slip Op. 20-140

I. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT) in *Echjay Forgings Private Limited v. United States*, Consol. Court No. 18-00230, Slip. Op. 20-140 (CIT October 8, 2020) (*Remand Order*). This litigation concerns the antidumping duty (AD) investigation of stainless steel flanges (flanges) from India and Commerce's decision to treat Echjay Forgings Private Limited (Echjay), Echjay Industries Private Limited (EIPL), Echjay Forgings Industry Private Limited (EFIPL), and Spire Industries Private Limited (Spire) (collectively, the Doshi companies) as a single entity in the investigation.¹

As set forth below, pursuant to the *Remand Order*, we have further considered whether it was proper to collapse Echjay with EIPL, EFIPL, and Spire. Specifically, as directed by the CIT, we have reconsidered whether the Doshi companies meet the criteria for affiliation under section 771(33)(F) of the Tariff Act of 1930, as amended (the Act), and for collapsing/single entity treatment under 19 CFR 351.401(f). For these final results of redetermination, we find that they do not. As a result, Commerce finds that that the application of adverse facts available

¹ See *Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 83 FR 40745 (August 16, 2018) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

(AFA) – which was premised upon Echjay’s failure to provide corporate history/sales/production data on behalf of the other companies – is not warranted.

II. BACKGROUND

On August 16, 2017, Commerce received an AD petition concerning imports of flanges from India, filed in proper form on behalf of the Coalition of American Flange Producers and its individual members, Core Pipe Products, Inc. and Maass Flange Corporation (the petitioners).² On September 11, 2017, Commerce published its initiation of a less-than-fair-value (LTFV) investigation of flanges from India.³ The period of investigation (POI) covered July 1, 2016, through June 30, 2017. We selected Echjay, Bebitz Flanges Works Pvt. Ltd., and Chandan Steel Limited as respondents for individual examination.⁴

Between October 31, 2017, and March 12, 2018, Echjay responded to Commerce’s initial AD questionnaire and supplemental questionnaires, including questionnaires specifically relating to Echjay’s affiliations and company history.⁵ In its response to section A of the initial questionnaire, Echjay reported affiliations with numerous companies, including EIPL, EFIPL, and Spire, all of which were owned by members of the Doshi family.⁶ We solicited information relating to the relationship between Echjay and these three companies, as well as information on their corporate structure, sales, and production.⁷

² See Petitioners’ Letter, “Stainless Steel Flanges from the People’s Republic of China and India: Petitions for the Imposition of Antidumping and Countervailing Duties,” dated August 16, 2017.

³ See *Stainless Steel Flanges from India and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 42649 (September 11, 2017).

⁴ See Memorandum, “Investigation of Stainless Steel Flanges from India: Respondent Selection,” dated October 4, 2017.

⁵ See Echjay’s Letters, “Echjay Forgings Private Limited’s Response to Section A of Original Antidumping Duty Questionnaire,” dated October 31, 2017 (Echjay October 31, 2017 AQR); and “Echjay Forgings Private Limited’s Response to 2nd Supplemental of Section A of Antidumping Duty Questionnaire,” dated December 12, 2017 (Echjay December 12, 2017 AQR).

⁶ See Echjay October 31, 2017 AQR at Exhibits A-3(a) through A-3(c).

⁷ See, e.g., Commerce’s Letter, “Stainless Steel Flanges from India: Section A Supplemental Questionnaire,” dated November 27, 2017.

On March 19, 2018, Commerce issued its Collapsing Memorandum,⁸ and on March 28, 2018, Commerce published the *Preliminary Determination* in the LTFV investigation.⁹ Commerce preliminarily determined that Echjay, EIPL, EFIPL, and Spire were affiliated within the meaning of sections 771(33)(A) and (F) of the Act, and that the companies constituted a single entity pursuant to 19 CFR 351.401(f). We noted that Sarvadaman Doshi was Chairman and Managing Director for Echjay, while his uncle owned EIPL, his brother, Deepak Doshi, owned EFIPL, and his brother, Nagin Doshi, owned Spire.¹⁰ Based on these facts, Commerce preliminarily determined, pursuant to section 771(33)(A) of the Act, that the Doshi family members were affiliated and comprised a family grouping.¹¹ As a result, due to the common ownership of all four companies by members of the Doshi family, we found, pursuant to section 771(33)(F) of the Act, that the Doshi family grouping had common control over the business dealings and exports of all companies.¹² We stated:

{T}he record demonstrates that members of the Doshi family, in their capacity as the only shareholders of Echjay, Echjay Industries, Echjay Forgings, and Spire, have direct or indirect control over the major decisions on financing, accounting, income distribution and loss settlement for each of these companies. Furthermore, as explained above, Doshi family members hold senior leadership positions at Echjay, Echjay Industries, Echjay Forgings, and Spire. For these reasons, members of the Doshi family are in a position to control these companies. By virtue of this control, Echjay, Echjay Industries, Echjay Forgings, and Spire have two or more persons in leadership and management positions which directly control the companies, are related as members of the Doshi family, and are therefore affiliated with each other, pursuant to section 771(33)(F) of the Act.¹³

⁸ See Memorandum, “Antidumping Duty Investigation of Stainless Steel Flanges from India: Affiliation Memorandum of Echjay Forgings Private Limited, Echjay Industries Private Limited, Echjay Forging Industries Private Limited, and Spire Industries Pvt. Limited,” dated March 19, 2018 (Collapsing Memorandum).

⁹ See *Stainless Steel Flanges from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 13246 (March 28, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

¹⁰ See Collapsing Memorandum at 4.

¹¹ *Id.* at 4-5.

¹² *Id.* at 6.

¹³ *Id.*

We also determined that the companies should be collapsed and treated as a single entity, pursuant to 19 CFR 351.401(f). Specifically, we found that Echjay, EIPL, EFIPL, and Spire would not require substantial retooling in order to restructure manufacturing, exporting, and selling priorities, and further determined that a significant potential for manipulation of price and production existed among the companies.¹⁴

As a result of this collapsing/single-entity treatment, we required that the Echjay single entity provide information on behalf of the constituent companies of the collapsed entity. However, Echjay maintained that it could not provide financial documents and sales records for these companies because it was legally separated from EIPL in 1985, and legally separated from EFIPL in 2005.¹⁵ Echjay further stated that a member of the Doshi family group which owned EFIPL founded Spire following the split from Echjay, and Spire has never independently been a component part of Echjay.¹⁶ In light of this response, Commerce determined that necessary information was missing from the record, and that the Echjay single entity failed to fully cooperate in the proceeding. We stated:

{T}he Echjay single entity refused to provide complete and accurate responses to requests for information, stating that Commerce’s questionnaire was not applicable to the Echjay affiliates. The Echjay single entity failed to provide information regarding: (1) an accurate, reliable sales/cost reconciliation regarding its reported sales of subject merchandise to the United States during the POI from Echjay Industries along with requisite sales/cost databases; and (2) full corporate/affiliation information, and full product specifications from Echjay Forgings, Echjay Industries, and Spire. Accordingly, Commerce finds pursuant to section 776(b) of the Act that the Echjay single entity failed to cooperate to the best of its ability to comply with Commerce’s requests for information. Therefore, we preliminarily find that application of total adverse facts available to the Echjay single entity is warranted for this preliminary determination.¹⁷

¹⁴ *Id.* at 11, 13.

¹⁵ *See* Echjay December 12, 2017 AQR at 5-9.

¹⁶ *Id.* at 7-8.

¹⁷ *See Preliminary Determination PDM* at “Application of Facts Available to the Echjay Single Entity with Adverse Inference.”

Because of our application of AFA, we assigned Echjay a rate of 145.25 percent. Also, as a result of the application of AFA, Commerce did not conduct verification of the information submitted by Echjay. In our *Final Determination*, we continued to find that Echjay, EIPL, EFIPL, and Spire should be treated as a single entity, and that application of AFA to the entity was appropriate.¹⁸

On October 8, 2020, the CIT remanded the *Final Determination* to Commerce for further explanation and/or reconsideration.¹⁹ The CIT concluded that Commerce’s finding of affiliation under section 771(33)(F) of the Act and our subsequent decision to collapse the Doshi companies were unsupported by substantial evidence.

First, the CIT held that Commerce did not adequately explain its finding that the Doshi family should be treated as a “person” within the meaning of section 771(33)(F) of the Act and, thus, the determination was not based on substantial evidence.²⁰ The CIT concluded that Commerce’s interpretation of the statute – to find that a family group may be considered a “person” for purposes of affiliation analysis – was permissible.²¹ However, the CIT determined that Commerce’s decision that the Doshi family *in particular* constituted a “person” failed to fully take into account evidence that the family grouping did not, and could not, collectively control the Doshi companies.²² The CIT also held that Commerce did not adequately address the legal documents on the record that required the separation of the companies.²³

Second, beyond the threshold affiliation analysis, the CIT determined that Commerce’s collapsing analysis, pursuant to 19 CFR 351.401(f)(2), was not based on substantial evidence.

¹⁸ See *Final Determination* IDM at Comment 2.

¹⁹ See generally *Remand Order*.

²⁰ *Id.* at 21-22.

²¹ *Id.* at 15.

²² *Id.* at 21.

²³ *Id.* at 10, and 21-22.

The CIT held that Commerce did not properly address the evidence concerning whether substantial retooling would be required for EFIPL and Spire to produce the subject merchandise.²⁴ The CIT highlighted the record evidence indicating that, while EFIPL produced subject merchandise prior to the POI, there was no evidence that it could produce subject merchandise during the POI, given record evidence which supported Echjay's statements that the EFIPL plants had been closed. Significantly, Echjay had provided photographic evidence that EFIPL's facilities had been closed and that there were design plans for a residential complex on the site; as a result, Echjay asserted, any production of subject merchandise would need a substantial investment, akin to that of a new market entrant.²⁵ The CIT also raised concerns regarding whether Spire could produce subject merchandise without substantial retooling. Specifically, the CIT asked Commerce to explain why it relied heavily on references to subject merchandise on Spire's website, without considering other record evidence – *i.e.*, photographic evidence that the forging equipment was no longer in Spire's factory and a government notice reducing Spire's electrical load usage from 450KV to 100KV – that Spire no longer produced subject merchandise and, in fact, had no production facilities during the POI.²⁶

Third, the CIT determined that Commerce's collapsing analysis, with regards to the potential for manipulation between the Doshi companies was not based on substantial evidence. Specifically, given the evidence on the record regarding the legal separation between the companies and the legal prohibition for the family to interfere in each other's business matters, the CIT concluded that Commerce had not explained how the potential for manipulation exists

²⁴ *Id.* at 24-26.

²⁵ *Id.* at 25.

²⁶ *Id.* at 25-26.

pursuant to the regulatory criteria in 19 CFR 351.401(f)(2) (*e.g.*, level of common ownership and common managers/directors).²⁷

Fourth, the CIT held that Commerce failed to justify its different treatment of the Echjay companies in this investigation compared with its treatment of certain of those companies in the 2006 AD investigation of flanges from India.²⁸ In that case, Commerce had refrained from collapsing Echjay and EIPL.²⁹ The CIT concluded that, because Commerce failed to provide an explanation for its departure from the prior determination, Commerce's decision in this investigation was arbitrary and capricious.

On December 9, 2020, we issued our draft results of redetermination in which we reevaluated our affiliation and collapsing decision for Echjay in accordance with the CIT's instructions.³⁰ On December 21, 2020, the petitioners and Echjay submitted comments on the draft results of redetermination.³¹

III. ANALYSIS

A. Applicable Law and Commerce Practice

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

- A. Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants

²⁷ *Id.* at 29-30. The CIT's *Remand Order*, requiring a discussion of indicia of common control of the Doshi companies, relates to both: (1) Commerce's decision to treat the Doshi family as a "person" under section 771(33)(F) of the Act; and (2) Commerce's analysis of the collapsing criteria under 19 CFR 351.401(f)(2).

²⁸ *Id.* at 33.

²⁹ See *Certain Forged Stainless Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 11379, 11382-11383 (March 7, 2006) (*Flanges 2006 Prelim*), unchanged in *Certain Forged Stainless Steel Flanges from India; Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 29314 (May 22, 2006) (*Flanges 2006 Final*).

³⁰ See Draft Results of Redetermination Pursuant to Court Remand - *Echjay Forgings Private Limited v. United States Consol.*, Court No. 18-00230, Slip Op. 20-140 (CIT October 8, 2020) (December 9, 2020) (draft results of redetermination).

³¹ See Echjay's Letter, "Stainless Steel Flanges from India: AD," dated December 21, 2020 (Echjay Comments); and Petitioners' Letter, "Stainless Steel Flanges from India: Comments on Draft Results of Redetermination Pursuant to Court Remand," dated December 21, 2020 (Petitioners Comments).

- B. Any officer or director of an organization and such organization
- C. Partners
- D. Employer and employee
- E. Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization
- F. Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person
- G. Any person who controls any other person and such other person

Section 771(33) of the Act further states that “a party shall be considered to control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.” The CIT has previously found that “{a}ctual control. . . is not required by the statute ... Rather, a person is considered to be in a position of control if he is legally in a position to exercise restraint or direction over the other person.”³² Additionally, the term “person” is defined in Commerce’s regulations to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”³³

The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreement Act, H.R. Doc. 103-3 16, vol. I (1994), states that the “traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm ‘operationally in a position to exercise restraint or direction’ over another in the absence of an equity relationship.” The SAA further indicates that control may exist within the meaning of section 771(33) of the Act through the following types of relationships: (1) corporate or family groupings; (2) franchises or joint ventures; (3) debt financing; or (4) close supplier relationships in which either party becomes reliant upon the other.

³² See *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1293 (CIT 2005).

³³ See 19 CFR 351.102(b)(37).

In *Ferro Union*, the CIT held that Commerce may interpret a “family” as a “person” for purposes of section 771(33)(F) of the Act to establish affiliation.³⁴ There, the CIT upheld Commerce’s finding of affiliation among a series of companies through common control of several families, even though there were no common individuals in control of some of the affiliated companies. The CIT in *Ferro Union* concluded that considering a family grouping to be a “person” complied with Commerce’s regulations as “a family can reasonably be considered an ‘entity’ or an ‘enterprise’ because family members likely share a common interest.”³⁵

With respect to single entity treatment, the principal regulation governing collapsing of companies is 19 CFR 351.401(f), which provides:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (i) The level of common ownership;
 - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
 - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

Therefore, pursuant to 19 CFR 351.401(f), three requirements must be satisfied in order for Commerce to collapse entities: Commerce must determine that (1) the companies are affiliated, (2) they share “production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities,” and (3)

³⁴ See *Ferro Union v. United States*, 44 F. Supp. 2d 1310, 1326 (CIT 1999) (*Ferro Union*).

³⁵ *Id.*, 44 F. Supp 2d at 1326.

there is “a significant potential for the manipulation of price or production” between the affiliated companies.

B. Analysis

In our *Final Determination*, we found that Echjay, EIPL, EFIPL, and Spire—through ownership/management, and, thus, control, by members of the Doshi family grouping—are affiliated under sections 771(33)(A) and (F) of the Act, and constitute a single entity.³⁶ Pursuant to the *Remand Order*, we have reevaluated the totality of the evidence on the record, with particular attention to the evidence highlighted by the CIT. For the reasons discussed below, we have revisited our affiliation/collapsing determination.

1. Affiliation Under Sections 771(33)(A) and (F) of the Act

We continue to find that the individual members of the Doshi family are affiliated within the meaning of section 771(33)(A) of the Act and comprise a family grouping. However, we find that, in this instance, due to particular and explicit legal arrangements, the Doshi family could not control or influence the operations of the constituent companies, *i.e.*, Echjay, EIPL, EFIPL, and Spire, during the POI. As a result, for these final results of redetermination, we find that the Doshi family does not have common control of the various Doshi companies (as contemplated by section 771(33)(F) of the Act), given the unique facts of this case.

In the underlying investigation, Echjay placed multiple primary documents on the record indicating both familial and business separations between itself and EIPL in 1985, and between itself and EFIPL/Spire in 2005.³⁷ These documents are not mere assertions or affidavits stating that the various family members are estranged or otherwise not prone to cooperation on business matters. Rather, they consist of formal legal documents, including decrees by the Bombay High

³⁶ See *Preliminary Determination* PDM at 9.

³⁷ See Echjay December 12, 2017 AQR at Exhibits AS-4(b) – AS-4(g).

Court (BHC), the court with jurisdiction over the states of Maharashtra and Gujarat, implementing the formal separation of the ownership/operation of the companies.

These legal documents specify the transfer of ownership and govern the performance of management/directors in the companies. For instance, the 1985 BHC documents clearly state that the family units will exchange holdings, and resign from directorships, in the companies that were transferred to other family members via legal decree:

In order to avoid any future disputes, differences, disagreements, litigations, *etc.* which may prejudicially affect the peace, harmony, honour, prestige and properties of the members of the aforesaid groups, the parties hereto through joint consultations from time to time, have agreed what the interests of Mansukhlal group in the said companies, its said firms and all other assets of the aforesaid six groups should be separated for eventual independent control and/or management by the members of Mansukhlal Group.³⁸

The document further provides:

With a view to avoiding any future disputes, differences, disagreements, litigations, *etc.*, which may prejudicially affect the peace, harmony, honour, prestige and properties of the parties hereto as members of a family, the parties hereto have agreed that subject to the provisions hereinafter appearing, Mansukhlal Group may be eventually given independent control and/or management by members of that group of ... Kanjur Marg Factory of Echjay Industries Private Limited.³⁹

Similarly, the 2005 documents state:

The parties will exchange their respective holdings in the concerned companies at book value, resign from their directorships in companies going to the others, and/or retire from the partnerships on receipt of the credit balance and share in profits, if any, without evaluating the value of the shares of the companies or assets of the partnerships.⁴⁰

The document further provides:

It is agreed that even pending the separation of the businesses as provided in this Agreement, as from the Cutoff Date the parties hereto shall be in exclusive charge

³⁸ *Id.* at Exhibit AS-4(c).

³⁹ *Id.*

⁴⁰ *Id.* at Exhibit AS-4(g).

of and shall run and manage the respective share hereunder to the entire exclusion of the others of them.⁴¹

Echjay also submitted company organization charts and board membership information, which demonstrate that, consistent with the separation agreements, there were no common board members or employees between Echjay and the other three companies.⁴²

Following the 2005 separation agreement, the only remaining overlap between the companies was a limited amount of temporary common stock ownership by the Echjay and EFIPL/Spire family groups. However, the BHC separation agreements Echjay provided specify that that the shares in opposing companies were to be held in trust while the shares transfer were completed.⁴³ The only exception to this is related to shares held by Pusha Doshi, the family matriarch, who, as the mother and grandmother of the other owners, has maintained a minority non-voting share in Echjay and EFIPL as passive income. Here, the agreements specify that these ownership interests will be inherited by the relevant family groups upon her passing.⁴⁴

These legal documents substantiate Echjay's claims that the companies are formally and legally separate. Importantly, these documents are unrebutted and not otherwise contradicted by evidence on the record. Substantial documentation, including financial statements and other data relevant to the Doshi companies' operations, provide no indication that the legal separations have been voided, breached, or otherwise eroded over time. As a result, under the unique facts of this particular case,⁴⁵ we find for purposes of these final results of redetermination that the record

⁴¹ *Id.*

⁴² *Id.* at Exhibits AS-8(a), AS-9(a), AS-10(a), and AS-11.

⁴³ *Id.* at Exhibits AS-4(h) and AS-4(g).

⁴⁴ *Id.* at 25 and Exhibit AS-4 (g).

⁴⁵ We emphasize that, even where legal documents indicate separation between companies owned by members of a family, Commerce may very well find that the companies do, or could potentially, coordinate their activities, such that the family grouping exercises common control of the companies, as contemplated under section 771(33)(F) of the Act. However, we find that, under the particular facts of this case, a different result is warranted.

does not support a finding that the Doshi companies are affiliated under section 771(33)(F) of the Act, as there legally can be no common control of the companies by the Doshi family.

2. Collapsing under 19 CFR 351.401(f)

In light of the *Remand Order*, we are also reconsidering the evidence regarding whether the Doshi companies meet the criteria for collapsing. As discussed above, we now find that the Doshi companies are not affiliated, and, thus, they do not meet the affiliation criterion under 19 CFR 351.401(f)(1).

Further, with regard to the companies' need for substantial retooling to produce subject merchandise under 19 CFR 351.401(f)(1), record evidence indicates that EFIPL and Spire would not be able to produce subject merchandise without a heavy investment in equipment. Echjay submitted evidence that, as of the POI, EFIPL had closed its manufacturing plant, and the site was in the process of being converted into residential high-rise buildings.⁴⁶ Echjay also provided a notice of plant closure that was filed with the government.⁴⁷

With respect to Spire, Echjay submitted the following evidence that Spire had sold its forging equipment, reduced its electronic load, and fired its employees: photographic evidence supporting the absence of forging equipment in Spire's factory,⁴⁸ and government documents indicating Spire's reduced electronic load and fired employees.⁴⁹ Further, although Commerce previously found information on Spire's website indicating that Spire was still capable of producing subject merchandise, Echjay contested that claim, asserting that the website was out of

⁴⁶ See Echjay December 12, 2017 AQR at Exhibit AS-13(c).

⁴⁷ *Id.* at Exhibit AS-13(b).

⁴⁸ *Id.* at Exhibit AS-14(c).

⁴⁹ *Id.* at Exhibits AS-14(a) and AS-14(b).

date.⁵⁰ Viewed in its totality, we find the evidence indicates that EFIPL and Spire could not produce subject merchandise without substantial retooling.

Regarding the potential for manipulation across the Doshi companies, as defined under 19 CFR 351.401(f)(2), we find that such a potential does not exist on the basis of the criteria relied upon in the context of our section 771(33)(F) analysis, as above. Although members of the Doshi company own the various Doshi companies, the legal documents filed with, and issued by, the BHC (since 1985 for EIPL and 2005 for EFIPL/Spire) expressly separate the operations of the Doshi companies and in some cases even forbid interactions between family members with regard to participating in the businesses. These separation agreements belie a finding that the Doshi family could lawfully coordinate the activities of the Doshi companies; thus, record information on ownership does not support a finding that there is a significant potential for manipulation of price or production. Further, financial documents show no transactions between Echjay and EIPL during the POI.⁵¹ For these reasons, we do not find that there is the potential for significant manipulation within the meaning of 19 CFR 351.401(f)(2) across the Doshi companies.

3. Consistency with Prior Determination

The CIT directed that Commerce must explain any inconsistency between its decision to collapse the Doshi companies in this investigation and its earlier (2006) decision not to collapse the companies.⁵² However, in light of the discussion above, and our reconsideration of the affiliation/collapsing treatment of the companies, there is no longer any potential inconsistency between the decisions. Thus, this aspect of the *Remand Order* is moot.

⁵⁰ *Id.* at 15.

⁵¹ *Id.* at 19-20.

⁵² *See Remand Order* at 36-37.

IV. COMMENTS ON THE DRAFT RESULTS OF REDETERMINATION

On December 21, 2020, the petitioners and Echjay submitted comments on the draft results of redetermination.⁵³ We address interested parties' comments below.

Comment 1: Commerce Should Collapse the Doshi Companies

Petitioners' Comments:

- Commerce correctly determined in the underlying investigation that Echjay, EIPL, EFIPL, and Spire were affiliated under section 771(33)(A) of the Act, and that the companies were properly treated as a single entity. In the draft results of redetermination, Commerce erred in declining to find that the record supports a finding of affiliation under section 771(33)(F) of the Act. Commerce also erred when it declined to collapse, at a minimum, Echjay and EIPL; accordingly, Commerce should collapse these companies. Moreover, Commerce should determine that Echjay failed to properly respond to Commerce's requests for information regarding the affiliated company(ies) in the underlying proceeding, warranting application of AFA as a result.⁵⁴
- Commerce treats as affiliated persons or parties members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants (*see* section 771(33)(A) of the Act), and two or more persons directly or indirectly controlling, controlled by, or under common control with, any person (*see* section 771(33)(F) of the Act).⁵⁵ The SAA explains that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person," and notes that "{a} company may be in a

⁵³ *See* Echjay Comments; and Petitioners Comments.

⁵⁴ *See* Petitioners Comments at 2, 4-5.

⁵⁵ *Id.* at 5.

position to exercise restraint or direction, for example, through corporate or family groupings.”⁵⁶ Additionally, Commerce’s regulations explain that *actual* control of one party by another is not required; but, rather, an *ability* to control is sufficient to find affiliation.⁵⁷ Commerce should find that the requisite level of control exists between the Doshi companies in general, and in particular between Echjay and EIPL.

- In the draft results of redetermination, Commerce placed too much weight on the 1985⁵⁸ partition in analyzing the relationship between Echjay and EIPL. First, in *Ferro Union*, the CIT explained that, in the context of an affiliation decision, the regulations and Act provide no exception for estranged family members.⁵⁹ Therefore, the partition is of limited import.
- Second, there is nothing on the record to indicate that the impetus for a separation in 1985 continues to exist today. The record does not demonstrate that the 1985 separation prevents Doshi family members from cooperating and coordinating business activities between the two companies; the partition only ensured the separation of the companies into two distinct entities at the time of the separation.⁶⁰ The legal separation of companies did not preclude Doshi family members themselves from coordinating and or communicating with other family members to take action that lies in the family’s best

⁵⁶ *Id.* at 5 (citing SAA at 4040, 4177).

⁵⁷ *Id.* at 6 (citing *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27297-98 (May 19, 1997)).

⁵⁸ In their comments, the petitioners denote the agreement separating Echjay and EIPL as taking place in 1983—the year of the initial interim agreement. Commerce is using 1985 as the reference year: the year of the final ruling on the separation agreement by the BHC. For consistency, we will refer to 1985 as the year of the separation agreement throughout this document.

⁵⁹ See Petitioners Comments. at 8 (citing *Ferro Union*, 44 F. Supp. 2d at 1310, 1325).

⁶⁰ *Id.* at 8 (asserting that the partition only operated “to ensure that the businesses themselves are legally separate entities, *i.e.*, that: (1) ‘{Echjay} and Echjay Industries . . . do not have any equity ownership in each other;’ (2) the same individuals are not shareholders in both Echjay and Echjay Industries; (3) the companies themselves (rather than the individuals operating the companies) ‘can {not} exercise operational control or direct the assets of the other company’”) (internal citations omitted).

interests as a whole. Indeed, the impetus for the partition was to [

].⁶¹ For these reasons, notwithstanding

the legal separation, Commerce should find Echjay and EIPL affiliated under section 771(33)(F) of the Act.

- Echjay and EIPL should be collapsed pursuant to 19 CFR 351.401(f), as the companies' production facilities would not require substantial retooling in order to restructure manufacturing priorities. Echjay and EIPL produced identical stainless steel flanges during the POI, and both companies exported stainless steel flanges into the United States during and prior to the POI, and [] EIPL's [

].⁶² This is all

significant evidence that no "substantial retooling" of Echjay or EIPL would be required for these companies to shift their manufacturing priorities.

- With respect to the potential for manipulation, Echjay and EIPL are also both wholly owned, controlled, and managed by the Doshi family, with members of the Doshi family owning 100 percent of both companies. Additionally, members of the Doshi family serve as board members and directors of both companies.⁶³
- The facts underlying Commerce's 2006 decision not to collapse Echjay and EIPL are distinct from the decision to collapse the two companies in this investigation. The record here shows that both companies produce identical stainless steel flanges, which was not evident during the 2006 case.

⁶¹ *Id.* at 9.

⁶² *Id.* at 11.

⁶³ *Id.*

- Commerce’s approach to analyzing the overlapping managers and/or board members in assessing the potential for manipulation has changed since 2006, as Commerce now conducts these analyses on a family-grouping level rather than on the individual-level basis that seemed to apply in 2006.⁶⁴

No other party submitted comments on this issue.

Commerce’s Position:

For the reasons stated below, we disagree with the petitioners that Commerce should collapse either the Doshi companies in general or Echjay and EIPL in particular, or that we should apply AFA to the resulting single entity. Accordingly, we have not changed this aspect of our draft results of redetermination.

As an initial matter, we agree with the petitioners that the Doshi family members are affiliated through section 771(33)(A) of the Act. However, we disagree that the Doshi family, as a group, has the ability to exercise restraint or direction over the various companies as is contemplated by section 771(33)(F) of the Act. We find that the individual companies, are not under common control of the Doshi family group pursuant to section 771(33)(F) of the Act, as the Doshi family is not “legally or operationally in a position to exercise direction or restraint on the other {parties}.” The record does not establish that the Doshi family group exerts actual control over each of the companies; nor does it evince their “ability” to exert control.

The petitioners assert that Commerce has improperly accorded weight to the separation agreement in analyzing “control” via a familial relationship. However, in accordance with the CIT’s opinion, we have evaluated the “legal documentation showing hostile family partitions among the owners of the Doshi Companies, resulting in the splitting of family assets”⁶⁵ and the

⁶⁴ *Id.* at 12.

⁶⁵ See Echjay December 12, 2017 AQR at Exhibits AS-4(b) – AS-4(g).

legal separation of companies which “prevents various Doshi family members from interfering in, controlling, or participating in the business of other family members.”⁶⁶ As discussed above, we find that these agreements mandated formal separation of the companies and limited the extent to which the family members and their companies can influence the operations of the other companies.

Although the petitioners emphasize the age of the separation agreement, we find that consideration to be irrelevant to its enforcement in this case, as there is no evidence to suggest that the parties have deviated from the spirit or letter of the separation agreement. Indeed, notwithstanding the fact that over 30 years have passed since the first agreement took effect, there is no evidence on the record that is suggestive of financial dealings between Echjay and EIPL and there were no shared board members or employees between the companies during the POI.

The petitioners emphasize that potential, if not actual, coordination across companies is possible, and that the separation agreements endeavored to [] among the family members. However, based on the record, we do not read this aspirational language in the legal agreement to stand for the proposition that the family members are now likely to cooperate in business matters or that there is any significant potential for such cooperation – especially when viewed in the context of a legal agreement implementing a hostile separation of the parties. Importantly, as noted above, there is no evidence of subsequent cooperation between the parties.

The petitioners also assert that Echjay and EIPL meet the criteria for collapsing. For the reasons discussed above with respect to our analysis of affiliation under section 771(33)(F) of the Act, we disagree and continue to find that a significant potential for manipulation does not exist

⁶⁶ *Remand Order* at 22.

under 19 CFR 351.401(f). The record does not indicate that either of these companies can direct/control the other. The parties are bound by a legal separation agreement that has not been shown to have been violated or legally altered. As such, the record information on ownership does not support finding a significant potential for manipulation. Additionally, the record contains no evidence of financial interaction or personnel overlap between the companies, and thus the record does not support a finding that the operations of the companies are intertwined. Moreover, the fact that estranged family members sit on the boards of separate companies does not, alone, demonstrate that the companies' operations are intertwined. Therefore, the totality of the evidence supports a finding that there is no significant potential for manipulation of price or production across the Doshi companies. Finally, while we agree with the petitioners that both Echjay and EIPL produce identical/similar merchandise,⁶⁷ the substantial retooling analysis is moot in light of our finding with respect to the potential for manipulation.

As noted above, in light of Commerce's affiliation/collapsing redetermination, the CIT's direction to consider the *Flanges 2006 Final* is moot. Nonetheless, we do not agree with the petitioner that the factual distinctions between this case and the *Flanges 2006 Final* warrant different outcomes in the two cases. Although the petitioners have identified certain distinctions, the fundamental finding in the 2006 review is consistent with our analysis here. In the 2006 review, we ultimately found that the third criterion for collapsing, the potential for manipulation, was not satisfied. We noted that this criterion of the collapsing analysis

requires consideration of three sub-factors: (1) the level of common ownership; (2) the extent to which managerial employees or directors of one firm also sit on the board of the other firm; and (3) whether operations are intertwined. The Department

⁶⁷ We note that, with respect to the petitioners' assertion regarding EIPL's exportation of subject merchandise, EIPL made [

]. See Echjay December 12, 2017 AQR at 12. However, for the reasons stated, the petitioners' arguments regarding EIPL's ability to produce subject merchandise are moot.

preliminarily determines that none of these factors have been satisfied in this segment of the proceeding.⁶⁸

This is the same conclusion reached in the instant remand when examining the issue of the potential for manipulation. Therefore, despite the differences highlighted by the petitioners, our analysis in this remand and in the *Flanges 2006 Final* are substantially similar.

The petitioners assert that we erred in our analysis in this case because between 2006 and the instant investigation Commerce's practice shifted from individual-level analysis of affiliation to consideration of family groupings. We have applied our current practice in the analysis here, including an evaluation of whether a family grouping is in a position to exercise restraint or direction over the companies at issue. However, the record of this investigation does not support a finding that the Doshi family, as a group, exercises or has the potential to exercise control over the companies. Crucially, the record does not present mere *claims* of estrangement/non-affiliation between members of a family. Rather, the record contains Indian legal documents reflecting legally binding and durable separation agreements that independently corroborate Echjay's claims. This evidence must factor into our analysis; indeed, the CIT specifically directed us to consider them.⁶⁹ We also note that our finding here does not stand for a broader proposition regarding Commerce's practice with respect to parties' claims of estrangement or control via familial groups. Rather, our analysis is unique to this particular instance, and is based on several key facts, including: the agreement in question (1) predates the POI by decades, (2) has been legally enshrined by local authorities, and (3) has not been repudiated by record evidence.

⁶⁸ See *Flanges 2006 Prelim*, 71 FR at 11383 (internal citations omitted), unchanged in *Flanges 2006 Final*, 71 FR at 29314

⁶⁹ See *Remand Order* at 22.

Comment 2: Commerce Made a Calculation Error

Echjay's Comments:

- The drafts results of redetermination contained a significant calculation error, whereby Commerce incorrectly summed the values in multiple currency fields in Echjay's home market sales database, rather than deriving an average of these values. This error effectively doubled the gross unit price for the affected products, and Commerce should correct it for the final results of redetermination using proposed programming language contained in Echjay's comments.

Petitioners' Comments:

- If Commerce decides to not collapse Echjay with its affiliated companies, the draft results of redetermination calculations are acceptable.

Commerce's Position:

Echjay's assertion that Commerce incorrectly calculated its revised dumping margin is correct. However, Echjay's proposed solution would not yield an accurate margin. As a result, we instead made the appropriate modifications, as detailed in the Final Results of Redetermination Calculation Memorandum.⁷⁰

Comment 3: Echjay's Revised Dumping Margin Should Apply Retroactively to the Completed First Administrative Review

Echjay's Comments:

- Echjay posted cash deposits on entries made during the first administrative review period at the rate of dumping determined during the LTFV investigation. Echjay understands that the cash deposits will be revised based on the final results of the first review.

⁷⁰ See Memorandum, "Margin Calculations for Echjay Forgings Private Limited Pursuant to Final Results of Redetermination," dated concurrently with these final results of redetermination (Final Results of Redetermination Calculation Memorandum).

Commerce should “apply the changes in the antidumping rate of the original investigation retrospectively, for immediate correction.”⁷¹

No other interested parties submitted comments on this issue.

Commerce’s Position:

Echjay is correct that its cash deposit rate during the first administrative review period was determined during the LTFV investigation. We note that Commerce is currently conducting an administrative review covering that period, including the entries in question made by Echjay.

To the extent that Echjay is arguing that Commerce should immediately modify Echjay’s cash deposit rate, Commerce may not take any action until there is a final court decision affirming the remand redetermination. Once that occurs, Commerce may issue an amended final determination and updated cash deposit instructions. With respect to its cash deposit, if these final results of redetermination are affirmed and we issue an amended final determination prior to the conclusion of the first administrative review (which covers the entries in question), Commerce will instruct U.S. Customs and Border Protection (CBP) to collect a cash deposit prospectively based on the weighted-average margin, as adjusted for the export subsidy offset, adopted in the amended final determination (*i.e.*, 4.58 percent margin – 4.87 percent export subsidy offset = 0.00 percent cash deposit). If Commerce issues the results of the first administrative review prior to a final court decision in this litigation, Echjay’s cash deposit rate from the investigation will have been superseded, and no cash deposit instructions stemming from this litigation will be required, as the cash deposit instruction issued following the first administrative review will already be in effect.

⁷¹ See Echjay Comments at 2.

With respect to liquidation, liquidation of entries covered by the first administrative review period will be governed by the results of that review. Whether these final results of redetermination will impact the assessment rate for entries made during the portion of the provisional measures cap period following the date of the final determination in the investigation depends on several factors. These include the timing of this determination becoming final (*i.e.*, being affirmed by the court and Echjay's rate being revised in an amended final determination) relative to the timing of the final results of the first administrative review and whether the entries are enjoined from liquidation if the first administrative review results pre-date the final outcome of this litigation.

Specifically, if the first administrative review concludes prior to our issuance of an amended final determination, then the entries in question will be liquidated at the rate determined in the administrative review, with entries following the date of the final determination in the investigation subject to the provisional measures cap amount established by the *Final Determination*,⁷² unless Echjay obtains a statutory injunction covering the entries. If this redetermination is affirmed by a final court decision and Echjay's rate is revised in an amended final determination prior to the issuance of the results in the first administrative review – or if the reviewed entries are subject to a statutory injunction pending the disposition of this litigation – then the terms of the amended final determination here will impact the liquidation rate for Echjay's entries during the relevant portion of the provisional measures period as mentioned above, as if they were in place per the normal course of the investigation. Specifically, assessments on Echjay's entries during the relevant portion of the provisional measures period (*i.e.*, following the date of final determination) will be subject to the provisional measures

⁷² See section 737(a) of the Act.

deposit cap amount established by any amended final determination. Assessments on Echjay's entries during the definitive measures period, following the International Trade Commission's notice of an affirmative final injury,⁷³ will be governed solely by the assessment rate determined in the first administrative review.

IV. FINAL RESULTS OF REDETERMINATION

Pursuant to the *Remand Order*, Commerce has reconsidered record evidence relating to our affiliation finding under section 771(33)(F) of the Act, and the subsequent collapsing, of the Doshi companies. We find that, for the reasons discussed above, Echjay, EIPL, EFIPL, and Spire are not affiliated parties under section 771(33)(F) of the Act and further, should not be collapsed and treated as a single entity section 19 CFR 351.401(f).

As a result of these final results of redetermination, we must also revisit our application of AFA to Echjay, which, in the *Final Determination*, was premised on Echjay's failure to provide information relating to the other entities comprising the Echjay single entity, *i.e.*, EIPL, EFIPL and Spire.⁷⁴ In light of our revised determination on affiliation and collapsing, we also find that the application of AFA to Echjay (which we previously treated as a part of the single entity) is no longer appropriate. Following the corrections made to the margin program, we have calculated a margin of 4.58 percent for Echjay, and assigned a cash-deposit rate of 0.00 percent, to reflect an offset for export subsidies calculated in the parallel countervailing duty (CVD) proceeding.⁷⁵

⁷³ See *Stainless Steel Flanges from India*, 83 FR 50122 (October 4, 2018).

⁷⁴ See *Final Determination* IDM at Comment 2.

⁷⁵ Specifically, we reduced the dumping margin by the *ad valorem* export subsidy rate (4.87 percent) found in the companion CVD investigation. See *Final Determination*, 83 FR at 40746. Because we are *adjusting* Echjay's cash deposit rate to zero, rather than finding it zero through the dumping margin analysis, we will not exclude flanges produced and exported by Echjay to the United States from the *Order*.

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act. As a result of this final remand redetermination, we have calculated a revised all-others rate of 7.00 percent.⁷⁶

Should the CIT affirm these final results of redetermination, Commerce intends to publish a notice of amended final determination and issue appropriate customs instructions to CBP, consistent with the discussion above.

2/17/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

⁷⁶ See Memorandum, “Antidumping Duty Investigation of Stainless Steel Flanges from India: Final Remand - Calculation of the All-Others Rate,” dated concurrently with these final results of redetermination. We calculated this rate by offsetting the weighted-average margin determined for the “all others” companies of 11.87 percent by the export subsidies rate (4.87 percent) found in the companion CVD investigation. See *Final Determination*, 83 FR at 40746. Therefore, the cash deposit rate for “all others” is now 7.00 percent.