



A-475-839
Investigation
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

I. SUMMARY

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

II. BACKGROUND

On October 5, 2017, Commerce received an antidumping duty (AD) petition covering imports of forged steel fittings from Italy,¹ which was filed in proper form by Bonney Forge Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) (collectively, the petitioners). Commerce initiated this investigation on October 25, 2017.²

¹ See Letter to the Secretary of Commerce re: “Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from the People’s Republic of China, Italy, and Taiwan,” dated October 5, 2017 (the Petition).

² See *Forged Steel Fittings from the People’s Republic of China, Italy, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 50614 (November 1, 2017) (*Initiation Notice*).



In the *Initiation Notice*, Commerce notified the public that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, on October 30, 2017, Commerce released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ On November 1, 2017, the petitioners submitted comments.⁵

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of forged steel fittings to be reported in response to Commerce's AD questionnaire.⁶ Commerce received a number of scope comments on the record of this investigation, as well as on the records of the companion forged steel fittings investigations involving Taiwan and the People's Republic of China. On March 9, 2018, Commerce issued a Preliminary Scope Decision Memorandum which included certain preliminary revisions to the scope based on the scope comments received (*see* Scope Comments Section V below).⁷

On November 14, 2017, the petitioners submitted comments to Commerce regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.⁸ On November 25, 2017, M.E.G.A. S.p.A. (MEGA), an Italian producer and exporter of subject merchandise, filed rebuttal comments regarding the petitioners' comments on physical characteristics of the merchandise.⁹ Based on the comments received, Commerce developed a questionnaire to be issued to the mandatory respondents which contained the product characteristics for this and the companion AD investigations.¹⁰

On November 28, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of forged steel fittings from Italy.¹¹

On December 6, 2017, Commerce issued a respondent selection memorandum selecting MEGA and Officine Nicola Galperti & Figlio (Galperti), the two publicly identifiable exporters or producers that account for the largest volume of the subject merchandise, in alphabetical order,

³ *Id.* at 50618.

⁴ *See* Memorandum to the File, "Customs Data for Respondent Selection," dated October 30, 2017 (Customs Data).

⁵ *See* Letter from the petitioners to Commerce, "Forged Steel Fittings from Italy: Comments on CBP Data for Respondent Selection," dated November 1, 2017. The petitioners' comments relevant to one of the mandatory respondents consist of business proprietary information.

⁶ *See Initiation Notice*, 82 FR at 50615.

⁷ *For further discussion of these comments, see* Memorandum to the File, "Certain Forged Steel Fittings from People's Republic of China, Italy, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated March 7, 2017 (Preliminary Scope Decision Memorandum).

⁸ *See* the petitioners' Letter re: Comments on Product Characteristics, dated November 14, 2017.

⁹ *See* M.E.G.A. S.p.A. Letter re: Reply Comments on Product Matching Characteristics, dated November 24, 2017.

¹⁰ *See* Commerce Letter to MEGA re: Antidumping Duty Questionnaire, dated December 8, 2017, and Letter to Galperti re: Antidumping Duty Questionnaire, dated December 8, 2017.

¹¹ *See Determinations; Forged Steel Fittings from China, Italy, and Taiwan*, 82 FR 56049 (November 27, 2017); *see also* Letter from the ITC to the Secretary dated November 28, 2017 (ITC Preliminary Affirmative Injury Determination).

based on the CBP data, for individual examination as mandatory respondents in this investigation.¹² On December 8, 2017, Commerce issued the AD questionnaire to MEGA and Galperti.¹³

On December 20, 2017, Galperti notified Commerce that it does not produce or export subject merchandise.¹⁴ The petitioners did not object to Galperti's claims. On December 27, 2017, and January 9, 2018, respectively, Pegasus S.R.L. (Pegasus) filed an entry of appearance as a voluntary respondent, and submitted a timely response to section A of Commerce's AD questionnaire, *i.e.*, the section relating to general information.¹⁵ In its questionnaire response, Pegasus claimed that it did not produce or sell the products described by the scope of this investigation.¹⁶ On January 15, 2018, the petitioners submitted comments on Pegasus's section A questionnaire response, stating that Pegasus's products, as reported, do not appear to fall within the scope of subject merchandise.¹⁷

On February 20, 2018, Commerce selected for examination the publicly identifiable producer or exporter accounting for the next largest volume of the subject merchandise, I.M.L. Industria Meccanica Ligure S.P.A. (IML) as a mandatory respondent, and issued the AD questionnaire to IML on February 21, 2018.¹⁸

On January 9, 2018, MEGA submitted a timely response to section A of Commerce's AD questionnaire.¹⁹ In January and February 2018, MEGA responded to sections B, C, and D of Commerce's AD questionnaire, *i.e.*, the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.²⁰ From February 2018 through March 2018, we issued supplemental questionnaires to MEGA.²¹ We received responses to these supplemental questionnaires from the same time period through April 2018.²²

¹² See Memorandum to the File, "Antidumping Duty Investigation of Forged Steel Fittings from Italy: Respondent Selection," dated December 6, 2017.

¹³ See Commerce's Antidumping Duty Questionnaire, dated December 8, 2017 (MEGA AD Questionnaire).

¹⁴ See Letter from Galperti, "A-475-839 Antidumping Duty Investigation - Officine Nicola Galperti e Figlio SpA," dated December 20, 2017.

¹⁵ See Letter from Pegasus, "Forged Steel Fittings from Italy; Entry of Appearance and Request for APO Access; Request for Voluntary Respondent Treatment," dated December 27, 2017; *see also* Letter from Pegasus, "Forged Steel Fittings from Italy; Voluntary Respondent Questionnaire Response," dated January 8, 2018 (Pegasus AQR).

¹⁶ See Pegasus AQR.

¹⁷ See Letter from the petitioners, "Forged Steel Fittings from the Italy [sic]: Comments on the Section A Questionnaire Response of Pegasus," dated January 15, 2018.

¹⁸ See Memorandum to the File, "Less-Than-Fair-Value Investigation of Forged Steel Fittings from Italy: Selection of Additional Mandatory Respondent," dated February 20, 2018; *see also* Commerce's Antidumping Duty Questionnaire, dated February 21, 2018 (IML AD Questionnaire).

¹⁹ See Letter from MEGA, "Forged Steel Fittings from Italy: Response to Section A of the Antidumping Questionnaire of M.E.G.A. S.p.A. ("MEGA")," dated January 8, 2018 (MEGA AQR).

²⁰ See Letters from MEGA: "Forged Steel Fittings from Italy: Response to Section A of the Antidumping Questionnaire of M.E.G.A. S.p.A. ("MEGA")," dated January 8, 2018 (MEGA AQR); "Forged Steel Fittings from Italy: Sections B and C Responses of M.E.G.A. S.p.A.," dated January 26, 2018 (MEGA BCQR); and, "Forged Steel Fittings from Italy: Section D Response of M.E.G.A. S.p.A.," dated February 12, 2018 (MEGA DQR).

²¹ See, *e.g.*, Commerce Letter to MEGA, "Antidumping Duty Less Than Fair Value Investigation of Forged Steel Fittings from Italy," dated March 19, 2018 (MEGA Supplemental D Questionnaire).

²² See, *e.g.*, Letter from MEGA, "Forged Steel Fittings from Italy: Second Supplemental Questionnaire Response of M.E.G.A. S.p.A.," dated April 5, 2018 (MEGA SDQR).

On March 21, 2018, IML submitted a timely response to section A of Commerce’s AD questionnaire, and on April 9, 2018, we issued a supplemental questionnaire based on this response.²³ We did not receive timely responses to sections B – D of the questionnaire from IML, and on April 23, 2018, IML notified Commerce of its intention to withdraw from the investigation.²⁴

On January 10, 2018, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.²⁵ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on February 2, 2018, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than May 3, 2018.²⁶ On January 23, 2018, Commerce tolled the deadline for the preliminary determination until May 7, 2018, due to the partial shutdown of the Federal Government from January 20, 2018, through January 22, 2018.²⁷

In April 2018, MEGA requested that Commerce postpone the final determination, and that provisional measures be extended.²⁸ In April 2018, the petitioners requested, in the event of a negative preliminary determination in this investigation, that Commerce postpone the final determination up to 135 days after the date of the publication of the preliminary determination.²⁹

On April 18, 2018, the petitioners filed comments for the preliminary determination.³⁰ On April 26, 2018, MEGA filed rebuttal comments regarding the petitioners’ comment for the preliminary determination.³¹

We are conducting this investigation in accordance with section 733(b) of the Act.

²³ See Letter from IML, “Response to Questionnaire Section A,” dated March 21, 2018 (IML AQR); *see also* Commerce Letter to IML, “Antidumping Duty Investigation of Forged Steel Fittings from Italy: Supplemental Section A Questionnaire,” dated April 9, 2018 (IML Supplemental A Questionnaire).

²⁴ See Letter from IML, “I.M.L. S.p.A. Italy will not participate [sic],” dated April 18, 2018 (IML Withdrawal Letter).

²⁵ See Letter from the petitioners, “Request to Extend Deadlines for Preliminary Determinations,” dated January 10, 2018.

²⁶ See *Forged Steel Fittings from the People’s Republic of China, Italy, and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 83 FR 4899 (February 2, 2018).

²⁷ See Memorandum for the Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government,” dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

²⁸ See Letter from MEGA, “Forged Steel Fittings from Italy: Request for Postponement of Final Determination,” dated March 28, 2018.

²⁹ See Letter from the petitioners, “Forged Steel Fittings from Italy: Request to Extend Final Determination,” dated April 18, 2018.

³⁰ See Letter from the petitioners, “Forged Steel Fittings from Italy: Pre-Preliminary Comments,” dated April 18, 2018.

³¹ See Letter from MEGA, “Forged Steel Fittings from Italy: Response of M.E.G.A. S.p.A. to Pre-Preliminary Comments,” dated April 26, 2018.

III. PERIOD OF INVESTIGATION

The POI is October 1, 2016, through September 30, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was October 2017.³²

IV. TREATMENT OF GALPERTI AND PEGASUS

On December 20, 2017, and January 9, 2018, respectively, Commerce received submissions from Galperti and Pegasus stating that each were not a producer or exporter of forged steel fittings from Italy during the POI. As provided in section 782(i)(1) of the Act, we intend to verify Galperti's and Pegasus' claims that they did not produce or sell the subject merchandise during the POI.

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.³⁴ Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. Based on our analysis of these comments, we made certain preliminary revisions to the scope, as reflected in Appendix I of the accompanying *Federal Register* notice. For a summary of the scope comments and rebuttal responses submitted to the record, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum and the Second Preliminary Scope Decision Memorandum.³⁵

VI. SCOPE OF THE INVESTIGATION

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

VII. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As noted above, Commerce selected MEGA and IML as mandatory respondents in this investigation. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference pursuant to sections 776(a)-(b) of the Act is appropriate for the preliminary determination with respect to MEGA and IML.

³² *See Initiation Notice*, 82 FR at 50615; *see also* 19 CFR 351.204(b)(1).

³³ *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³⁴ *See Initiation Notice*, 82 FR at 50615.

³⁵ *See* Preliminary Scope Decision Memorandum and Memorandum to the File, "Second Preliminary Scope Decision Memorandum," dated concurrently with this memorandum (Second Preliminary Scope Decision Memorandum).

A) *Application of Adverse Facts Available*

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: (1) withholds information requested by the Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has 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 from the facts otherwise available. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³⁶ Further, section 776(b)(2) of the Act states that use of an adverse inference when selecting from the facts otherwise available may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.³⁷ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (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.”³⁸ Affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.³⁹ It is Commerce’s practice to consider, in employing adverse facts available, the extent to which a party may benefit from

³⁶ See section 776(b)(1)(B) of the Act.

³⁷ See also 19 CFR 351.308(c).

³⁸ See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

³⁹ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

its own lack of cooperation.⁴⁰

MEGA

We preliminarily find that the use of facts available is appropriate with respect to MEGA because MEGA withheld information and failed to provide such information in the form or manner requested in response to our requests for critical information related to cost of production. Specifically, on December 8, 2017, and March 19, 2018, Commerce issued questionnaires to MEGA, requesting that it submit a complete cost reconciliation.⁴¹ In response, MEGA failed to submit data and explanation to Commerce's questions about the specific types and cost of out-of-scope merchandise in its cost reconciliation.⁴² In particular, MEGA's statement that the total cost of manufacturing for the out-of-scope merchandise for the POI consists of the difference of the POI total cost of manufacturing and the total cost of manufacturing for the POI for the in-scope merchandise⁴³ equates to a single arithmetic calculation devoid of adequate detail and factual support. MEGA did not provide support from its accounting records identifying the out-of-scope products and quantifying their costs, despite our requests that it do so, and it did not demonstrate how the out-of-scope products were outside the scope of this investigation. As we have previously explained, a sufficient cost reconciliation is necessary to demonstrate that all costs are appropriately included or excluded from the reported COP for the merchandise under consideration.⁴⁴ MEGA's failure to explain adequately its reconciling items leaves Commerce without the ability to establish the starting point for MEGA's reported costs or verify those costs, because we do not know from the record information whether MEGA has reported all costs pertaining to subject merchandise. Without a complete, adequate cost reconciliation, Commerce is unable to understand the basis for MEGA's reported COP, to verify MEGA's COP and, consequently, to rely on MEGA's COP in its LTFV analysis. Accordingly, Commerce is unable to calculate an estimated weighted-average dumping margin for MEGA in this preliminary determination.

Therefore, we find that necessary information is missing from the record within the meaning of section 776(a)(1) of the Act, and that MEGA withheld information and failed to provide such information in the form or manner requested, within the meaning of section 776(a)(2)(A)-(B) of the Act. Consequently, we find it appropriate to use facts available, pursuant to section 776(a) of the Act, with respect to MEGA for this preliminary determination.

Further, we preliminarily find that the use of an adverse inference with respect to the facts available for MEGA is appropriate, because MEGA did not act to the best of its ability in

⁴⁰ See SAA at 870; see also *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at 4; unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).

⁴¹ See MEGA AD Questionnaire; see also MEGA Supplemental D Questionnaire at 4.

⁴² See MEGA DQR at 25; see also MEGA SDQR at 3 – 5.

⁴³ See MEGA SDQR at 5.

⁴⁴ See *Certain Steel Nails From Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016*, 83 FR 6163 (February 13, 2018), and accompanying Issues and Decision Memorandum at Comment 2.

responding to requests for information by Commerce. The Court of Appeals for the Federal Circuit (CAFC) in *Nippon Steel* provided an explanation of the meaning of act to “the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that “ability” refers to “the quality or state of being able.”⁴⁵ Thus, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum that it is able to do.⁴⁶ The CAFC acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.⁴⁷ Hence, compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.⁴⁸

Here, we find that MEGA did not act to the best of its ability to comply with Commerce’s requests for information, because MEGA failed to submit a sufficient response to Commerce’s questions about the types and cost of non-scope merchandise in its cost reconciliation. As discussed above, MEGA failed to identify all non-scope merchandise in its cost reconciliation and provide support for the amount claimed related to non-scope merchandise, as requested. Although “the best-of-its-ability standard requires that Commerce examine respondent’s abilities, efforts, and cooperation in responding to Commerce’s requests for information,” we note that the CAFC in *Nippon Steel* also stated that the standard “does not condone inattentiveness, carelessness, or inadequate record keeping.”⁴⁹ MEGA would or should have been able to provide information regarding the non-scope merchandise it produces for purposes of its cost reconciliation had it made the appropriate effort when receiving Commerce’s initial section D questionnaire and the supplemental questionnaire asking for this information. It is, therefore, reasonable for Commerce to expect that MEGA would have been more forthcoming with this information. Here, MEGA did not provide the level of detail requested or needed for Commerce to rely on the cost reconciliation submitted.⁵⁰ Consequently, at the very least, MEGA made “inadequate inquiries” and effort when it failed to provide this necessary information to Commerce.⁵¹ Accordingly, because we determine that MEGA did not act to the best of its ability, we have applied an adverse inference, pursuant to section 776(b) of the Act, for the preliminary determination.

Although we preliminarily determine to apply AFA to MEGA, we have issued a supplemental questionnaire to provide MEGA with a final opportunity to correct its error by providing a complete cost reconciliation before verification and the final determination in this investigation.

IML

We preliminarily find that the use of facts available is appropriate with respect to IML, because

⁴⁵ See *Nippon Steel*, 337 F.3d at 1382.

⁴⁶ *Id.*

⁴⁷ *Id.* at 1380.

⁴⁸ *Id.* at 1382.

⁴⁹ *Id.*

⁵⁰ See MEGA DQR at 25; see also MEGA SDQR at 3 – 5.

⁵¹ *Id.* at 1383.

necessary information to calculate an estimated weighted-average dumping margin is missing from the record, pursuant to section 776(a)(1) of the Act, and further, because IML withheld information, failed to provide such information by the deadlines for submission of the information, or in the form and manner requested, and significantly impeded the investigation by failing to respond to requests for information by Commerce, pursuant to section 776(a)(2)(A)-(C) of the Act. Specifically, on February 21, 2018, Commerce issued the AD questionnaire to IML, which set deadlines of March 14 and March 30, 2018 to respond to sections A and B-D, respectively.⁵² Commerce subsequently granted IML a one-week extension of time to submit its response to section A of the questionnaire.⁵³ On March 21, 2018, IML submitted a wholly deficient response to section A of the questionnaire.⁵⁴ On March 28, 2018, Commerce granted IML additional extensions of time to submit its response to sections B – C and section D, with deadlines of April 9 and April 13, 2018, respectively.⁵⁵ Further, on April 9, 2018, Commerce issued IML a supplemental section A questionnaire with a response due by April 16, 2018.⁵⁶ However, IML did not submit a response to sections B – D, or the supplemental A questionnaire. Therefore, we are relying on facts otherwise available with respect to IML, pursuant to section 776(a) of the Act, for this preliminary determination.

On April 18, 2018, IML submitted a letter notifying Commerce of its withdrawal from the investigation.⁵⁷ Because IML did not submit a response to sections B – D, or the supplemental A questionnaire, we preliminarily find that IML did not act to the best of its ability to comply with Commerce’s request for information. Further, the failure of IML to participate in this investigation and respond to Commerce’s questionnaires has precluded Commerce from performing the necessary analysis to calculate an estimated weighted-average dumping margin for IML based on its submissions. Accordingly, Commerce preliminarily concludes that IML failed to cooperate to the best of its ability to comply with requests for information by Commerce. Based on the above, and in accordance with section 776(b) of the Act, Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available with respect to IML.⁵⁸

⁵² See Commerce’s Antidumping Duty Questionnaire, dated February 21, 2018; *see also* Memorandum to the File, “Antidumping Duty Investigation of Forged Steel Fittings from Italy: Confirming Delivery and Receipt of the Antidumping Questionnaire to IML Industria Meccanica Ligure S.p.A.,” dated March 7, 2018.

⁵³ See Memorandum to the File, “Forged Steel Fittings from Italy: Telecon with IML Industria Meccanica Ligure S.p.A. (IML),” dated March 14, 2018.

⁵⁴ See IML AQR.

⁵⁵ See Commerce Letter to IML, “Antidumping Duty Investigation of Forged Steel Fittings from Italy – Request for Extension,” dated March 28, 2018.

⁵⁶ See IML Supplemental A Questionnaire.

⁵⁷ See IML Withdrawal Letter.

⁵⁸ See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying Issues and Decision Memorandum at Comment 21 (applying total AFA to a respondent that withdrew from an investigation).

B) Preliminary Estimated Weighted-Average Dumping Margin Based on Adverse Facts Available

Section 776(b)(2) of the Act states that Commerce, when employing adverse facts available (AFA), may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁵⁹ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁶⁰ Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.⁶¹

With respect to this investigation, the highest dumping margin alleged in the Petition is 80.20 percent and no rate was calculated for an individually-examined respondent. Thus, consistent with Commerce's practice, we have selected the highest dumping margin alleged in the Petition as the AFA rate applicable to IML and MEGA in this investigation.

C) Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, in general, where Commerce relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.⁶² Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."⁶³ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.⁶⁴ The SAA and Commerce's regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information derived from interested parties during the particular investigation.⁶⁵ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.⁶⁶

Because the AFA rate applied to both IML and MEGA is derived from the Petition and,

⁵⁹ See also 19 CFR 351.308(c).

⁶⁰ See SAA, at 870.

⁶¹ See, e.g., *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

⁶² See also 19 CFR 351.308(d).

⁶³ See SAA, at 870.

⁶⁴ See SAA at 870; see also 19 CFR 351.308(d).

⁶⁵ See SAA at 870; see also 19 CFR 351.308(d).

⁶⁶ See section 776(d)(3) of the Act.

consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable. In this case, we determined that the Petition margin is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.⁶⁷

Specifically, we examined evidence supporting the calculations in the Petition to determine the probative value of the highest dumping margin alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the alleged dumping margin calculation, *i.e.*, export price (EP) and normal value (NV).⁶⁸ Further, we examined information from various independent sources provided either in the Petition or, based on our request, in the supplement to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive the dumping margins alleged in the Petition.⁶⁹

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

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. Because there are no available calculated dumping margins in this investigation, we relied upon the highest dumping margin alleged in the Petition, which is the only reliable information regarding the forged steel fittings industry reasonably at Commerce's disposal at this time.

Accordingly, Commerce preliminarily determines that the highest dumping margin alleged in the Petition has probative value. Commerce has corroborated the AFA rate of 80.20 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and there is no record information indicating otherwise), and 2) is relevant.

VIII. ALL-OTHERS RATE

Section 735(c)(5)(A) of the Act provides that the estimated "all-others" rate shall be an amount

⁶⁷ See Memorandum to the File, "Antidumping Duty Investigation Initiation Checklist: Forged Steel Fittings from Italy; A-475-839," dated October 25, 2017 (Italy Initiation Checklist).

⁶⁸ *Id.*

⁶⁹ *Id.*

equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As indicated above, IML and MEGA are mandatory respondents and their estimated dumping margins are determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce's practice under these circumstances has been to assign, as the "all-others" rate, a simple average of the dumping margins alleged in the Petition.⁷⁰ In this investigation, the simple average of the Petition rates (*i.e.*, 18.66 and 80.20 percent) is 49.43 percent. Consequently, and consistent with its practice, Commerce is using 49.43 percent as the "all-others" rate applicable to entities not individually examined in this investigation.

IX. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

5/7/2018

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

⁷⁰ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; see also *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).